The handbook of public health.

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The Handbook of Public Health

Part I.

J. Patten MacDougall
and
A. Murray

3/6 Net.

THE

HANDBOOK OF PUBLIC HEALTH

PART I.

Skelton's Handbook of Public Health

THE

HANDBOOK OF PUBLIC HEALTH

A NEW EDITION REVISED BY

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PART I.

THE PUBLIC HEALTH (SCOTLAND) ACT, 1897

WITH NOTES

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON
MDCCCXCVIII

PREFACE.

THE Public Health (Scotland) Act, 1897, is a consolidating and amending statute. It contains many new provisions — some adapted from English Acts passed since 1867, and others due to the improved conditions and methods of sanitary science now established. All existing Scottish Public Health Statutes, with the sole exception of the Act of 1891, have been repealed and codified. But the provisions of the Burgh Police Act of 1892, so far as they bear upon the subject, have been left intact.

The new Act rendered necessary a new edition of Sir John Skelton's Handbook, and he had made a beginning of the work before his death. The plan laid down by him has been followed. The Notes show the alterations which have been made upon previous legislation, and include full cross-references, collating and analysing the various provisions. All recent

decisions of the Superior Courts, so far as available, are cited for reference.

Part II. of the work will contain other statutes falling within the administration of the Public Health Authorities. These will be similarly treated.

J. P. M.
A. M.

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ABBREVIATIONS AND REFERENCES.

B.	Signifies that the opinion given is that of the Board of Supervision.
P.L.M.	Poor Law Magazine.
D.	Court of Session Cases (Second Series), Dunlop.
M.	Court of Session Cases (Third Series), Macpherson.
R.	Court of Session Cases (Fourth Series), Rettie.
H.L.	House of Lords Cases (as reported in Court of Session Cases).
J., Just.	Justiciary Cases (as reported in Court of Session Cases).
County Council Cases .	Reports of Cases issued by the Association of County Councils in Scotland.
S.L.R.	Scottish Law Reporter.
S.L.Rev.	Scottish Law Review.
S.L.T.	Scots Law Times.
Jur.	Scottish Jurist.
Couper	Couper's Justiciary Cases.
Glen	The Law relating to Public Health, by W. C. Glen; eleventh edition, 1895, by A. Glen and A. F. Jenkin.
Lumley	The Public Health Act, 1875, by W. G. and E. Lumley; fifth edition, 1896, by Macmorran and Lushington.
Knight's Bye-Laws . .	Knight's Annotated Model Bye-Laws of the Local Government Board; fourth edition, 1893.
Rankine	The Law of Land Ownership in Scotland, by Prof. Rankine; third edition, 1891.

PUBLIC HEALTH (SCOTLAND) ACT, 1897.

(60 & 61 VICTORIA, CHAPTER 38.)

An Act to consolidate and amend the Laws relating to the Public Health in Scotland.—[6*th 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:

Preliminary.

Short Title.

1. [1]This Act may be cited as the Public Health (Scotland) Act, 1897.

[1] This Act consolidates and amends the sanitary law of Scotland. It repeals the Acts enumerated in the first schedule, being the whole of the Public Health Acts at present in force with the exception of the Act of 1891, which remains untouched. The repeal of previous Acts does not affect anything duly done under these Acts. (See sec. 196 of this Act, also sec. 38 of the Interpretation Act, 1889.)

The amendments of the sanitary law introduced in this Act are largely taken from the English Public Health Act, 1875, the Infectious Disease (Prevention) Act, 1890, and the Public Health (London) Act, 1891.

Extent and commencement of Act.

2. This Act shall extend to Scotland only, and shall come into operation on the first day of January after the passing thereof.[1]

[1] That is, on 1st January 1898. Sec. 36 (2) of the Interpretation Act, 1889, provides that—"Where an Act passed after the commencement of this Act . . . is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day."

[1]*Definitions.*

3. In this Act the following words and expressions have the meanings hereinafter assigned to them, unless such meaning is inconsistent with the context:

The word "Board" means the [2]Local Government Board for Scotland:

[1] In addition to the definitions here given, regard must be had to those laid down in the Interpretation Act, 1889, a number of which are cited in the notes.

[2] The constitution of the Board is fixed by the Local Government (Scotland) Act, 1894, sec. 4. (See note to sec. 5, *infra*.)

The word "secretary" includes assistant secretary:

The expressions [3]"medical officer of health" and "medical officer" mean a [4]legally qualified medical practitioner appointed by the [5]local authority under the [6]Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), or under the [7]Acts repealed by this Act or under this Act:[8]

[3] See sec. 15 and notes.

[4] See definition of "legally qualified medical practitioner," which immediately follows.

[5] See sec. 12.

[6] See sec. 77 of the Burgh Police Act, 1892.

[7] See sec. 196 and Schedule I.

[8] The county medical officer appointed under sec. 52 (1) of the Local Government Act, 1889, is not embraced in this definition. Apparently, therefore, the county medical officer will exercise no powers under this Act unless in his capacity as district medical officer or as appointed by a local authority, but the provisions of sub-secs. (2) and (3) of sec. 52 of the Local Government Act of 1889 do not appear to be affected. See note 2 to sec. 15.

Wherever in this Act the expression "legally qualified medical practitioner" is used, it shall mean a registered medical practitioner qualified, as the case may be:

The expression [3]"sanitary inspector" means a sanitary inspector appointed by the [5]local authority under the [9]Burgh Police (Scotland) Act, 1892, or under the Acts repealed by this Act or under this Act:[10]

[9] See sec. 75 of that Act.

[10] See note 8 to this section. The remarks as to county medical officers apply equally to county sanitary inspectors.

The expressions "veterinary surgeon" and "qualified veterinary surgeon" mean a member of the Royal College of Veterinary Surgeons:

The word [3]"clerk" includes acting clerk:

The word [11]"parish" means a parish *quoad civilia* exclusive of any burgh situated or partly situated therein:

[11] There was no definition of parish in the 1867 Act. The effect of the definition here given is to make the word parish in this Act mean *landward part of the parish*, and to give to the word a more restrictive signification than in the Local Government Acts.

The word [12]"burgh" includes not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, but also any [13]police burgh within the meaning of the Burgh Police (Scotland) Act, 1892:

[12] See sec. 12 *infra*. In the Local Government Acts the word "burgh" has a more restricted signification, being confined to royal and parliamentary burghs (see sec. 105 of the Local Government Act, 1889, and sec. 54 of the 1894 Act). Burghs of barony and of regality, although included in the definition of "burgh" given in the 1867 Act, appear to be excluded from the definition in this Act, except such of them as are police burghs.

[13] See sec. 4 (25) of the Burgh Police Act, which provides that "'police burgh' shall mean a populous place the boundaries whereof have been fixed under the General Police Acts or under any Local Police Act or under this Act."

The word [14]"county" means a county exclusive of any burgh, and does not include a county of a city:

[14] It will be observed that the definition of "county" here given is similar in *expression* to that in the Local Government Act of 1889, but owing to the difference in the definition of the word "burgh" in the two Acts, the *signification* of the word is in this Act more restricted.

By sec. 7 of the Interpretation Act, 1889, the word "county" includes stewartry.

The word [15]"district" means the district of any local authority under this Act:

[15] This word has not the restricted meaning given to it in sec.

77 of the Local Government Act of 1889, but signifies the area of jurisdiction of the local authority, whether burghal or landward.

The expression "district committee" means a district committee under the Local Government (Scotland) Act, 1889, and, subject to the provisions of section seventy-eight, sub-section three, of that Act, as amended by section nineteen, sub-section seven, of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), in the case of a county not divided into districts includes a county council:

The word [16] "magistrate" means a magistrate or judge having police jurisdiction under the Burgh Police (Scotland) Act, 1892, or under any general or local Police Act:

[16] See secs. 38 and 454 of the Burgh Police Act.

The word "decree" or "decern" includes any warrant, sentence, judgment, order, or interlocutor:

The word [17] "premises" includes lands, buildings, vehicles, tents, vans, structures of any kind, streams, lakes, seashore, drains, ditches, or places open, covered, or inclosed, whether built on or not, and whether public or private, and whether natural or artificial, and whether maintained or not under statutory authority, and any [18] ship, lying in any sea, river, harbour, or other water, or *ex adverso* of any place within the limits of the local authority:

[17] It will be observed that the definition of "premises" is very wide, and more exhaustive in its specification than that given in the 1867 Act.

[18] See definition of "ship" *infra*.

The word [19] "land" in this Act and in the Acts incorporated herewith as after-mentioned, shall include water and any right or servitude to or over land or water:

[19] This definition makes an important extension of the meaning of the word "land" in the Lands Clauses Acts as incorporated with this Act (see sec. 4). In these Acts the word *land* does not expressly include water. In the Burgh Police Act the expression "lands and premises" includes springs, but no other description of water is specified, a defect which is remedied by the proviso in sec. 124 of this Act.

The Interpretation Act, 1889 (sec. 3), provides that the expression

"land" shall, unless the contrary intention appears, include "messuages, tenements, and hereditaments, houses, and buildings of any tenure."

The word [20]"ship" includes any sailing or steam ship, vessel, or boat not belonging to Her Majesty or any foreign Government:

[20] See definition of "premises" *supra;* also sec. 177.

The word [21]"street" includes any [22]highway and any public bridge, and any road, lane, footway, square, [23]court, or passage, whether a thoroughfare or not, and whether or not there are houses in such street:

[21] This word was not defined in the 1867 Act. The definition here given is that in the Public Health (London) Act, 1891. Burgh officials will observe the points in which it differs from the definition in the Burgh Police Act; *e.g.*, the word "passage" is here used without qualification, while in the Burgh Police Act the expression "*public* passage" is used.

[22] The word "highway" is defined in sec. 3 of the Roads and Bridges Act, 1878, and is no doubt used here in the same sense.

[23] The word "court" is defined in the Burgh Police Act, sec. 4 (10). See also Lord Trayner's remarks in *Cooper* v. *Elder,* March 6, 1891, 18 R. 642.

The word [24]"house" means a dwelling-house, and includes schools, also [25]factories and other buildings in which persons are employed:

[24] There was no definition of *house* in the 1867 Act. The definition here given follows that in the London Public Health Act of 1891. See also sec. 177.

[25] See definition of "factory" immediately following.

The word [26]"factory" includes workshop and workplace:

[26] The word "factory" has in this Act a wider meaning than in the Factory and Workshop Acts, where the words "factory" and "workshop" are carefully distinguished.

The word "ashpit" means any receptacle for the deposit of ashes or refuse matter:

The expression [27]"knacker" means a person whose business it is to kill any horse, ass, mule, or cattle, 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:

[27] The definitions of "knacker," "knacker's yard," "slaughterer of cattle or horses," and "slaughter-house" are the same as in the Public Health (London) Act, 1891. These expressions were not defined in the 1867 Act.

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:

The word [28]"owner" means the person for the time entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the premises, and includes a trustee, factor, tutor, or curator, and in case of public or municipal property applies to the persons to whom the management thereof is entrusted:

[28] The definition of owner given in the 1867 Act is repeated here; it differs from that given in the Local Government Act, 1889, and the Burgh Police Act, 1892.

The word [29]"occupier" means in the case of a building or part of a building the person in occupation or having the charge, management, or control thereof, either on his own account or as the agent of another person, and in the case of a ship means the master or other person in charge thereof:

[29] There was no definition of "occupier" in the 1867 Act. The definition here given differs from that in the Burgh Police Act.

The word "company" includes commissioners:

The expression [30]"author of a nuisance" means the [31]person through whose act or default the [32]nuisance is caused, exists, or is continued, whether he be the [33]owner or occupier or both:

[30] This is the same definition as in the 1867 Act.

[31] In the 1867 Act the word *person* was defined. There is no definition given here, but sec. 19 of the Interpretation Act, 1889, provides that "person" shall, "unless the contrary intention appears, include any body of persons, corporate or unincorporate."

[32] For the meaning of "nuisance" under this Act, see sec. 16.

[33] See above for definitions of "owner" and "occupier." See also note 3 to sec. 20 *infra*.

The expression [34]"common lodging-house" means a house

or part thereof where lodgers are housed at an amount not exceeding fourpence per night, [35]or such other sum as shall be fixed under the provisions of this Act, for each person whether the same be payable nightly or weekly, or for any period not longer than a fortnight, and shall include any place where emigrants are lodged and all boarding-houses for seamen, irrespective of the rate charged for lodging or boarding.

[34] This definition differs from that in the 1867 Act by omitting the words after "fortnight," viz., "or where the house is licensed to lodge more than twelve persons," and by including emigrants' lodgings and seamen's boarding-houses. The distinction between common lodging-houses and the lodging-houses dealt with in sec. 72 must be attended to. In the latter there is no limit of charge; every "house or part of a house which is let in lodgings or occupied by members of more than one family" being within the scope of the enactment.

[35] See sec. 89, under which the charge may be raised or diminished, but so as not to exceed sixpence per night.

The expression, [36]"keeper of a common lodging-house," includes any person having or acting in the care and management of a common lodging-house.

[36] It does not appear to be imperative that the owner or keeper of a common lodging-house should live on the premises, if he appoints a person to act for him.—B.

"Where he [the owner] neither resides in the house nor exercises any control over its management, but simply receives the rent, he cannot be considered the keeper. . . . But where the owner, though not resident in the house, either in person or through an agent colourably or otherwise exercises control over its management, we have no doubt that he should be considered the keeper."—Opinion of the English law officers of the Crown, Sir A. E. Cockburn (late Chief Justice) and Sir W. P. Wood (late Lord Chancellor), obtained by the English General Board of Health and published in their circular of 17th October 1853.

The word "cattle" means bulls, cows, oxen, heifers, and calves, and includes sheep, goats, and swine:

The word [37]"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:

[37] The definitions of "dairy" and "dairyman" are the same as in the Public Health (London) Act, 1891.

The word "dairyman" includes any cowkeeper, [38]purveyor of milk, or occupier of a dairy:

[38] It was held that an ice-cream seller is not a "purveyor of milk" in the sense of the Dairies, Cowsheds, and Milkshops Order, 1885. (*Lang* v. *Pianta*, Jan. 22, 1894, 21 R. (J.C.) 20; 1 S.L.T. 474.)

The word "burial" includes cremation:

The expressions "day" and "daytime" mean between nine o'clock in the morning and six o'clock in the evening.

Incorporation of Acts.

4.—(1.) [1]The Lands Clauses Acts, except the provisions thereof relating to the purchase and taking of land otherwise than by agreement, are incorporated with this Act, and for the [2]special purposes hereinafter mentioned the provisions thereof for the purchase and taking of land otherwise than by agreement are incorporated with this Act, but shall only be put in force in manner hereinafter set forth.

[1] Sec. 23 of the Interpretation Act provides that as respects Scotland the expression Lands Clauses Acts shall mean the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), and the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), and any Acts amending the same.

[2] See secs. 144 and 145.

(2.) Section [3]six and sections [4]seventy to seventy-eight of the Railway Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), are [5]incorporated with this Act, and in the said sections for the purpose of such incorporation "the company" shall mean the local authority; "the railway" or "the railway and works" shall mean any works constructed under the powers of this Act; "the construction of the railway" shall mean and include the construction of any works under this Act, or the acquisition of rights and powers to make sewers or to use any sewer; and "lands taken or used for the purposes of the railway" shall mean and include lands, buildings, engines, materials, or apparatus purchased, taken on lease, or used for the purposes of this Act.

[3] Sec. 6 of the Railway Clauses Consolidation (Scotland) Act, 1845, as modified for the purpose of incorporation with this Act, runs as follows:—

"In exercising the power given to the [local authority] by the [Public Health (Scotland) Act, 1897, or by any Order or Provisional Order made in terms thereof] (*see sec.* 145 (11) (*b*) *of this Act*) to

construct [any works under the said Act], and to take lands for that purpose, the [local authority] shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation (Scotland) Act; and the [local authority] shall make to the owners and occupiers of and all other parties interested in any [lands, buildings, engines, materials, or apparatus purchased, taken on lease, or used for the purposes of the said Public Health (Scotland) Act, 1897], or injuriously affected by the construction [of any works under the said Public Health (Scotland) Act, 1897, or the acquisition of rights and powers to make sewers or to use any sewer], full compensation for the value of the lands [buildings, engines, materials, or apparatus so purchased, taken on lease, or used], and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, [buildings, engines, materials, or apparatus], of the powers by this or the [Public Health (Scotland) Act, 1897, or any Order or Provisional Order made in terms thereof], or any Act incorporated therewith, vested in the [local authority], and, except where otherwise provided by this or the [Public Health (Scotland) Act, 1897, or any Order or Provisional Order made in terms thereof], the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforcing the payment or other satisfaction thereof."

[4] Secs. 70 to 78 of the Railway Clauses Act deal with the procedure in cases of mines lying under or near the railway.

[5] The reason for incorporating these clauses of the Railway Clauses Consolidation (Scotland) Act, 1845, was thus explained by the Lord Advocate in the course of the discussion of the Bill in Committee of the House of Commons as reported :—

"The Lands Clauses Act was the general statute which provided the methods by which a man's land might be taken and paid for, for any purpose whatsoever. Owing to some difference of procedure in arbitrations and so on between England and Scotland, instead of there being one Act for the two kingdoms there were two, and in the Scottish Act there was a curious omission. The English Act contained an 'injuriously affected' clause, so that if a man's land, although not taken, was injuriously affected, he was entitled to make out his claim. The omission in the Scottish Act was rectified in the Railway Clauses Consolidation (Scotland) Act, and in the Waterworks Clauses. So far as justice was concerned there was no difference between the two countries, only that for Scotland it was necessary to have both the Lands Clauses and the Railway Clauses Acts. There was no difference between public health purposes and any other purposes in this matter. What was it to a man whose land was injuriously affected, whether it was for a public health or any other purpose, however good? Besides, they had the authority of Parliament so lately as the Parish Councils Act of 1894, which incorporated these sections. He therefore asked the Committee to retain the words in the clause."

(3.) The expression in this Act "in terms of the Lands Clauses Acts," or any similar expression, shall, unless the context otherwise requires, mean in terms of the Lands Clauses Acts (except the provisions thereof relating to the purchase and taking of land otherwise than by agreement), and of the Railways Clauses Consolidation (Scotland) Act, 1845, as incorporated in this Act.

PART I.

Authorities for Execution of Act.

Central Authority.

Local Government Board to be Central Authority.

5. The [1]Local Government Board for Scotland (in this Act referred to as the Board) shall be the central authority for the execution of this Act. In addition to the powers conferred on or transferred to it by the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), the Board shall have the powers hereinafter mentioned.

[1] The constitution of the Board is fixed by sec. 4 of the Local Government (Scotland) Act, 1894. It consists of three *ex-officio* members, viz., the Secretary for Scotland, who is President, the Solicitor-General for Scotland, and the Under-Secretary for Scotland, together with three appointed members, one of whom is the Vice-President (who is also Chairman of the Board in the absence of the President), the other two being the legal and medical members respectively. This Board succeeded to the office and functions of the Board of Supervision, which was established by the Poor Law Act of 1845. The provisions regulating its procedure will be found in sec. 5 of the Local Government (Scotland) Act, 1894.

Powers of Board to inquire into sanitary conditions of district.

6.[1] It shall be lawful for the Board, upon written application by a parish council, or ten ratepayers, or upon the report of any of the [2]inspecting officers of the Board, to inquire into the sanitary condition of any district or part of a district, and for this purpose the Board are hereby empowered to make [3]inquiries, and require answers or returns to be made to the Board upon any question or matter connected with or relating to the purposes of this Act, and

also by a [4]summons, signed by one of their number or by the secretary, to require the attendance of all such persons as they may think fit to call before them upon any such question or matter, and to administer [5]oaths to and examine upon oath all such persons, and to require and enforce the production upon oath of all books, contracts, agreements, accounts, and writings, or copies thereof respectively, in anywise relating to any such question or matter.

[1] This section re-enacts sec. 9 of the 1867 Act with some modifications.

[2] The four general superintendents of poor and visiting officers of the Board under the Poor Law Acts, are also inspecting officers under the Public Health Acts, the country being divided into four districts, and allocated to them for the purposes of inspection.

[3] The powers given in this and the succeeding sections are in addition to those conferred on the Board by sec. 39 (2) of the Local Government Act, 1894, which provides: "Where the Board are authorised or required by any Act to make or confirm any order, rule, or regulation, or to give any consent, sanction, or approval, or otherwise to act, they may cause a local inquiry to be held in terms of sub-section eight of section twenty-five of this Act, and the provisions of that sub-section shall apply accordingly."

[4] Under the corresponding provision in sec. 9 of the Act of 1867, the Board of Supervision exercised the power of requiring attendance by summons in one or two cases where the local authority refused or delayed to produce books or other documents.

[5] Sec. 3 of the Interpretation Act, 1889, provides that "the expressions 'oath' and 'affidavit' shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration."

Power to Board to authorise special inquiries.

7.[1] It shall be lawful for the Board, whenever it may seem fitting to them, to authorise and empower for a limited time one of the members thereof to conduct any special inquiry in any part of Scotland, and to report thereon to the Board; and such member so authorised and empowered shall be entitled to summon and examine on oath witnesses and havers, and to exercise all such other of the powers by this Act given to the Board as may be necessary for conducting such inquiry, and such member shall be reimbursed by the Board of all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall be deemed

part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of the Board are now defrayed.

[1] This section reproduces sec. 10 of the 1867 Act, with this alteration, that the consent of the Secretary for Scotland or the Lord Advocate is now dispensed with.

Power to Board to appoint commissioners for conducting special inquiries.

8.[1] It shall be lawful for the Board, whenever it may seem fitting to them, to appoint some person or persons, not being a member or members of the Board, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a limited period, and to report thereon; and the Board shall delegate to every person so appointed for the purpose of conducting such inquiry such of the powers of the Board as they may deem necessary or expedient for summoning or examining on oath witnesses and havers, and otherwise conducting such inquiry; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary or of any member of the Board to the sheriff of the county within which the inquiry in question is to be made; and every such commissioner shall be reimbursed by the Board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said Board, and approved of by the Treasury.

[1] Under the corresponding section of the Act of 1867 (sec. 11) the Board of Supervision appointed commissioners whenever it appeared to them necessary to obtain the professional assistance of some person specially qualified to advise them on any matter coming before them for decision. For example, when a local authority applies for the Board's recommendation to a loan from the Public Works Loan Commissioners to meet the cost of some sanitary improvement, it has been the practice of the Board to appoint a civil engineer as a commissioner to inquire and report to them as to the nature, mode of execution, durability, &c., of the works for which the loan is required. Under the 1867 Act the appointments were limited to advocates, medical practitioners, architects, surveyors, and engineers; the new Act authorises the appointment of any person save a member of the Board.

Power to Board to allow expenses of witnesses, &c.

9.[1] It shall be lawful for the Board, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said Board, or member thereof, or commissioner or commissioners, as such Board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of the Board are now defrayed.

[1] This section is an exact reproduction of sec. 12 of the 1867 Act.

Penalties on persons giving false evidence or refusing to obey summons of Board.

10.[1] If any person, upon any examination on oath under the authority of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the Board, or member or commissioner authorised or appointed by the Board as aforesaid, or to give evidence, or shall wilfully refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be required to be produced before the Board, or member thereof, or commissioner or commissioners, or shall wilfully neglect or disobey any of the orders of the Board or member or commissioner, or be guilty of any contempt of the Board or member or commissioner, such person being thereof lawfully convicted, shall forfeit and pay for the first offence any sum not exceeding five pounds, and for the second and every subsequent offence any sum not exceeding twenty pounds nor less than five pounds.

[1] This section reproduces sec. 13 of the 1867 Act.

Power to Board to appoint clerks, &c.

11.[1] The Board are hereby empowered from time to time to appoint all such officers and clerks as they shall deem necessary, and from time to time, at the discretion of the

Board, to remove such officers and clerks, or any of them, and to appoint others in their stead; provided that the amount of the salaries of such officers and clerks shall from time to time be regulated by the Treasury.

[1] This section corresponds to sec. 14 of the 1867 Act.

Local Authorities.

Local Authorities to execute Act.

12. The following shall respectively be the local authority to execute this Act within the districts hereunder stated:

(1) In [1]burghs subject to the provisions of the Burgh Police (Scotland) Act, 1892, the town council or burgh commissioners:

[1] See definition of "burgh" in sec. 3. There are only five burghs in Scotland which are not subject to the provisions of the Burgh Police Act—viz., Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock; accordingly, all the burghs in Scotland save these five will come under sub-sec. 1. These five burghs have each local Acts for police and sanitary purposes, and they have power to adopt the provisions of the Burgh Police Act.

Cases may occur where, through the operation of sec. 81 (2) of the Local Government Act, 1889, the jurisdiction of the county council or district committee as local authority may extend into a burgh. That sub-section deals with special drainage or water-supply districts which are partly within a county and partly within a burgh, and in the Clydebank case the Court held that the county council or district committee was the local authority for the purposes of water supply within the whole of the special district, although the special district was partly within the burgh. (*County Council of Dunbarton* v. *Police Commissioners of Clydebank*, Nov. 16, 1894, 22 R. 64; 2 S.L.T. 290.) See sec. 122 (5) and note 26 thereto.

(2) In [2]other burghs, the town council or board of police, as the case may be:

[2] This sub-section will apply only to the five burghs named in the preceding note.

(3) In districts where the county is [3]divided into districts under the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), and, [4]subject to the provisions of section seventeen of that Act, as amended by this Act, the district committee:

[3] Under sec. 77 of the Local Government Act of 1889 most of the counties in Scotland are for public health purposes divided into

districts, and by this sub-sec. the district committee of the county council is continued as the local authority within its jurisdiction. But those members of the district committee who sit as the representatives of burghs are precluded from acting or voting in the district committee when it is engaged in the administration of this Act. See sec. 138 of this Act, and sec. 73 (8) of the Local Government Act, 1889.

[4] The jurisdiction of the district committee as local authority is subject to the provisions of sec. 17 of the Local Government Act, 1889. That section limits the powers of the district committee in certain matters. It provides that a district committee shall have no power of raising money by rate or loan; that it shall be subject to general regulations made by the county council; and that any of its proceedings and orders, save proceedings for the removal of a nuisance, shall be subject to review by the county council on an appeal by five ratepayers. As regards the appointment of the medical officer and sanitary inspector for the county, the county council is the local authority.

(4) In counties where the [5]county is not so divided, the county council, subject to the provisions of section seventy-eight, sub-section three, of the Local Government (Scotland) Act, 1889, as amended by section nineteen, sub-section seven, of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58).

[5] There are eight counties which have not been divided into districts, viz., Caithness, Clackmannan, Elgin, Kinross, Nairn, Peebles, Selkirk, and Sutherland. These counties come under sub-sec. 4 of this section, and the county council, as constituted for public health purposes by sec. 78 (3) of the Local Government Act, 1889, is the local authority. The representatives from the burghs are precluded from acting or voting in the county council when engaged in the administration of this Act. See sec. 138 *infra*.

Provided always that wherever, except in regard to a burgh, the expression "local authority" is in this Act used with reference to [6]rating, borrowing, or acquiring or holding land, it shall mean the [7]county council, but this proviso shall not be construed to extend or diminish the exemption from stamp duties contained in section one hundred and sixty-eight of this Act.

[6] See secs. 133 to 145.

[7] See note 4 *supra* as to the limitations of the power of the district committee as local authority; also sec. 191, which saves the powers and rights of county councils. The county council, in exercising its powers as to rating, borrowing, and acquiring land, acts without the addition of the representatives from parish councils who, in counties not divided into districts, are associated with

the elected councillors as the local authority in administering the other provisions of the Public Health Acts. The burgh representatives will not act (see sec. 138 *infra*).

Where district in more than one county.

13.[1] Where any parish or burgh shall be situated in more than one county, the Board shall, on application being made to them by any person having interest, determine in which one of such counties such parish or burgh shall be held to be situated for the purposes of this Act, whose decision shall be final; and the jurisdiction and powers of magistrates, justices, and [2]sheriffs, and the powers of their officers under this Act, shall be regulated accordingly, and the Board may from time to time recall or vary such determination.

[1] This section re-enacts sec. 6 of the Act of 1867, but it is difficult to understand the object of retaining it. There are only five parishes which are in more than one county, and a determination by the Board in terms of this section would in these cases create great difficulty and confusion. There seem to be no burghs in Scotland which are situated in more than one county. It is possible, however, that a new police burgh may at some future time be formed, partly in one county and partly in another, and in that case the provision of this section might conceivably be of use.

[2] In burghs situated in more than one county, sec. 49 of the Burgh Police Act provides that the Secretary for Scotland shall appoint one of the sheriffs to exercise jurisdiction under that Act.

Local authorities to be bodies corporate. Committees may be appointed.

14.[1] The local authorities shall respectively be [2]bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to [3]hold lands for the purposes of this Act; and the local authority, [4]subject, in the case where the local authority is a district committee, to the provisions of sub-section two of section seventeen of the Local Government (Scotland) Act, 1889, may appoint any [5]committee or committees of their own body to receive [6]and issue notices, to [7]take proceedings, and [8]in all or certain specified respects to execute this Act, whereof two shall be a quorum, unless a larger quorum be specified in their appointment; and such local authority or their committee, [9]thereto duly authorised, may

by a writing under the hand of the clerk empower any officer or person to [10]serve notices, make complaints, and take proceedings on their behalf; and [11]all acts done or proceedings taken by or against such committee or officer or person shall be as valid as if they were done by or taken in the name of all the members of the local authority; and the local authority shall have power to commence or carry on all proceedings commenced, or which might have been commenced, before the [12]commencement of this Act, by the local authority under any of the Acts hereby repealed, and [13]shall be vested with all property or pecuniary claims vested in and be liable to perform all pecuniary and other obligations undertaken or incurred by or devolving on such last-mentioned local authority.

[1] This section re-enacts sec. 7 of the 1867 Act, with slight alterations, and makes a number of provisions respecting the procedure of local authorities. In matters not provided for by this section the local authorities will be subject to the provisions of the Acts under which they are respectively constituted. For instance, there is no provision as to the quorum of the local authority; accordingly the quorum of the local authority of any burgh which is subject to the Burgh Police Act will be determined by the proviso in sec. 50 of that Act that one-third of the commissioners is required to constitute a quorum, while in the case of a district committee the quorum will be fixed in terms of secs. 74 (1) and 80 of the Local Government Act, 1889.

In the case of committees, however, when there is no regulation or minute fixing the number, two is the quorum.

[2] The commissioners of burghs are incorporated by sec. 55 (1) of the Burgh Police Act, and sub-sec. 2 of the same section makes provision as to the corporate name of the commissioners. The district committee is not incorporated by the Local Government Act, 1889, but sec. 79 of that Act provides that "it shall be designated according to the district within which it acts, and may sue and be sued under that designation."

[3] District committees have no power to hold lands. In landward districts the county council is the local authority *quoad* the acquisition or holding of land. See proviso to sec. 12 *supra*.

[4] Sec. 17 (2) (*b*) of the Local Government Act, 1889, provides, *inter alia*, that "the county council shall make general regulations for the government of a district committee, and such committee shall conform to these regulations."

[5] See sec. 54 of the Burgh Police Act as to the appointment of committees by the commissioners of burghs.

As to committees for special drainage and special water-supply districts see sec. 81 of the Local Government Act, 1889, as amended by sec. 44 (9) of the Act of 1894; also note 26 to sec. 122 of this Act.

[6] The words "and issue" are new. Regard must be had to the

difference between the power to *issue* notices, which the local authority may delegate to a committee, and the power to *serve* notices, which, under a subsequent provision of this section, may be delegated by the local authority, or by a committee thereto duly authorised, to any officer or person. As to the service of notices under this Act, see sec. 159 *infra*, and of notices under the Burgh Police Act, 1892, see secs. 336–8 of that Act.

[7] As to the appearance of the local authority in legal proceedings, see sec. 152 *infra*. The local authority may appoint any person to take proceedings in their behalf. The clerk or sanitary inspector is usually appointed. In the case of bakehouses the power of taking proceedings is given by statute to the medical officer of health. See sec. 17 (1) of the Factory and Workshop Act, 1883.

[8] The local authority may delegate any, or all, of their powers to a committee, but the Board of Supervision thought that a general remit of this kind would not apply to acts of extraordinary jurisdiction—such, for example, as the appointment of officers, the formation of special drainage and water-supply districts, &c. &c. The Perth Local Police Act empowered the commissioners of that burgh to appoint committees "for carrying the purposes of the Act into execution," and for that purpose to delegate their powers to them. The Court held, upon a construction of the statute, that a paving committee had no power to order proprietors to repave a street, but only to see to the execution of decrees pronounced by the commissioners. (*Thomas* v. *Elgin*, July 4, 1856, 18 D. 1204; 28 Jur. 590.)

The local authority may, if they think fit, at any time withdraw from a committee any powers they may have delegated to it.—B.

It is a general rule of law that the proceedings of a committee may be reviewed by the body appointing it, except when the plea of "*rei interventus*" can be raised. But it is difficult to secure the orderly transaction of business if the action of committees is overruled at meetings of the local authority.—B.

[9] The power of a committee is limited to the matters delegated to them, and it is not competent for them to act beyond these. It is a rule of common law (*delegatus non potest delegare*) that a committee cannot delegate its powers to a sub-committee unless legally authorised to do so. The Court held that where police commissioners had delegated certain of their duties to a committee under sec. 63 of the General Police Act, this committee could not delegate their duties to a sub-committee. (*Thomson* v. *Dundee Police Commissioners*, December 8, 1887, 15 R. 164; P.L.M. 1888, p. 94.)

[10] See notes 6 and 7 *supra*.

[11] See sec. 166 as to non-liability of local authority for any irregularity of their officers or for anything done by themselves in the *bonâ fide* execution of the Act.

[12] That is, before 1st January 1898. Sec. 2.

[13] In landward districts heritable property will be vested in the county council and not in the district committee; and in like manner pecuniary obligations of the nature of a loan will fall to be discharged by the county council.

Local authority to appoint medical and other officers.

15. [1] The local authority [2]shall [3]appoint a [4]medical officer or medical officers, who shall be called medical officer or medical officers of health, and a sanitary inspector or inspectors, [5]the latter of whom shall be also inspector or inspectors of common lodging-houses, and the local authority [6]shall, subject to the approval of the Board, regulate the duties of such medical officers and sanitary inspectors and their relations to each other, whether appointed before or subsequent to the commencement of this Act, and this, [7]notwithstanding anything contained in sections seventy-five, seventy-six, and seventy-seven of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55); and the local authority [8]may, and if required by the Board shall, appoint convenient places for their offices, and shall allow to every such medical officer and sanitary inspector and [9]every other officer or clerk appointed by them on account of his employment a [10]proper salary or remuneration; and the names and addresses and salaries of the said medical officers and sanitary inspectors shall be reported by the local authority to the Board immediately on such persons being appointed and such salaries fixed; and the said medical officers and sanitary inspectors, and the [11]local authority and their clerk, and the registrars of births, deaths, and marriages shall be bound to make such returns and special reports to the Board in such form and at such times as the Board shall require. The medical officer may, when [12]authorised by the local authority, exercise any of the powers with which the sanitary inspector is invested by this Act.

No person shall be appointed as the medical officer of any burgh or of any district, other than a burgh, unless he possesses the [13]qualifications set forth in section fifty-four of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50).

[14] No medical officer or sanitary inspector appointed by the local authority under this or any of the repealed Acts shall be removable from office, except by or with the sanction of the Board.

[15] The registrar of births, deaths, and marriages in each registration district shall furnish to the local authority such periodical returns of births and deaths as may be required of him and approved by the Board, and for each death in-

cluded in such return and for each return of births he shall be paid by the local authority the sum of twopence, and the local authority shall provide the forms on which such returns are to be made, and shall pay for their transmission by letter post.

[16] The medical officer and sanitary inspector shall, if required by the local authority, respectively name a [17] duly qualified substitute for whom they shall be responsible, and if the local authority shall approve of the nomination, such substitute shall have the same powers and duties as the medical officer or sanitary inspector, as the case may be, during the temporary illness or authorised absence of either of them, and the local authority may from time to time with consent of the Board withdraw their approval of such substitute, and may require the medical officer or sanitary inspector, as the case may be, to name for their approval some other duly qualified substitute.

Nothing contained in this Act shall, save in so far as expressly otherwise provided, prejudice or affect the existing officers and servants of the local authorities under any Act in force at the passing of this Act, and such officers and servants shall without any further appointment be the officers and servants of the local authorities under this Act, with, save as aforesaid, the same tenure of office (if any), and emoluments as heretofore.

[1] This section takes the place of sec. 8 of the 1867 Act, but differs from it in many important features.

[2] It is imperative on the local authority to make the appointments. Under the 1867 Act it was permissive, except when the local authority was required by the Board to make an appointment; but in burghs the appointment of sanitary inspectors and medical officers was made compulsory by the Burgh Police Act, secs. 75 and 77. In counties sec. 52 of the Local Government Act, 1889, requires county councils to appoint medical officers and sanitary inspectors, who shall not hold any other appointment, or engage in private practice or employment, without the express written consent of the council. The same section provides that the district committees as local authorities may either themselves appoint medical officers and sanitary inspectors, or may make arrangements with the county council for rendering the services of the medical officers and sanitary inspectors for the county regularly available within their districts, and when the latter course is followed, the county officers are the officers of the district under the Public Health Act, and the district committee are not bound to appoint others. It does not appear that these provisions are affected by this Act.

[3] The Local Government Act, 1889, sec. 17 (3), provides that appointments may be made either for the whole district or for any part of it.

In many parts of the country it would be highly expedient for local authorities whose districts are contiguous to unite in the selection of a competent person as sanitary inspector for their joint districts—each local authority contributing a fair proportion of his salary. By this course of procedure, the services of an officer of a superior class would be secured at a moderate cost, and constant attention would be given to the enforcement of the provisions of the statute. Such a system would tend to promote both economy and efficiency.—B. *Circ. 29th July* 1870; *Report*, 1870, App., p. 55. The same recommendation applies to medical officers.

Appointments should be made only by the local authority itself or by a committee expressly authorised. An appointment is an act of extraordinary administration, which does not come within the ordinary business remitted to a committee; but an appointment made by a committee and subsequently approved by the local authority would probably be held to have been validly made by the local authority itself.—B.

Intimation of the intention to appoint must be given in the notice calling the meeting; an appointment made without notice would be invalid.—B.

It is neither expedient nor competent that the offices of sanitary inspector and medical officer should be held by the same person.—*Board's Report*, 1868, p. xix. But a medical man, other than the medical officer, may competently be appointed sanitary inspector.—B.

An appointment of sanitary inspector during the pleasure of the local authority, or for a limited period, is invalid, being inconsistent with the statutory provision that such officers are removable only by the Board.—B. This opinion referred to the provisions of the 1867 Act, but will now apply to all sanitary inspectors and medical officers.

[4] The statutory title of the medical officer under this Act is "Medical Officer of Health," the same as in the Burgh Police Act, 1892, sec. 77.

The appointments of sanitary inspector and medical officer, being offices of profit, cannot legally be held by members of the local authority.—B.

A minor cannot competently be appointed sanitary inspector or medical officer.—B.

There is no statutory provision as to *assistant* sanitary inspectors or medical officers; it is left to the local authority to make such arrangements as they think fit with respect to the appointment, remuneration, and duties of such assistants. The special statutory duties of the sanitary inspector or medical officer cannot be performed by an assistant. This section provides as to substitutes.

[5] The sanitary inspector being *ex officio* inspector of common lodging-houses, the local authority cannot appoint any one to that office who is not sanitary inspector; but there is nothing to prevent a local authority appointing two or more sanitary inspectors, and assigning to one of them the discharge of the duties connected with common lodging-houses.—B.

[6] Under the 1867 Act it was permissive for the local authority to regulate the duties of their medical officer and sanitary inspector; it is now imperative. In burghs it was made imperative by the Burgh Police Act, section 77 (3). The local authority are required by this section to regulate not only the duties of the medical officer and sanitary inspector, but also their relations to each other, and these regulations are to apply whether the officials were appointed prior to the commencement of this Act or not.

The Local Government Act of 1889, sec. 53 (1), authorises the Board to make regulations for the medical officer and sanitary inspector of a district in any county, and a copy of any report made in terms of these regulations must be sent to the county council. These regulations, however, do not supersede the regulations authorised by this section. Any local authority may make such last-mentioned regulations, which, in the case of a district committee, would be supplementary to the Board's regulations.

Unless required by a regulation or byelaw, or specially instructed to do so, it is not the duty of the medical officer to attend cases of infectious disease (see sec. 66 (1) (*d*) and note 11 thereto). The main object of the appointment of a medical officer is to afford to the local authority the aid of a properly qualified adviser with regard to all sanitary questions on which professional advice is likely to prove of service.—B.

It is on the medical officer that the duty of carrying out the sanitary provisions as to bakehouses is laid by sec. 17 (1) of the Factory and Workshop Act, 1883.

[7] The object of the words "notwithstanding anything contained in secs. 75, 76, and 77 of the Burgh Police (Scotland) Act, 1892," is not very clear, but seems to be to authorise the local authority, in making the regulations, to ignore the provisions of these sections which relate to the duties and position of the medical officer and sanitary inspector. The result appears to be that if the regulations made by the local authority are inconsistent with the terms of the sections referred to, the regulations will supersede the statutory provisions.

[8] Under the 1867 Act the provision as to offices was imperative; it is now permissive, unless the Board require the power to be exercised. The places appointed for the offices of the medical officer and sanitary inspector need not be exclusively used for that purpose. The local authority are empowered by sec. 141 to borrow for the purpose of providing offices.

[9] While the 1867 Act provided that the local authority should allow to the medical officer and sanitary inspector a proper salary, this Act extends the requirement to "every other officer or clerk." The effect seems to be to constitute the office of clerk to the local authority a salaried office. The practice hitherto has been that in burghs the town clerk, and in districts the district clerk, acted *ex officio* as clerk to the local authority, and his salary as clerk to the local authority was included in his salary as town or district clerk. The new provision apparently requires that the clerk shall have a separate salary as clerk to the local authority, and it may possibly be held that a clerk without a separate salary is not the statutory clerk.

[10] An appointment of medical officer or sanitary inspector without a proper salary is invalid. What a "proper" salary is must in each case depend on the amount of work to be done, and the other local circumstances of the district. In some cases the Board of Supervision held that a "proper salary" had not been fixed, the amount named by the local authority being altogether illusory. In one case a local authority reduced the sanitary inspector's salary to a nominal sum, manifestly for the purpose of compelling him to resign. The Board held that the local authority were not entitled to effect by indirect means what they have no power to accomplish by direct means.—*Board's Report*, 1872, p. xxiii. See also note 14 *infra*, and *Board of Supervision* v. *Parochial Board of Old Monkland*, January 17, 1880, 7 R. 469; P.L.M. 1880, p. 141.

A resolution to reduce a salary is inept if made without notice of the intention to propose such a resolution, or without the sanction of the Board obtained on a statement of sufficient grounds.—B.

At a meeting of the commissioners of a burgh it was resolved to increase the salary of the sanitary inspector. The resolution was not intimated to him, and it was subsequently cancelled. *Held* that the inspector had no *jus quæsitum* entitling him to sue for the increase of salary.—*Burr* v. *Bo'ness Commissioners*, Nov. 13, 1896, 24 R. 148; 34 S.L.R. 91; 4 S.L.T. 228.

By the Local Taxation (Customs and Excise) Act, 1890, sec. 2 (III.) (*a*), a sum of £15,000 is set apart as an imperial contribution to the cost of medical officers and sanitary inspectors appointed under the Public Health and Local Government Acts. The money is distributed to the local authorities in accordance with regulations framed by the Secretary for Scotland. It is provided by these regulations that, in order to entitle a local authority to participate in the contribution, the salaries of the officers must be approved by the Secretary for Scotland on the recommendation of the Local Government Board, and that no alteration of an approved salary shall be made without the consent of the Board.

[11] Under the 1867 Act only the medical officer and sanitary inspector were bound to make reports and returns to the Board. The duty is now laid also upon the local authority and their clerk, and the registrar.

[12] This is a new provision. There are not many cases where power is given under this Act to the sanitary inspector and not to the medical officer; the most important is the inspection of common lodging-houses. The provision may be of use in the case of a temporary vacancy in the office of sanitary inspector. It will not, however, entitle the local authority to evade their duty of appointing a sanitary inspector. The section does not prescribe the manner in which the authority is to be given. In the absence of any provision, it is thought that there may be either a general authority or a special authority in any particular case.

[13] The qualifications set forth in sec. 54 of the Local Government Act, 1889, are that the medical officer shall be a registered medical practitioner, and that he shall be registered on the Medical Register as the holder of a diploma in sanitary science, public health, or State medicine, under sec. 21 of the Medical Act, 1886. Under the

1889 Act this latter qualification is not required, save in the case of the medical officer of the county or district or parish having a population of 30,000 or upwards; but the effect of this Act appears to be to extend the requirement to all appointments of district medical officers. It already applies to burghs under sec. 77 (1) of the Burgh Police Act, and the smaller burghs experience great difficulty in obtaining a medical officer with the necessary qualifications. Sometimes no medical man so qualified can be found within reasonable distance of the burgh. If the county medical officer possesses the qualification, probably the best course in such cases is to appoint him, arranging that in his absence any duties of an urgent nature shall be performed by a resident substitute.

[14] Under the 1867 Act the sanitary inspectors were removable only by the Board, except in burghs having a local Act or a population over 10,000; there was no provision as to the tenure of medical officers. The Local Government Act, 1889, sec. 54 (4), provided that medical officers and sanitary inspectors should only be removable with the sanction of the Board, and the Burgh Police Act applied the same provision to these officers in burghs. This Act retains that enactment with this addition, that the Board is now enabled to remove these officers *ex proprio motu*.

It does not appear that the tenure of office of medical officers and sanitary inspectors amounts to an *ad vitam aut culpam* tenure. The Board of Supervision were advised by counsel that sanitary inspectors, who under the 1867 Act were removable only by the Board, did not hold office *ad vitam aut culpam*, but that the Board could remove such a sanitary inspector not only on the ground of incompetency, but also on being satisfied that his office was unnecessary.

It is incompetent for the local authority to bring about the removal of a sanitary inspector or medical officer from office by indirect means, such as reducing his salary, or attaching conditions to his appointment, or otherwise.—B. See also note 10 *supra*, and *Board of Supervision* v. *Parochial Board of Old Monkland*, Jan. 17, 1880, 7 R. 469; P.L.M. 1880, 141.

[15] This provision will enable local authorities to obtain from the registrars such returns of births and mortality as may be required without the necessity of paying the fees fixed under the Registration Acts. It will be observed that the registrar is to receive twopence for each death entered in the return, but only twopence for each return of births.

[16] The provision as to substitutes is new.

[17] The words "duly qualified" appear to mean that the substitute for the medical officer must possess all the qualifications required for the post of medical officer of health, including the public health diploma. If this be the proper construction, it is probable that the provision will not be acted on in many districts, particularly in the smaller burghs, where two medical practitioners with public health diplomas are seldom to be found.

PART II.

SANITARY PROVISIONS.

[1] GENERAL NUISANCES.

[1] By this Act very important changes are made in the definition of statutory nuisances. Speaking generally, the new Act provides that the summary proceedings which it authorises may be put into operation when the conditions or sets of circumstances specified in the various sub-sections of sec. 16 are "a nuisance or injurious or dangerous to health." Under the 1867 Act it was necessary in most cases to prove that there was actual injury to health, and in consequence the number of matters which could be dealt with was somewhat restricted; under this Act the burden of proof appears to be much lighter, and the number of matters which it will be possible to deal with much greater. It is true that the words "injurious to health," as used in the 1867 Act, were generally construed somewhat freely and comprehensively. Thus Sir Henry Littlejohn, medical officer of the Board, expressed the following opinion: "The phrase 'injurious to health' is construed by various medical men in different senses. If actual injury to health have to be proved, it will be found almost impossible to reach this description of nuisance. I venture to express the opinion that when smells from whatever cause are declared to be very offensive, and produce feelings of nausea or sickness in those exposed to them, and when these smells in certain directions of the wind so invest houses as to prevent proper ventilation, medical men should have no hesitation in describing them as *injurious to health.*" And in a case of a nuisance under sec. 16 (*j*) of the 1867 Act, the Sheriff of Mid-Lothian (Davidson) remarked: "It is maintained that it has not been proved that the mode of conducting the churchyard is injurious to health. This is not a question that requires medical or other scientific evidence; it is patent to the common sense of every intelligent man. It is not at all surprising that the petitioners should not have been able to bring proof that particular individuals have suffered from the effects of a foul atmosphere in this churchyard. It is not easy to fix on the exact place and time at which a person whose body happens to be in an apt state has caught infection; nor is it likely that the petitioners should have knowledge of such cases."—(*Local Authority of Edinburgh* v. *Kirk-Session of St. Cuthbert's;* P.L.M. 1874, p. 203.)

Notwithstanding these and similar opinions, sanitary officials were much hampered by the necessity of proving injury to health. The introduction in this Act of the word "dangerous" as alternative to "injurious" will considerably extend the scope of the statutory nuisance, there being many matters which are "dangerous," or, in other words, likely to cause injury to health, though it may be impossible to prove that they actually have caused such injury. The new Act, however, goes further, and enables action to be taken without the necessity of proving even danger to health. Any of the matters and circumstances specified will be liable to be

dealt with under the statutory powers, if it be a "nuisance"—that is, a nuisance at common law. The word "nuisance" was defined by the Lord Chancellor (Selbourne) in *Fleming* v. *Hislop*, March 1, 1886, 13 R. (H.L.) 43, in the following terms: "What causes material discomfort and annoyance for the ordinary purposes of life to a man's house or to his property is to be restrained, subject of course to any findings which the particular circumstances of the particular case may raise; and although the evidence does not go to the length of proving that health is in danger, I will say no more than that the conclusion seems necessarily and properly to follow."

It will be seen that the above definition of the word "nuisance" approaches very nearly to the definition which was given to the word "offensive" in sec. 16 (*e*) of the 1867 Act. The Board of Supervision took the opinion of counsel—George (now Lord) Young, E. S. (afterwards Lord) Gordon, and Sheriff Monro—on the question of what kind of offensiveness would require to be proved. Their opinion was, "We find it impossible usefully to say more (speaking generally and without reference to any particular case) than that the offensiveness must be such as seriously to interfere with the comfort of life in the neighbourhood, and such as may be detrimental to health, although it should be impossible to prove that it has been or necessarily must be so." (*Board's Report*, 1872, App., p. 107.) The above opinions may be regarded as an indication of what will have to be established in any proceedings in regard to a matter which is averred to be a "nuisance or injurious or dangerous to health."

The procedure provided by this Act for dealing with nuisances is confined to the nuisances enumerated in sec. 16. But these nuisances are not thereby precluded from being made the subject of action at common law (secs. 170, 171). On the other hand, there may be nuisances at common law which do not come within the purview of this Act.

Under sec. 57 of the Local Government Act, 1889, the county council is empowered to make byelaws for the "prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the county." The nuisances dealt with in this section are therefore excluded from the scope of such byelaws.

The Burgh Police Act, 1892, provides penalties for a number of nuisances (secs. 380 and 381), and also empowers the commissioners to make byelaws for preventing nuisances (sec. 316).

By the Coal Mines Regulation Act, 1887, any unfenced shaft of a disused mine is declared to be a nuisance under sec. 16 of the Public Health Act. See 50 & 51 Vict. c. 58, secs. 37 (5) and 76 (10).

The local authority have power to deal with nuisances affecting their district, but situated in the district of another local authority. Sec. 149 *infra*.

The power given to any five ratepayers by sec. 17 (2) (*c*) of the Local Government Act, 1889, to appeal to the county council from any proceedings or order of a district committee is expressly declared not to apply to "any proceedings for the removal of a nuisance."

It is obligatory upon the local authority to adopt means for ascertaining the existence of nuisances, and to enforce the provisions for their abatement. They have no option in the matter. See sec. 17 *infra*.

Definition of nuisances.

16. For the purposes of this Act,

(1.) Any [1]premises or part thereof of [2]such a construction or in such a state as to be a [3]nuisance or injurious or dangerous to health:

[1] See definition of "premises" in sec. 3. This sub-section has been substituted for sub-section (*a*) of sec. 16 of the 1867 Act. That sub-section dealt with dwelling-houses or other inhabited premises, and it was necessary to prove either that the premises were injurious to the health of the inmates or unfit for human habitation or use. The new provision applies to all premises whether inhabited or not, and it is not necessary to prove injury to health.

Part II. of the Housing of the Working Classes Act, 1890, provides for the closing of any dwelling-house which is in a condition so dangerous or injurious to health as to be unfit for human habitation, and sec. 16 (*a*) of the 1867 Act is set forth in the third schedule as one of the enactments applied for the purpose of proceedings for closing premises (53 & 54 Vict. c. 70, secs. 29–37, and Sched. 3). By force of sec. 193 of this Act, sub-sec. 1 of sec. 16 hereof will be substituted for sec. 16 (*a*) of the 1867 Act in the said schedule.

Sec. 75 of the same Act provides that in any contract made after 14th August 1885 for letting for habitation a house or part of a house at a rent not exceeding (in Scotland) four pounds, there "shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation."

[2] It will be observed that the existence of a nuisance under this sub-section depends on one or other of two circumstances, (*a*) the construction, and (*b*) the state of the premises. The proprietor of a tenement built as a dwelling-house put up a boiler and steam-engine in his premises, and carried the flue of the furnace into one of the ordinary chimneys of the mutual gable wall. Evidence was led that the heat rendered the adjoining house almost uninhabitable. *Held* that the gable was used in a way inconsistent with the ordinary use of a mutual wall, and that a nuisance existed which must be removed.—*Wilsons* v. *Brydone*, July 19, 1877, 14 S.L.R. 667. If the nuisance arises from any want or defect of a structural character, the owner will be the person liable. Sec. 20 (3) (*a*).

In some cases which might come under this sub-section another remedy may be found under other provisions of this Act. (See, for instance, sec. 40.) The Burgh Police Act contains a number of enactments dealing with the sanitary condition of premises. (See particularly the provisions as to cleansing, secs. 107 to 127.)

[3] See note to heading of Part II., *supra*.

(2.) [4] Any [5] street, pool, [6] ditch, gutter, watercourse, sink, cistern, [7] water-closet, earth-closet, privy, urinal, cesspool, [8] drain, dung-pit, or [9] ashpit so foul or [10] in such a state or so situated as to be a [3] nuisance or injurious or dangerous to health :

[4] This sub-section takes the place of the first part of sec. 16 (*b*) of the 1867 Act, but does not correspond exactly thereto in respect that it includes in the enumeration of possible nuisances the following things not mentioned in the 1867 Act, viz., street, sink, cistern, water-closet, earth-closet, and dungpit, and omits sewer, which had a place in the earlier Act. Under that Act, too, it was necessary to prove that the thing specified was "so foul as to be injurious to health;" the new provision is of larger comprehension.

[5] See definition of "street" in sec. 3. In burghs and in special scavenging districts the duty of keeping the streets free from foulness lies on the local authority. In burghs the commissioners have extensive powers as to the state of the streets. Under sec. 39 of this Act the local authority may take measures to have the private streets and footways within any special scavenging district put into a proper state.

Interdict was granted against a tramway company who cleared their lines of snow by adding salt to such an extent that the resulting freezing mixture became a nuisance to the public horse-traffic.—*Ogston* v. *Aberdeen Tramways Co.*, 14 Dec. 1896, 24 R. (H.L.) 8; 34 S.L.R. 169; 4 S.L.T. 284.

[6] See sec. 28 *infra* as to special powers for dealing with foul water-courses, ditches, gutters, or drains; also sec. 41 as to provision for cleansing open ditches lying near to or forming the boundary between districts.

[7] See sec. 30 as to penalty for causing a drain, water-closet, earth-closet, privy, urinal, or ashpit to be a nuisance by wilfully injuring it; also sec. 31 as to water-closets and similar conveniences used in common.

[8] There is no definition either of "drain" or of "sewer" in this Act. In the English Public Health Act of 1875 the word "drain" is defined, and is distinguished from "sewer," of which there is also a definition (see note to heading of Part VI. of this Act). In certain sections of this Act, *e.g.*, 110 and 120, drain is distinguished from sewer; in others, *e.g.*, 119, it appears to include sewer. In this sub-section it does not appear to include sewer, for by sec. 101 all sewers are vested in the local authority, and by sec. 103 the local authority are required to construct and keep them so as not to be a nuisance.

In *Lady Willoughby d'Eresby's Trustees* v. *Strathearn Hydropathic Co.*, Oct. 21, 1873, 1 R. 35, it was held that irrigation with refuse water from baths was not a nuisance.

[9] See definition of "ashpit" in sec. 3.

[10] The words "in such a state or so situated" are new, and have the effect of extending the application of this sub-section further than the corresponding provision of the 1867 Act. Under the earlier Act foulness alone constituted the nuisance; now the state

or the situation of the specified subjects may be such as to create a nuisance.

(3.) [11] Any well or water-supply injurious or dangerous to health:

[11] This sub-section takes the place of the latter part of sec. 16 (*b*) of the Act of 1867, but is expressed in different words. The change of expression, however, does not seem to import any material alteration or extension of the application of the provision. The present Act simply uses the words "well or water-supply;" in the 1867 Act the expression was "any well or other water-supply used as a beverage or in the preparation of human food." And the words of this Act—"injurious or dangerous to health" appear to be as comprehensive as the more specific terms of the 1867 Act—"so tainted with impurities or otherwise unwholesome as to be injurious to the health of persons using it, or calculated to promote or aggravate epidemic disease."

The jurisdiction of the local authority extends to all sources of water-supply used by the inhabitants, and it is the duty of the local authority to close or prevent the use of any well or other source of supply, whether public or private, within their jurisdiction, if found to be unfit for dietetic use. The local authority have full power over public wells, and may close them if contaminated; but in regard to private wells that are unwholesome, an order from the sheriff must be obtained if the shutting up is objected to. The local authority have the same power to examine private wells as they have in the case of any other suspected nuisance. And the examination may include a chemical analysis, the cost of which may competently be charged against the public health assessments, whether the well be public or private.—B. Water being expressly excluded from the operation of the Food and Drugs Act, 1875, the provisions of that statute with regard to analysis are not available.

When water is shown by analysis to be impure, any allegation to the effect that some persons appear to have used the water with impunity, or that epidemic disease has not appeared, or that the health of the community is good, is quite beside the question. All experience demonstrates that, in the event of an epidemic appearing, the use of such water is certain to promote it and widen its effects. It has been found that, in towns and populous areas, repairing wells, and thereby endeavouring to improve the quality of the water, is at best only a temporary expedient, and never wholly satisfactory. Money spent on such operations is usually thrown away, and a gravitation scheme has ultimately to be adopted.—B.

Where the wells within a limited area are numerous, and a number of them have been analysed and found unwholesome, it would appear that the local authority may take proceedings to have the whole of the wells shut up, without going to the expense of having each separate well analysed. In advising a local authority in a case of this kind, the Board of Supervision suggested that, in respect of the contiguity of the remaining wells to those that had been analysed, the sheriff might reasonably take the view that the presumption that

these wells were contaminated was so strong, that it would require to be proved (if desired by the persons using them) that the water was wholesome. Upon this a proof would be ordered, and the cost of the analyses would become part of the expenses of the action, for which the defenders would probably be found liable.—B.

If shutting up all the wells in a district would deprive the inhabitants of a sufficient supply of water for domestic purposes, the local authority, pending the introduction of a supply of pure water, should exercise a reasonable discretion as to the time when the wells should be shut up.—B.

In a case where a tenant-farmer persisted in using an impure well for dairy purposes, although a supply of wholesome water had been provided, the local authority were advised by the Board of Supervision that the proper course was to proceed against the owner under sec. 16 (*b*) and sec. 19 of the 1867 Act to have him ordained to shut up the well.—B. Another procedure is now provided by the Dairies, Cowsheds, and Milkshops Order of 1885.

The question whether water used for cattle (apart from dairy purposes) may be dealt with as a nuisance is attended with doubt, and it would be unwise for a local authority to take proceedings in regard to such water without consulting their legal adviser.—B. It will be observed, however, that in this Act the words "water supply" are not qualified as they were in the 1867 Act, and it seems not improbable that, if it were shown that a water-supply for other than dietetic purposes was injurious or dangerous to the health of any persons, the procedure here authorised would be competent.

The pollution of drinking-water by gas-washings, &c., is dealt with in secs. 127–9. The pollution of streams by sewage from public works is prohibited by sec. 116; but ampler powers are provided at common law, and by the Rivers Pollution Act, 1876. Sec. 118 of this Act prohibits the throwing of carcases of animals into streams, wells, reservoirs, &c. See also secs. 61–67 of the Waterworks Clauses Act, 1847, incorporated with this Act by sec. 132.

(4.) [12] Any stable, [13] byre, or other building in which any animal or animals are kept in such a manner or [14] in such numbers as to be a [3] nuisance or injurious or dangerous to health:

[12] This provision is in almost the same terms as sec. 16 (*c*) of the 1867 Act. The word "pigstye" is omitted after "byre," but the omission appears to be of little importance, as pigstye is no doubt included in the words "other building." Moreover, under sec. 35, power is given to the Local Authority to make byelaws as to the construction, situation, and cleansing of pigsties so as to prevent them from becoming a nuisance, or dangerous to public health.

[13] The local authority has power to deal with the sanitary condition of byres under the provisions of sec. 34 of the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), as amended by sec. 9 of the Act of 1886 (49 & 50 Vict. c. 32), and under the Dairies, Cowsheds, and Milkshops Order, 1885, made in terms thereof.

In burghs the byres will also be under the provisions of the Cattle Sheds in Burghs (Scotland) Act, 1866 (29 & 30 Vict. c. 17),

which provides for the licensing and inspection of all cattle-sheds, cow-houses, and byres within burgh.

Sec. 121 of the Burgh Police Act, 1892, requires that all stables and byres and areas connected therewith shall be kept clean by the occupiers to the satisfaction of the inspector of cleansing or sanitary inspector; and sec. 389 of the same Act provides that every person who keeps in any house, building, or other premises any dog or fowl or other animal which is a nuisance or annoyance to the inhabitants in the neighbourhood is liable to a penalty. Sec. 316 B (7) empowers the commissioners to make byelaws providing that cattle, dogs, and poultry shall not be kept in such places or in such manner as to be a nuisance or annoyance to the inhabitants.

It has been held that the business of cowkeeping may be so conducted and regulated within burgh as not to be a nuisance. (*Manson* v. *Forrest*, June 14, 1887, 14 R. 802.)

[14] The words "or in such numbers" are new. The two points to be considered in certifying or proving a nuisance under this sub-section are (1) the manner and (2) the numbers in which the animals are kept.

In *Ireland* v. *Smith*, Dec. 4, 1895, 33 S.L.R. 156; 3 S.L.T. 281, interdict was granted against the owner of a henhouse adjoining the complainer's house on proof (1) that dust from the henhouse prevented the use of his larder, (2) that unpleasant smells necessitated closing of his windows, and (3) that the crowing of the fowls disturbed him in the morning.

A dealer brought into a burgh sixty pigs and housed them in a stable behind occupied property. The occupiers complained of the nuisance. The locality had been declared an area infected with swine-fever under the Diseases of Animals Act, the effect of which was that the pigs could not be removed until twenty-eight days after their arrival. It was thought that if the existence of a nuisance under sec. 16 (*c*) of the 1867 Act were certified, the local authority might institute proceedings for its removal, and it would fall to the court to determine the question of the conflict of jurisdiction which had taken place.

(5.) [15]Any accumulation or deposit, including any deposit of [16]mineral refuse, which is a [3]nuisance or injurious or dangerous to health, or any deposit of offensive matter, refuse, or offal, or manure (other than farmyard manure or manure from byres or stables, or spent hops from breweries), within fifty yards of any public road wherever situated, or any offensive matter, refuse, or offal, or manure other than aforesaid contained in uncovered trucks or waggons standing or being at any station or siding or elsewhere on a railway or in canal boats so as to be a [3]nuisance or injurious or dangerous to health:

[15] This sub-section replaces sec. 16 (*d*) of the 1867 Act, from which it differs considerably. It does not recognise any difference

between burghs and rural districts, as did the earlier Act, nor does it renew the provisions whereby proximity of an accumulation to a dwelling-house was of itself in certain cases sufficient to determine the existence of a nuisance. The sub-section consists of three provisions. 1. In the first place it deals with any accumulation or deposit, including any deposit of mineral refuse, which is a nuisance or injurious or dangerous to health. This is the most general and comprehensive of the enactments in the sub-section. It will be observed that the words "accumulation" and "deposit" are unqualified, accordingly the provision is not to be construed as confined to accumulations of manure or refuse ; it extends to any kind of accumulation or deposit which is a nuisance or injurious or dangerous to health. 2. The sub-section deals in the second place with deposits of a specified character, viz., offensive matter, refuse, or offal, or manure (except the following kinds of manure, which are expressly excluded—viz., farmyard manure, manure from byres or stables, and spent hops from breweries), and enacts that such deposits come under the provisions as to nuisance if they are within 50 yards of any public road wherever situated. Deposits of the nature specified, if within 50 yards of any public road, are declared to be statutory nuisances, and it does not appear to be necessary to aver or prove that they are a nuisance or injurious or dangerous to health. If the deposits referred to in this second provision of the sub-section are not within 50 yards of a public road, they can only be dealt with if they come under the first provision, and are proved to be a nuisance or injurious or dangerous to health. 3. The sub-section in the third place deals with the manure traffic on railways and canals. In any certificate or proceedings under this part of the sub-section the following points must not be overlooked, viz., that the provision does not apply to farmyard manure, or manure from byres or stables, or spent hops from breweries; that it does not apply if the railway trucks or waggons are covered, though it apparently applies to manure in canal boats whether covered or not; that it does not apply so long as the trucks or waggons are on the journey, but only when standing or being at any station or siding or elsewhere on a railway, though apparently it applies to canal boats during the journey; that it does not apply to the manure while it is being conveyed to or from the trucks or waggons or the canal boats, or during the process of loading or unloading; and that it will be necessary to aver and prove that the manure is a nuisance or injurious or dangerous to health.

In proceedings under this sub-section regard must be had to proviso *a* to this section. See that proviso and notes.

In burghs many nuisances of the kind to which this sub-section applies are prevented by the operation of the provisions as to cleansing (secs. 107–127), and by the byelaws which the commissioners have power to make under sec. 316 B (2) and (8) of the Burgh Police Act, 1892. See also sec. 381 (36) and (42) of that Act.

In special scavenging districts formed under sec. 44 of the Local Government (Scotland) Act, 1894, the cleansing provisions of the Burgh Police Act are operative so far as adopted. In such districts also the local authority have the powers with regard to accumulations of manure, &c., given by sec. 42 of this Act.

In the event of a nuisance being caused by the local authority themselves in removing or dealing with refuse under the scavenging provisions, sec. 37 provides a remedy.

[16] The sub-section will apply to the bings of mineral refuse so frequently seen at pit-heads, and which too often become a nuisance, especially when set on fire. See *Fleming* v. *Hislop*, March 1, 1886, 13 R. (H.L.) 43.

(6.) [17]Any work, manufactory, trade, or business, injurious to the health of the neighbourhood, or so conducted as to be injurious or dangerous to health, or [18] any collection of rags or bones injurious or dangerous to health:

[17] This sub-section re-enacts the provisions of sec. 16 (*e*) of the 1867 Act, but with an important alteration. Under the earlier Act a business so conducted as to be "offensive" was a nuisance, and it was unnecessary to aver or prove that it was injurious or dangerous to health. An averment of offensiveness will not constitute a relevant charge under this sub-section; it will be necessary to aver and prove that the work, &c., is injurious to the health of the neighbourhood, or so conducted as to be injurious or dangerous to health. It may possibly be found that the provisions of sec. 36 afford a simpler and more effective means of dealing with offensive businesses than is supplied by this sub-section.

In burghs under the Burgh Police Act, the commissioners are empowered to make byelaws for reducing or removing the noxious or injurious effects attending offensive businesses.—Sec. 316 B (6).

Alkali works and works of a like nature are dealt with by the Alkali, &c., Works Regulation Act, 1881.

Much information as to the trades dealt with in this sub-section and in sec. 36 will be found in Dr. Ballard's Report on Effluvium Nuisances, printed in the Reports of the Medical Officer to the Local Government Board, England, for 1876, 1877, and 1878. It has also been published separately.

The Board of Supervision were of opinion that the selling or sending out of milk from premises where infectious disease exists would probably be held to be a nuisance in terms of the corresponding provision of the 1867 Act, but secs. 58 and 60 of this Act provide a more certain and specific remedy in such cases.

Any proceedings against nuisances under this sub-section must be founded on a medical certificate, or on a representation by a parish council, or on a requisition in writing under the hands of any ten ratepayers of the district of the local authority, and can only be taken before the sheriff. See sec. 22.

[18] In the case of collections of rags or bones, injury or danger to health must be proved.

In burghs the commissioners are empowered to make byelaws for regulating the keeping of depôts of bones, carrion, rags, or any other offensive matter or thing.—Sec. 316 B (5) of Burgh Police Act.

(7.) [19]Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates:

[19] This sub-section is an exact reproduction of sec. 16 (*f*) of the 1867 Act, but its application is extended owing to the definition of "house" in sec. 3, and it will apply not only to dwelling-houses, but to schools and to factories and other buildings in which persons are employed.

Complaint was made to the Board of Supervision as to a boarding-school for young ladies being overcrowded, and their medical officer, Sir Henry D. Littlejohn, recommended that a space of 600 cubic feet should be allowed to each pupil, and that arrangements should be made whereby the air in each apartment and dormitory should be renewed twice every hour.

When any regulation under Part IV. of this Act is in force, special powers are given to deal with overcrowded houses. See sec. 84 *infra*.

Power to prevent overcrowding in common lodging-houses is given by means of byelaws under sec. 92; in other lodging-houses under sec. 72; and in tents, vans, sheds, and similar structures, under sec. 73.

It would appear that in cases of overcrowding under this sub-section, the proper person to proceed against is the occupier. A landlord let, along with a farm, a cottage, into which the tenant put a workman with a large family. The sheriff convicted and fined both landlord and tenant for causing a nuisance under sec. 16 (*f*) of the 1867 Act. The landlord appealed. *Held* that he was not the author of the nuisance, the cottage not being under his control, but under that of the tenant.—(*Home* v. *Local Authority of Kelso*, March 17, 1876, 3 Couper 239.) But if the nuisance is caused by the house being divided into separate dwellings, the owner would appear to be the proper person to proceed against. In proceedings under this sub-section, it will be necessary to aver and prove injury or danger to the health of the inmates of the house.

Under proviso (*b*) to this section, the court is directed, in considering whether any dwelling-house or part thereof which is also used as a factory, or whether any factory, used also as a dwelling-house, is a nuisance by reason of overcrowding, to have regard to the circumstances of such other use.

Where two convictions for overcrowding a house have been obtained within three months, the sheriff may direct the closing of the house for such time as he may deem necessary. See sec. 76 *infra*.

(8.) [20]Any schoolhouse, or any [21]factory which is not a factory subject to the provisions of the Factory and Workshop Acts, 1878 to 1895, or any Act amending the same, with respect to cleanliness, ventilation, or overcrowding, and

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

(ii) is not ventilated in such a manner as to render harmless so 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 [22]health, or

(iii) [23]is so overcrowded while work is carried on as to be injurious or dangerous to the health of those therein employed:

[20] This sub-section takes the place of sec. 16 (*g*) of the 1867 Act, the main difference being that it applies to schoolhouses. The object of extending it to schoolhouses is not clear, as its provisions, particularly those of head (ii), are not applicable to schoolhouses.

Proceedings under this sub-section must be founded either on medical certificate, or on a representation by a parish council, or on a requisition in writing under the hands of ten ratepayers of the district of the local authority, and can only be taken before the sheriff (sec. 22).

[21] The word "factory" includes workshop and workplace (sec. 3). The sanitary provisions of the Factory and Workshop Acts are of a somewhat complex nature, and cannot be set forth in a note. They will be found in Part II. of this work. Generally speaking, *factories* (using the word as in the Factory Acts, viz., as meaning works where steam or other mechanical power is used, and as distinct from workshops, where no mechanical power is used) come under the sanitary provisions of the Factory Acts, while *workshops* come under the present sub-section. There are, however, many sanitary provisions in the Factory Acts which apply to workshops as well as to factories, and there are provisions by which the inspector of factories is enabled to secure that if in any case the Public Health Acts provide a remedy for sanitary defects in factories and workshops, and the Factory Acts do not, the local authority shall exercise their powers and put the enactments in force. The Factory Acts also contain special provisions with regard to bakehouses, which fall to be put into execution by the local authority and their medical officer.

As to power to require water-closets or privies to be provided in schoolhouses and factories, see sec. 29 of this Act.

[22] Although not expressly so stated, sub-head (ii) appears to be directed to those instances where there is a nuisance or injury or danger to health to those employed in the factory, and not to cases where the nuisance affects the health of those outside the premises. The latter cases are dealt with by sec. 36.

[23] Sec. 1 (1) of the Factory and Workshop Act, 1895, defines what constitutes overcrowding in the sense of this sub-section. "A workshop shall for the purpose 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 once in the room a proportion less than two hundred and fifty,

or, during any period of overtime, four hundred cubic feet of space to every person."

See also proviso (*b*) to this section.

(9.) [24] Any fireplace or furnace situated within the limits of any burgh or special scavenging district which does not so far as practicable consume the smoke arising from the combustible matter used therein, for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever:

[24] This sub-section corresponds to sec. 16 (*h*) of the 1867 Act, with this difference that, while the older provision was confined to burghs, the new Act makes it applicable also in special scavenging districts.

The Smoke Nuisance Abatement (Scotland) Act, 1857 (20 & 21 Vict. c. 73), and the Amendment Acts of 1861 (24 Vict. c. 17) and 1865 (28 & 29 Vict. c. 102), apply to burghs of not less than 2000 inhabitants, and proceedings may be taken by the procurator-fiscal or the commissioners of the burgh.

In *Local Authority of Dumfries* v. *Murphy*, March 14, 1884, 11 R. 694, it was held that to amount to a nuisance under sec. 16 (*h*) of the Act of 1867 a furnace must be shown not to consume its own smoke, either by reason of faulty construction, or by reason of systematic misuse. That a well-constructed furnace had on ten occasions in a period of four months sent out quantities of offensive black smoke was held not to be evidence of such systematic misuse as to bring it within the provisions of that section.

It will be observed that it is not necessary to aver that there is nuisance or injury or danger to health.

See the proviso to sec. 24 as to procedure in case of contravention of a decree for removal of a nuisance under this sub-section.

(10.) [25] Any chimney (not being the chimney of a private dwelling-house) sending forth smoke in such quantity as to be a [3] nuisance or injurious or dangerous to health: and

[25] This sub-section re-enacts sec. 16 (*i*) of the 1867 Act, but the introduction of the words "in such quantity," which did not appear in the earlier Act, indicate that the *quantity* of the smoke discharged is alone to be founded on as the ground of the nuisance.

(11.) [26] Any churchyard, cemetery, or place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health;

[26] This sub-section re-enacts sec. 16 (*j*) of the 1867 Act. It will be observed that it is sufficient to prove "offensiveness." As to the meaning of "offensive," see note 1 to heading of Part II. *supra*.

In proceedings under this sub-section it is not necessary to cite any person as the author of the nuisance, but intimation must be made to the collector of the churchyard dues, or such other person as the sheriff may direct. The proceedings must be before the Sheriff. See sec. 22.

For cases in which churchyards have been closed under sec. 16 (*j*) of the 1867 Act, see *Local Authority of Edinburgh* v. *Kirk-session of St. Cuthbert's*, P.L.M. 1874, p. 203; *Local Authority of Gourock*, P.L.M. 1876, p. 86; *Ayr Town Council*, P.L.M. 1891, p. 546. See also Dunfermline case, P.L.M. 1896, p. 476, where there was an action by ratepayers against the local authority, under sec. 96 of the 1867 Act, for failure to put sec. 16 (*j*) of that Act into force. In the Gourock case an appeal was taken to the Secretary of State, but he refused to consider it on the ground that he had no jurisdiction, the proceedings not being under the Burial Grounds Act. The only appeal competent in cases under this sub-section will be in terms of sec. 156. See P.L.M. 1876, p. 95.

The 91st section of the English Public Health Act, 1875, which in general corresponds to sec. 16 of this Act, contains no sub-section similar to sub-sec. 11, but the Public Health (Interments) Act, 1879, empowers local authorities to provide cemeteries, and to make byelaws with regard to them. The Local Government Board (England) issued a circular on the subject, with model byelaws, a memorandum on the sanitary requirements of cemeteries, and a copy of the regulations issued by the Secretary of State. See the Local Government Board's Report, 1882, App., p. 7.

The Burial Grounds (Scotland) Act, 1855, provides another means of closing a burial ground. Prior to this Act the local authority under the Public Health Acts had no powers under the Burial Grounds Act. But sec. 146 (2) of the present Act extends to the local authority the power of initiating proceedings under the Burial Grounds Act. See sec. 146 (2) and notes.

shall be deemed to be nuisances liable to be dealt with [27] summarily in manner provided by this Act:

[27] The procedure for dealing with nuisances under this section is set forth in secs. 20–26 and 154–157 *infra*.

The history of an ordinary case may be thus summarised. As soon as information of the existence of a nuisance is received, the sanitary inspector or other officer authorised by the local authority —sec. 19—forthwith sends intimation to the author of it. If the nuisance is not removed, the next step is to serve on the author a notice requiring him to remove it, and to execute such works and do such things as may be necessary for that purpose—sec. 20. Under the 1867 Act this was not a statutory requirement, although it was the usual practice. It is now imperative, and appears to be an indispensable step in the proceedings. If the local authority think it desirable (but not otherwise) the notice may specify the works to be executed. A formal certificate of the service of the notice should in each case be prepared and attested by a witness—sec. 159. If the nuisance is not removed within the time specified in the notice, or, if removed, is likely to recur, the local authority

apply to the sheriff by summary petition—secs. 21 and 22. Any person may be appointed by the local authority to conduct the proceedings on their behalf—secs. 14 and 152; but prosecutions are usually at the instance of the sanitary inspector or the clerk, under the instructions of the local authority. The proceedings must be directed against the author of the nuisance, or when the author cannot be found, against the owner or occupier of the premises. Where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the owner is the person liable—sec. 20 (3) (*a*). Where the person causing the nuisance cannot be found, and the nuisance is not due to the fault of the owner or occupier, the local authority may themselves remove it, and do what is necessary to prevent its recurrence—sec. 20 (3) (*b*). Where doubt exists as to who is the author, several persons may be included in the petition, and the sheriff will decide. When the nuisance comes under any of the heads 1, 2, 3, 4, 5, or 7 of sec. 16, the proceedings may be either before the sheriff or before any magistrate or justice; but the Board invariably recommend that all prosecutions should be before the sheriff. When the nuisance is under any of the heads 6, 8, 9, 10, or 11 of sec. 16, the proceedings must be before the sheriff—sec. 22. In cases under heads 6 and 8, a medical certificate or a representation by a parish council, or a requisition by ten ratepayers (not merely inhabitants, as under the 1867 Act), is indispensable—sec. 22. In all cases where a question of health arises, a medical certificate is advisable.

The sheriff will, in the first place, order the petition to be served on the author of the nuisance, and will appoint a day for answers to be lodged, or for hearing parties—sec. 154. The sheriff, on considering the answers, or on hearing parties, or if the respondent fail to appear, may at once decern—sec. 154. Or he may remit to a man of skill to report, and may decern on the report; or, if either party desire it, he may allow a proof—sec. 154. No written pleadings are allowed, and in cases under heads 9, 10, and 11 of sec. 16 the sheriff must take notes of the evidence as in civil proofs—sec. 155. If he finds the allegations proved, he will order the removal of the nuisance, specifying in his interlocutor the operations which he deems necessary for that purpose, which need not be restricted to any special remedy prayed for in the petition—secs. 22 and 23. If he considers that the nuisance is likely to recur, he will also grant interdict—secs. 22 and 23. Should structural works be necessary, he may direct these to be carried out under the direction of any person he may appoint, and may require the local authority to furnish him with an estimate of the cost—sec. 25. If it appear to the sheriff that the nuisance arose from the wilful fault or culpable negligence of either the owner or occupier, he may impose a fine not exceeding five pounds—sec. 22. If the respondent should fail to implement the decree, or should he infringe the interdict, he becomes liable in penalties—sec. 24; and the local authority may apply for a warrant to have the nuisance removed at his expense—sec. 26. Where the sheriff is satisfied that the author of the nuisance is not known or cannot be found, he has power to ordain the local authority themselves to execute

the necessary works—sec. 26. The judgment of the sheriff is final —sec. 157—save in cases under sub-secs. 9, 10, and 11 of sec. 16, when certified in terms of sec. 156.

Provided that—

(*a*) A penalty shall not be imposed [28]as hereinafter provided on any person in respect of any accumulation or deposit necessary for the effectual carrying on of any business, trade, or manufacture, if it be 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, trade, or manufacture, and that the [29]best available means have been taken for preventing injury or danger thereby to the public health; and

[28] The penalty here referred to is the fine authorised by sec. 22. Although the penalty is not to be imposed in the circumstances stated, the proviso does not appear to affect or limit the power to enforce the removal of the nuisance. It is therefore not to be regarded as a modification of sec. 16 (5), but rather of the first proviso in sec. 22.

[29] It is thought that the use of the means ordinarily practised in the business, trade, or manufacture, will not suffice to bring the author of the nuisance within the proviso, unless such means is the "best available."

(*b*) [30]In considering whether any dwelling-house or part thereof which is also used as a factory, or whether any factory, used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstances of such other use.

[30] This proviso may apply in cases coming under sub-secs. 7 and 8 (iii).

Duty of local authority to inspect district for detection of nuisances.

17.[1] 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 what nuisances exist calling for removal under the powers of this Act, and to enforce the provisions of this Act in order to remove the same, and otherwise to put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all [2]premises within their district.

[1] This section reproduces part of sec. 99 of the 1867 Act, with amendments.

It is the duty of the local authority to ascertain what nuisances exist, and to take steps for their removal. The fact that the health of the district appears to be good, and that there is an absence of complaints, will not relieve them of this duty.

The provisions of sec. 7 of the Housing of the Working Classes Act, 1885, which section is not repealed by the consolidating Act of 1890, impose upon the local authority a further obligation with regard to the sanitary condition of premises. It provides: "It shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government, to put in force, from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority."

Sec. 32 of the Housing of the Working Classes Act, 1890, imposes on the local authority a specific duty in regard to insanitary dwellings: "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."

The local authority are bound to execute the Act, and a resolution not to enforce its provisions would be incompetent and illegal. The local authority cannot divest themselves of their responsibilities by an appeal to the ratepayers. The fact that a majority of those present at a public meeting expressed an adverse opinion, cannot relieve the local authority from the discharge of their duty, nor prevent proceedings being taken against them under the Act.—B.

Not only is the local authority bound to enforce the provisions of the Act, they are also required to exercise the powers vested in them so as to secure the proper sanitary condition of all premises within the district. If there is any power relating to public health vested in the local authority, the exercise of which is necessary to secure the proper sanitary condition of the district, the local authority are bound to exercise such power, whether it be under this or any other statute.

[2] See definition of "premises" in sec. 3.

Power of entry to local authority or their officers.

18.[1] If the local authority, or medical officer, or sanitary inspector have [2]reasonable grounds for believing that nuisance exists in any [3]premises, such local authority, or medical officer, or sanitary inspector may demand admission for themselves, the chief constable or superintendent of police, or any other person or persons whom the local authority may desire to enter and inspect such premises, and, if necessary, to open up the ground of such premises, or for any or all of them, to inspect the same at any hour

between nine in the morning and six in the evening, or at any hour when the operations suspected to cause the nuisance are believed to be in progress or are usually carried on; and may cause the ground or surface to be opened, and the drains to be tested, or such other work to be done as may be necessary for an effectual examination of the said premises: [4]provided always, that if no nuisance be found to exist, the local authority shall restore the premises at their own expense, and if admission be refused, the local authority, or medical officer, or sanitary inspector may apply to the sheriff, or to any magistrate or justice of the peace having jurisdiction in the place, stating on oath such belief; and such sheriff, magistrate, or justice may, [5]after intimation to the [6]owner and occupier, or person in charge of the premises, by order in [7]writing, require the occupier or person having the custody of such premises to admit the local authority and others aforesaid; and if such occupier or person refuse or fail to obey such order, he shall, on conviction of such offence, be liable to a penalty not exceeding five pounds; and on being satisfied of such failure or refusal, the sheriff, magistrate, or justice may grant warrant to such local authority, officers, or person or persons for immediate forcible entry into the premises; and if no such occupier or person can be discovered, or if no person is found on the premises to give or refuse admission, the local authority or their officers may enter the premises without any order or warrant, and forcibly if need be.

[4] Provided that if no nuisance be found to exist, the local authority shall restore the premises at their own expense.

Any order made by a sheriff, magistrate, or justice, for the admission of the local authority or their officers or other persons under this section shall continue in force until the nuisance has been removed, or the work for which the entry was necessary has been done.

[1] This section takes the place of sec. 17 of the 1867 Act. Under the older provision the sanitary inspector was the only officer empowered to enter premises. Under this section the medical officer also receives the power. A further amendment is the power to open the ground and test drains.

[2] Before the local authority or their officers can claim entry into any premises under this section, they must have reasonable grounds for believing that nuisance exists. Other sections provide for entry in other specified circumstances. See, for instance, sec. 33 (6), 43 (1), 47 (3), 73 (3), 82, 98, 109.

[3] See definition of "premises" in sec. 3.

[4] This proviso is repeated at another part of the section.

[5] Under the corresponding section of the 1867 Act the intimation to the owner or occupier might or might not be given. Under this section it is imperative.

[6] See definitions of "owner" and "occupier" in sec. 3.

[7] Under sec. 20 of the Interpretation Act, 1889, "expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

Information of nuisances to local authority.

19. [1] Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person, and [2]it shall be the duty of every officer of such authority, and of any constable or officer of police of the county or burgh, 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. The local authority shall give such [3]directions to their officers as will secure the existence of the nuisance being immediately brought to the knowledge of any person who may be required to remove it, and such officer shall do so by an [4]intimation as hereinafter provided.

[1] There appears to be no necessity for the first provision of this section; statutory authority was not required to empower persons to give information of nuisances. It will be the duty of the local authority to inquire as to any nuisance regarding which they receive information, with the view of taking steps for its removal.

A local authority is sometimes indisposed to pay regard to complaints addressed to them anonymously. But it is the duty of the local authority to investigate every complaint made to them, without regard to the means by which it comes to their knowledge, and if they find it well-founded, to take measures to remove the ground of complaint. The question in all complaints is not—Who was the complainer? but—Is the complaint well-founded or not? A complaint is certainly not the more worthy of credence because it is anonymous, but it should not be disregarded solely on that account. The local authority could not safely shelter themselves under such a plea. Many persons shrink from becoming personally complainants, and to disregard all anonymous communications would simply be to repress legitimate complaints, and to deprive the local authority of much information.—B.

[2] Before the passing of this Act many local authorities had made arrangements whereby the police reported to them any nuisances observed by them in the course of performing their police duties.

It will now be the duty of every constable or officer of police to inform the local authority of the existence of any nuisance which may come to his knowledge; and it will be the duty of every police authority to make regulations as to the giving of such information.

Under sec. 169 the police are required to aid the authorities acting in execution of the Act. See also sec. 86 of the Burgh Police Act, 1892.

[3] The directions may be given either in the form of a minute of instruction to the officer concerned, or in the regulations authorised by sec. 15. The duty of giving the intimation under this section or serving the notice under sec. 20 should be laid on one officer, who should be responsible for the performance of the duty. The sanitary inspector will usually be selected.

[4] As to the service of intimations, see sec. 159.

Notice requiring removal of nuisance.

20.—(1.) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act, the local authority shall, [1]if satisfied of the existence of a nuisance, [2]serve a notice on the [3]author of the nuisance, or, if such author cannot be found, on the occupier or owner of the premises on which the nuisance arises or continues, requiring him to remove the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and if the local authority think it desirable (but not otherwise) specifying any works to be executed.

[1] The local authority, on receiving information of a nuisance, will have to satisfy themselves that the information is correct, which they will do through one or other of their officers.

[2] The notice here referred to differs from the "intimation" of the preceding section, and the issue of it is a more formal and important proceeding. The local authority are required to give their officers a general direction to issue the "intimation" under sec. 19, but apparently they are not empowered to give a general power to their officers to issue notices under this section (sec. 14, note 6). Each case is to be submitted to the local authority, or to a committee duly authorised, who will decide whether the statutory notice is to be served or not. This notice is the necessary basis of legal proceedings for the removal of a nuisance, and the service of it should be certified in the manner prescribed in sec. 159. The notice should set forth the nuisance, state under which head of sec. 16 it falls, call upon the author to remove it, and to execute such works or do such things as may be necessary for that purpose, and specify the time within which it is to be removed, which will vary according to the nature of the nuisance. It is optional to specify the works to be executed; and should it be found desirable to do so, it may be done in the form of a note appended to the notice.

[3] The notice is to be served on the *author of the nuisance;* it is only when the author cannot be found that it is to be served on the owner or occupier. Some doubt has arisen as to whether there can be an author of a nuisance other than the owner or occupier. The definition given in sec. 3 (*q.v.*), and particularly the last words thereof, appear to lead to the implication that none other than the owner or occupier can be the author of a nuisance in the sense of the Public Health Act. The question was considered by the Court in the case of the *Local Authority of Cadder* v. *Lang*, July 11, 1879, 6 R. 1242—when the Lord President (Inglis), after citing the definition of "author of a nuisance" in sec. 3 of the 1867 Act (which is exactly the same as in this Act) observed: "That plainly assumes that the nuisance exists on premises of which there is an owner, and, may be, a separate occupier, and when we come to the description of the different classes of nuisance in sec. 16, we see also that almost every one of the ten separate heads are nuisances caused either by the owner or occupier of the premises. There are two heads only —running water and manure or other filth deposited—in which an outsider might be the real cause of the nuisance; but I do not think that these exceptional cases can derogate from the plain meaning of the statute otherwise, taking the interpretation clause and sec. 16 together, that either the owner or the occupier must be the author of the nuisance, and that is not only the most reasonable but the most expedient view." And in *Police Commisioners of Govan* v. *Mackinnon*—July 10, 1885, 22 S.L.R., 843; P.L.M., 1885, p. 488—where proceedings were taken for the removal of a nuisance arising from the pollution of a burn by sewage, it was held that the defenders, as owners of the lands on which the nuisance existed, were the authors of the nuisance, although it was proved that the pollution was not caused by them or their tenants, but by parties higher up.

Notwithstanding these decisions, this sub-section appears plainly to indicate that the author may be some person other than the owner or occupier of the premises; and sub-sec. 3 (*b*), which provides for cases "where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the premises," confirms this view.

As the notice is now a statutory part of the proceedings, care must be taken that it is in proper terms and that it is served on the person legally liable. The local authority will therefore have to decide in the first instance who is the author of the nuisance. Sub-sec. 3 will afford assistance in certain cases, but in some cases it may be advisable to serve the notice on both owner and occupier. See sec. 161 as to cases where two or more persons are answerable. In cases of overcrowding the occupier will generally be the person liable. See note 19 to sec. 16 (7), and *Hume* v. *Local Authority of Kelso*, March 17, 1876, 3 Couper 239, in which case Lord Young observed: "I should think that it could hardly ever be true, in respect to a house which is let, that he (the proprietor) could be held to be the author of such a nuisance as overcrowding. A landlord lets a house to his tenant to be used lawfully, and is in no respect responsible for any abuse of the house by the

tenant, who is certainly responsible for putting more people into it than it is constructed to hold without injury to their health."

The case of a burial ground under sub-sec. 11 of sec. 16 is special, and the notice there will be sent to the collector of the churchyard or other dues. If there is no such person, the only course will be to apply to the sheriff to decide who is to be called as author of the nuisance. See sec. 22.

(2.) [4]The local authority may also by the same or another notice served on such occupier, owner, or [5]person, require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, may specify any works to be executed for that purpose, and may serve that notice, notwithstanding that the nuisance may for the time have been removed, if the local authority consider that it is likely to recur on the same premises.

[4] The notice under this sub-section is adapted to those cases where it may be necessary to apply for interdict of a nuisance, as, for instance, a nuisance arising under sec. 16 (5) from manure traffic on a railway.

[5] Apart from the owner and occupier there is no previous mention of any "person" in the section, except the author of the nuisance, and he is no doubt the "person" referred to.

(3.) Provided that—

(*a*) [6]where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner;

[6] The owner is liable when the nuisance is due to any structural defect. Where a tenant is bound under his lease to maintain the structure of the premises, it does not appear that the local authority can take such contract into consideration; their proper course will be to serve the notice on the owner, leaving him to establish his claim against the tenant. See sec. 150, particularly the concluding proviso thereof.

(*b*) where the [7]person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the premises, [8]the local authority may themselves remove the same, and may do what is necessary to prevent the recurrence thereof.

[7] It will be observed that the expression "author of the nuisance" is not used here, but the words employed are equivalent.

[8] This is a new provision. Under the 1867 Act the local authority were not entitled to remove a nuisance except on a warrant from the sheriff or a magistrate or justice under sec. 22, which is

represented in this Act by sec. 26. They are now empowered to remove nuisances in the circumstances set forth in this proviso.

The words are permissive, but probably it would be held to be the duty of the local authority to exercise the power in cases where the proviso applies.

On non-compliance with notice local authority to proceed summarily.

21. If the person on whom a notice to remove a nuisance has been served [1]as aforesaid makes default in complying with any of the requisitions thereof within the time specified, [2]and if the nuisance, although removed since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority [3]shall proceed by summary petition as [4]hereinafter provided.

[1] See preceding section.

[2] Although the word "and" is used here where "or" would have been expected, it does not seem to be necessary that both particulars should co-exist in order to bring the section into operation. The word "or" is used in the corresponding section of the English Public Health Act, 1875 (sec. 95).

[3] The language is imperative, and a duty is laid on the local authority. See note 2 to sec. 22.

[4] See secs. 22 and 154.

Proceedings by local authority when nuisances are ascertained to exist.

22.[1] In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, or where the nuisance in the opinion of the local authority did exist, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they [2]may apply to the [3]sheriff or to any [4]magistrate or justice, by summary petition in manner [5]hereinafter directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance as [6]hereinafter mentioned; [7]provided that if it appear to the sheriff or magistrate or justice that the nuisance arose from the wilful fault or culpable negligence [8]either of the owner or occupier of the premises, and that a notice in respect thereof had previously been served on such

[9]author, the sheriff or magistrate or justice may, in addition to making a decree as aforesaid, impose a fine not exceeding five pounds on such owner or occupier; provided that in the cases under sub-sections (6) and (8) in section sixteen of this Act [10]such application shall be made only on [11]medical certificate, or on a [12]representation by a parish council, or on a requisition in writing under the hands of any ten rate-payers of the district of the local authority, and that in these cases and the cases under sub-sections (9) and (10) in said section, it shall be made only to the sheriff; and farther, that in [13] the cases under sub-section (11) in section sixteen it shall not be necessary to cite any person as the author of the nuisance, but such application shall be proceeded with by the sheriff (to whom alone it shall be made) after such intimation to the collector of the churchyard or other dues, or to such other person as to the sheriff shall seem meet; and such person or persons as shall appear after such intimation shall, if the sheriff think proper, be allowed to be heard and to object to such application in the same manner as if he or they were the author of the alleged nuisance within the meaning of this Act.

[1] This section sets forth the procedure for having a nuisance removed, and re-enacts sec. 18 of the 1867 Act with certain alterations. See note 27 to sec. 16 *supra*. Although not expressly stated here, it appears from the preceding section that the service of the notice to remove the nuisance is an indispensable preliminary to legal proceedings.

The fact that the person injured came to the nuisance is no bar to proceedings, nor is it a valid defence. In a case of nuisance arising from the burning of "blaes," which was appealed from the sheriff of Lanarkshire to the Court of Session, and afterwards to the House of Lords, Lord Halsbury said that there was nothing "in the law which diminished the right of a man to complain of a nuisance because the nuisance existed before he went to it. It is clear that whether the man went to the nuisance or the nuisance came to the man, the rights are the same." (*Fleming, &c.*, v. *Hislop, &c.*, March 1, 1886, 13 R. (H.L.) 43.)

It is not competent to proceed on an allegation that any proposed or uncompleted work will prove a nuisance. The powers of the local authority and the sheriff do not arise until a nuisance actually exists.—B. See also *Steel, &c.*, v. *Local Authority of Gourock*, July 11, 1872, 10 M. 954; P.L.M. 1873, p. 84; and English case *Mogg* v. *Bocken*, note 1 to sec. 29 *infra*.

[2] The expression in this section is permissive—"they *may* apply"—but it appears to be the duty of the local authority to proceed. See sec. 21 and note 3 thereto, also sec. 17 and note 1 thereto.

[3] Where the nuisance comes under sub-secs. 1, 2, 3, 4, 5, or 7 of

sec. 16, the petition may be to the sheriff or to any magistrate or justice; in cases under sub-secs. 6, 8, 9, 10, or 11, the sheriff alone has jurisdiction. See the latter part of this section. The sheriff, magistrates, or justices, though they may be members of the local authority, are not barred from exercising jurisdiction (sec. 158).

[4] See definition of "magistrate" in sec. 3.

[5] See secs. 154–157.

[6] See sec. 23.

[7] The provision for imposing a penalty for causing a nuisance is new in Scotland. Under the 1867 Act there was no liability in a penalty until there was refusal to obtemper the decree of the court. As to the effect of concluding for the penalty, see note 1 to sec. 157.

[8] It appears to be only the owner or occupier of the premises who is subject to a fine; an author of a nuisance who is neither owner nor occupier will apparently escape. But see note 3 to sec. 20 as to these expressions.

[9] The word "author" refers to owner or occupier previously mentioned. See preceding note.

[10] *I.e.*, the application to the sheriff, magistrate, or justice.

[11] It does not appear that the "medical certificate" here referred to is necessarily to be given by the medical officer of health, as was the case under the 1867 Act (sec. 18). Apparently a certificate by any legally qualified practitioner will satisfy the section.

[12] This is a new provision, which recognises the right of the parish council to make representations to the local authority with regard to nuisances, and attaches so much weight to such representation that it is put as an alternative to a medical certificate.

[13] For a note of cases under sec. 16 (*j*) of the 1867 Act (of which sec. 16 (11) of this Act is the equivalent) see note 26 to sec. 16 (11) *supra*.

Form of interlocutor.

23.[1] It shall not be necessary to restrict such decree to any special remedy prayed for in the petition, but, as the case shall require, the author of the nuisance or owner or [2]occupier of the premises may be ordained to [3]execute such works or to do or to abstain or cease from doing such acts or things as are necessary to remove the nuisance complained of, in such manner and within such time as shall be specified; and if the sheriff, magistrate, or justice, is of opinion that such or the like nuisance is likely to recur, he may further grant interdict against the recurrence of it, or do otherwise, as the case may in his judgment require; and if the nuisance proved to exist be such as to [4]render a house or building unfit for human habitation or use, he may prohibit such habitation or use until in his judgment it is rendered fit therefor, and [5]on the sheriff, magistrate, or justice being satisfied that it has been rendered fit for that

purpose he may declare the house or building habitable, and from the date [6]thereof such house or building may be let or occupied, or the sheriff, magistrate, or justice may do otherwise as the case may in his judgment require.

[1] This section comes in place of sec. 19 of the 1867 Act, but it does not suggest the terms of the interlocutors in such detail as was done in the earlier statute, which specified the nature of the remedy applicable to each case coming under sec. 16 of that Act.

[2] In the 1867 Act only the author of the nuisance or the owner of the premises were specified as the persons against whom decree is to be given. The occupier is now introduced as an alternative respondent.

[3] See sec. 25 as to cases where structural works are required.

[4] Proceedings with regard to houses unfit for human habitation may also be taken under the Housing of the Working Classes Act, 1890. See note 1 to sec. 16 (1). See also sec. 76 as to power of sheriff to close houses after two convictions for overcrowding, and to close cellars.

[5] The provision that, after a house or building has been closed as uninhabitable, the sheriff may, on being satisfied that it has been rendered fit for human habitation or use, declare it to be habitable, did not appear in the 1867 Act.

[6] The word "thereof" apparently refers to the interlocutor declaring the house or building habitable.

Penalty for contravention of decree and of interdict.

24.[1] If the said decree be not complied with in good and sufficient manner, and within the time appointed, the author of the nuisance, or the owner [2]or occupier, as the case may be, shall be liable, in the case of nuisances under sub-sections (1), (2), (3), (4), (5), (7), (10), and (11) in section sixteen of this Act, to a penalty of not more than ten shillings per day during his failure so to comply; and if the said interdict be knowingly infringed by the act or authority of the [3]owner or occupier, such owner or occupier shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such infringement; and in the case of nuisances under sub-sections (6), (8), and (9) in the said section, the party not complying with or infringing such decree shall be liable to a penalty not exceeding five pounds [4]for the first offence, and not exceeding ten pounds for the second, and for each subsequent conviction a sum not exceeding double the amount of the penalty in the last preceding conviction, but no penalty shall exceed two hundred pounds: Provided

always, in the case of a nuisance under the said sub-section (9), that if it appears to the sheriff that the best means then known to be available for mitigating the nuisance, or the injurious effects thereof, have not been adopted, he may [5]suspend his final determination upon condition that the [6]author of the nuisance shall undertake to adopt within a definite time such means as [7]he shall judge to be practicable, and order to be carried into effect, for mitigating or preventing such injurious effects.

[1] This section re-enacts sec. 20 of the 1867 Act, which it reproduces with a few changes. The penalties here imposed are for contravention of the decree or interdict, and are to be distinguished from the fine which may be imposed under sec. 22 for causing a nuisance. See secs. 153 and 154 as to procedure for recovery of penalties, and secs. 156 and 157 as to appeals.

[2] The words "or occupier" are new. They did not appear in the 1867 Act. See note 3 to sec. 20 with regard to the expressions "author of the nuisance" and "owner or occupier;" also note 2 to sec. 23.

[3] Observe that the words "author of the nuisance" are not repeated here.

[4] Under the 1867 Act there was a minimum penalty of two pounds in these cases. No minimum is fixed by this Act.

[5] The meaning of "suspend his final determination" is not quite clear. It seems to imply that the sheriff may sist procedure in the case and abstain from inflicting a penalty if the author of the nuisance give the undertaking referred to in the section, leaving it to the local authority to approach the sheriff again if the author fail to implement the undertaking, or if the means adopted do not prove effectual.

[6] The owner or occupier are not specified here.

[7] "He" refers to the sheriff.

Order when structural works are required.

25.[1] When it shall appear to the sheriff, magistrate, or justice that the execution of structural works is required for the removal or remedy of a nuisance, he may appoint such works to be carried out under the direction and subject to the approval of any person he may appoint; and he may, before making his order, require the local authority, within a time to be specified by him, to furnish him with an estimate of the cost of the required works.

[1] This section is an exact reproduction of sec. 21 of the 1867 Act.

Local authority to do works on owner's or occupier's default, or if person causing nuisance cannot be found.

26.[1] In case of non-compliance with or infringement of any decree aforesaid, the sheriff, magistrate, or justice may, on application by the local authority, grant warrant to such person or persons as he may deem right to enter the premises to which such decree relates, and remove or remedy the nuisance thereby condemned or interdicted, and do whatever may be necessary in execution of such decree; or if in the original application it appears to his satisfaction that [2]the author of the nuisance is not known or cannot be found, then such decree may at once ordain the local authority to execute the works thereby directed; [3]and all expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance, and failing him from the owner of the premises.

[1] This section reproduces sec. 22 of the 1867 Act. When decree for the removal of a nuisance has been granted, it does not appear that the local authority are entitled to remove it themselves without a warrant. But see following note.

[2] See note 3 to sec. 20 *supra*. See also sec. 20 (3), proviso (*b*), as to the power of the local authority without a warrant to remove a nuisance when the author cannot be found.

[3] The author of a nuisance is not liable for the expense of removing it unless he has had an opportunity of removing it himself.

A local authority petitioned the sheriff to ordain certain proprietors to remove a nuisance. The sheriff, being of opinion that the author of the nuisance had not been ascertained, ordained the local authority themselves to execute the necessary works, and afterwards found the respondents liable in the cost. On appeal to the Court of Justiciary, it was held that the sheriff was not entitled to decern against the respondents for the expense incurred, not having given them an opportunity of abating the nuisance. (*United Kingdom Temperance, &c., Institution, &c.*, v. *Local Authority of Cadder*, June 14, 1877, 4 R. (Justiciary) 39; P.L.M. 1877, p. 480.) The local authority thereafter raised an action to recover the cost of the works from the owner of the ground on which they were executed. The court assoilzied the defender, holding that, in order to entitle the local authority to recover from the author of a nuisance the cost of removing it, it is necessary either that the sheriff should have ordained him to execute the removal himself, and only on his failure have then ordained the local authority to do so; or that at the date of the order on the local authority it should have appeared that the author of the nuisance was unknown. (*Local Authority of Cadder* v. *Lang*, July 11, 1879, 6 R. 1242; P.L.M. 1879, p. 532.)

Articles removed to be sold.

27.[1] Any matter or thing removed by the local authority in [2]pursuance of this Act may be [3]sold by public roup, after not less than five days' notice by printed handbills posted in the locality, except in cases where delay would be prejudicial to health, or in which the matter or thing is not of the value of two pounds or upwards, in which cases the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the matter or thing, and the proceeds of the sale shall be retained by the local authority, and applied *pro tanto* in payment of all expenses incurred under this Act with reference to such nuisance; and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing; and the balance of such expenses shall be defrayed, if such proceeds are insufficient for that purpose, by the author of the nuisance or the owner of the premises.

[1] This section re-enacts sec. 23 of the 1867 Act with the words "matter or thing" substituted for "article or articles."

[2] Although the words used are general—"in pursuance of this Act"—it is evident both from the collocation of the section and the references to "nuisance" contained in it that it applies more particularly to cases where the local authority themselves remove a nuisance either under the powers contained in sec. 20 (3) (*b*), or under a warrant in terms of sec. 26.

[3] See also the latter part of sec. 42, which authorises the sanitary inspector to order the removal of accumulations of manure, &c., in a special scavenging district; and if his order be not obeyed the manure, &c., is vested in the local authority, and may be sold by them.

Foul ditches, &c., may be replaced by sewers.

28.[1] Whenever any watercourse, ditch, gutter, or drain along the side of any [2]street, or between or parallel to rows of dwelling-houses, shall be used or partly used for the conveyance of any water, sewage, or other liquid or matter from any [3]premises, and cannot in the opinion of the local authority be rendered free from foulness or offensive smell without the laying down of a sewer or of some other structure, such local authority shall and they are hereby required to lay down such sewer or other structure [4]within the limits of their district, or, subject to the approval of the Board,

where necessary for the purpose of outfall or distribution of sewage, without their district, and to keep the same in good and serviceable repair; and they may enter any premises for such purposes, and use such part thereof as shall be necessary, and for such use shall pay such damages as may be assessed by the sheriff on a summary application, and to such party as the sheriff may direct: Provided always, that no damage shall be payable to any person who has caused or contributed to cause such watercourse, ditch, gutter, or drain to become foul or offensive, unless such person shall satisfy the sheriff that he had justifiable excuse for so doing; and such local authority are hereby authorised and empowered to assess the [5]owners of all the premises (according to the yearly value thereof) from which then or at any time thereafter any material other than pure water flows, falls, or is carried into the said sewer or other structure, for payment of all expenses incurred in making and maintaining the same, and that either in one sum or in instalments, as they shall think just and reasonable, and after fourteen days' notice at the least left with the said owners, if resident within the district, and if not so resident with the [6]occupiers of the said premises, to levy and collect the sums so assessed, with the same remedies in case of default in payment thereof as are hereinafter provided with reference to the [7]public health general assessment leviable under this Act.

[1] This section re-enacts sec. 24 of the 1867 Act with a few alterations. It provides means of dealing with any foul watercourse or gutter in regard to which the local authority may not deem it expedient to take proceedings as a nuisance under sec. 16 (2). The procedure will suit cases where the works necessary are not such as to warrant the formation of a special drainage district, and where a large scheme, such as is authorised by sec. 103, is not required.

[2] See the definition of "street" in sec. 3.

[3] See the definition of "premises" in sec. 3.

[4] The works must be within the district of the local authority, unless it should be necessary for the purpose of outfall or distribution of sewage to extend them beyond the district, in which case the Board must approve of the extension. Under the corresponding section of the 1867 Act the Board's approval was required whether the works were within or without the district. It will be competent to acquire land compulsorily for the purposes of this section. See secs. 144 and 145.

[5] The cost of the works authorised by this section is to be assessed on the *owners* alone.

[6] As to the power of the local authority to recover from the occupier any costs or expenses due by the owner, and the power of the occupier to deduct such from the rent, see sec. 150.

[7] See secs. 135 and 136 for the provisions respecting recovery of the public health general assessment.

An owner refused to pay his share of the assessment under sec. 24 of the 1867 Act, to which this section corresponds. *Held* that proceedings could be taken under sec. 105 of that Act (sec. 154 of this Act) as for a sum of money due to the local authority; also, that it was no defence against a claim for the assessment that the cost of the operations had been defrayed in the first instance out of the public health general assessment. (*Local Authority of Selkirk* v. *Brodie*, March 16, 1877, 4 R. (Justiciary) 21; P.L.M. 1877, p. 324.)

Local authority may erect public water-closets, &c.

29.[1] The local authority may erect such public ashpits, water-closets, privies, and urinals, and in such situations, as they may think fit, and may defray the expense thereof, and of keeping the same in repair and in good order, and shall cause such privies to be cleansed daily; and [2]the local authority may also, by [3]written notice to the [4]owner or occupier of any schoolhouse, or of any [5]factory or building in which persons are employed in any manufacture, trade, or business, require them or either of them, within a time specified, to construct a sufficient number of water-closets or privies for the separate use of each sex; and any person failing to comply with such notice shall be liable for each offence in a penalty not exceeding twenty pounds.

[1] This section re-enacts sec. 41 of the 1867 Act with certain alterations. The 1867 Act contained no provision enabling the local authority to acquire land compulsorily for the purposes of this section, but this Act remedies that defect, and land may now be acquired for this and any other of the purposes of Part II. See sec. 144.

No power to borrow to meet the expense of public water-closets, &c., being given by the Act, the whole cost must be met out of the year's assessment. If this is found impracticable, the best course is to borrow the sum required from a bank or other lender on a minute of the local authority, and pay off the debt by annual instalments. This has been done in several instances. But the local authority cannot pledge future assessments for payment of such a debt.—B.

Care must be taken that public water-closets are not nuisances, either from their situation or the manner in which they are kept. But it is not competent to take proceedings against proposed erections on the ground that they will cause a nuisance. If after erection they become nuisances, they may be proceeded against

as such, and the authority here given to erect them will be no bar to action being taken at common law by any person aggrieved. See *Adam* v. *Alloa Police Commissioners*, November 24, 1874, 2 R. 143.

An English local authority empowered a society to put up a public convenience in their district. A resident in the neighbourhood raised an action to restrain the erection, on the ground that it would be a nuisance. Mr Justice Stirling held that he could not assume that the mere fact of the erection of this building would create a nuisance at law. But he felt the strongest doubt whether this agreement of the local authority to delegate its powers to a society was not *ultra vires*. (*Mogg* v. *Bocken*; 'Sanitary Record' for November, 1888, p. 243.)

Under sec. 110 of the Burgh Police Act, 1892, "the commissioners may erect or continue public water-closets or earth-closets, and latrines and urinals, in suitable places, and may place movable or fixed boxes for the temporary deposit of street sweepings in any of the streets, in such situations as shall, in the opinion of the commissioners, cause the least inconvenience or nuisance."

[2] Under the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), secs. 74 and 76 (10), the provisions of sec. 41 of the 1867 Act are applied to surface buildings in connection with mines. By sec. 193 of this Act sec. 29 will be substituted for sec. 41 of the earlier Act.

By the Factory and Workshop Act, 1895, sec. 35 (1), it is provided: "In every place where section 22 of the Public Health Acts Amendment Act, 1890, is not in force, every factory or workshop shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are employed or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

"(2) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act."

As the Public Health Amendment Act 1890 does not extend to Scotland, the above provision of the Factory and Workshop Act, 1895, will apply generally in Scotland. The two Acts will thus supplement one another, and the local authority will be able to enforce the provision in cases where the inspectors under the Factory Acts are unable to interfere. Sec. 35 of the Factory Act, 1895, is enforceable by the factory inspector, not by the local authority.

[3] By sec. 20 of the Interpretation Act, 1889, it is provided that writing shall include "printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

As to the service of notices, see sec. 159.

[4] See definitions of "owner" and "occupier" in sec. 3.

[5] The word "factory" includes workshop and workplace. See definition in sec. 3.

Penalty for injuring closet, &c., so as to cause nuisance.

30.[1] If a person causes any drain, water-closet, earth-closet, privy, urinal, 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 penalty not exceeding five pounds.

[1] This section was not in the 1867 Act. It is taken from the Public Health (London) Act, 1891, sec. 15.

Water-closets, &c., used in common.

31.[1] The following provisions shall have effect with respect to any water-closet, earth-closet, privy, or similar convenience used in common by the [2]occupiers of two or more separate dwelling-houses, or by other persons :—

(1) If any person injures or improperly fouls any such convenience, or anything used in connection therewith, he shall for each offence be liable to a penalty not exceeding ten shillings ;

(2) If any such water-closet, earth-closet, privy, or similar convenience, or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are, in the opinion of the local authority or of their sanitary inspector or medical officer, in such a state as to be a nuisance or annoyance to any of the persons using, or entitled to use, the same for want of the proper cleansing thereof, [3]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 penalty not exceeding ten shillings, and to a penalty not exceeding five shillings for every day during which the offence continues after a conviction for the offence.

[1] This section is new. It is taken from sec. 21 of the English Public Health Amendment Act, 1890, and the Public Health (London) Act, 1891, sec. 46.

[2] See definition of "occupier" in sec. 3.

[3] For procedure where two or more parties are jointly answerable, see sec. 161.

[1] Offensive Trades.

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

32.[2]—(1.) If any [3]person after the [4]commencement of this Act [5]establishes, without the [6]sanction of the local authority, the following businesses, or any of them; that is to say, the business of blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter, [7]knacker, tanner, tripe-boiler, gut or tripe cleaner, skinner or hide factor, [7]slaughterer of cattle or horses, or [8]any other business which the local authority may declare, by order [9]confirmed by the Board and published in the *Edinburgh Gazette*, to be an offensive business, he shall be liable to a fine not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same after a conviction for the establishment thereof shall be liable to a penalty not exceeding twenty-five pounds for [10]every day during which he so carries on the same.

[1] The new Act effects an important change in the law as to offensive trades. Under sec. 30 of the 1867 Act offensive businesses (including slaughter-houses) could not be established within a burgh or village, or within 500 yards therefrom, without the consent of the local authority. Sanction is now required whatever be the situation of the business, and as regards slaughter-houses and knackers' yards, a licence must be obtained from the local authority before they can be carried on, and this licence is subject to annual renewal. Special provision is also made for dealing with trades which cause effluvia so as to create a nuisance, and for dealing with any nuisance arising out of the action of the local authority in removing and disposing of house and street refuse.

[2] This section is taken from the Public Health (London) Act, 1891, sec. 19, with certain modifications necessary to adapt it to the different circumstances of Scotland.

[3] "The expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate." (Interpretation Act, 1889, sec. 19.)

[4] That is, 1st January 1898; see sec. 2. Sanction is not required in the case of any of the specified businesses established before this Act comes into force. If any such causes a nuisance sec. 36 will provide a remedy.

[5] For the meaning of "establishes" in this section, see subsec. 6.

[6] It is the sanction of the local authority of the district in which the business is situated which must be obtained. The sanction

must be given by the local authority by order (see sub-sec. 2). The fact that any business has received the sanction of the local authority under this section will not, it is thought, prevent proceedings being taken in regard to it, if it should prove to be a nuisance under sec. 16 (6) or sec. 36. (*Pentland* v. *Henderson*, Mar. 2, 1855, 17 D. 542.)

[7] For the definitions of "knacker" and of "slaughterer of cattle or horses," see sec. 3.

[8] Provision is made for applying the section to other offensive businesses than those specified. It would appear that the other businesses must be *ejusdem generis* with those specified in the section.

[9] The confirmation of the Board is necessary to any order under this section, and the Board will be entitled to cause a local inquiry to be held in each case in which their confirmation is applied for. See sec. 39 (2) of the Local Government (Scotland) Act, 1894, quoted in note 3 to sec. 6.

[10] The daily penalty is not incurred until after the conviction.

(2.) The local authority shall give their [11]sanction by [12]order, but, [13]at least fourteen days before making any such order, shall make public the [14]application for it, by advertisement in one or more local newspapers, or by the posting of handbills in the locality, setting forth the time and place at which they will be willing to hear all persons objecting to the order, and they shall consider any objections made at that time and place, and shall [15]grant or withhold their sanction as they think expedient, and where the local authority grants or withholds such sanction, any person aggrieved may [16]appeal to the Board, whose decision shall be final, but, in the case of a district other than a burgh, the appeal to the Board shall only arise after the county council has given its determination on the matter, and a local authority may appeal to the Board against the determination of the county council.

[11] The Board of Supervision were of opinion that, under sec. 30 of the 1867 Act, a local authority might competently grant consent before the premises were erected, if the site and plans were satisfactory; and that a new consent after the building was erected was not required. In an English case decided in the Exchequer Chambers, Justice Willes said: "A licence to erect a slaughter-house means, *primâ facie*, to erect a slaughter-house *which shall be used as a slaughter-house*, and not that there should be two separate licences, one for the erection and another for the use." (*Anthony* v. *Brecon Markets Company*, 26 L.T., N.S. 979.) See Knight's "Byelaws," p. 184. Perhaps the safest course is for the local authority, if satisfied with the site and plans, to grant a conditional consent, and to delay giving the formal consent until the premises are completed.

[12] As to the fee to be charged for the order, see sub-sec. 5.

[13] "At least fourteen days" means that there must be fourteen clear days, excluding the day of giving the notice and the day of making the order.

[14] The local authority have power by byelaws under sub-sec. 3 to fix the mode in which application is to be made.

[15] As the Act does not provide for sanction, when legally granted, being withdrawn or recalled, it is the duty of the local authority to exercise the greatest care to ascertain, before giving sanction, that the situation and construction of the premises are entirely satisfactory. The Model Byelaws as to slaughter-houses issued by the Local Government Board, England, prescribe the forms in which applications for licence are to be made, and these forms require the applicant to supply detailed information as to the site and buildings. See the *Model Byelaws*, Nos. 1 and 2, *Local Government Board's Report*, 1878, App., p. 123; and Knight's "Byelaws," p. 185.

[16] There is an appeal to the Board in either case, whether the local authority grants or withholds sanction. If sanction is granted any objector may appeal, and if it is withheld the applicant may appeal. There is no provision requiring the local authority to publish their resolution, and there is no limit of time fixed within which the appeal must be taken. In landward districts the appeal to the Board does not arise until the county council has given its determination on the matter. There is no provision in the section as to how the matter is to be brought before the county council. There exists the provision in sec. 17 (2) (*c*) of the Local Government (Scotland) Act, 1889, which empowers any five ratepayers in the district to appeal to the county council from any proceedings or order of a district committee. It is not clear that this is the only means of bringing the resolution of the district committee on an application for sanction to an offensive business before the county council. If it were so, then, in the event of the sanction of the local authority being withheld, it would appear that the applicant would be debarred from appealing to the Board unless he could induce five ratepayers to bring a preliminary appeal before the county council. The fact that "any person aggrieved" may appeal to the Board, and that such appeal does not arise till the county council has given its decision, suggests that any person aggrieved may bring the matter before the county council.

(3.) The local authority may make [17]byelaws for regulating the conduct of any businesses within the meaning of this section, and of section thirty-seven of this Act, [18]which are for the time being lawfully carried on in their district, and the structure of the premises in which any such business is being carried on, in order to prevent or diminish the noxious or injurious effect thereof, and the mode in which the [19]said application is to be made.

[17] As to the making, publication, confirmation, &c., of byelaws see secs. 183 to 187.

The three matters which may be dealt with in the byelaws are: (1) the conduct of the business; (2) the structure of the premises; and (3) the mode of application for the sanction of the local authority, the object in the case of Nos. 1 and 2 being "in order to prevent or diminish the noxious or injurious effect thereof."

Model Byelaws as to various offensive trades have been issued by the Local Government Board, England; see their Report, 1883, App., p. 20. The London county council have also framed byelaws for most of the noxious trades coming under this section, and these have been published in book form along with other byelaws and regulations of the council.

In burghs the commissioners have power under sec. 316 B (6) of the Burgh Police Act, 1892, to make byelaws—"for reducing or removing the noxious or injurious effects attending the business of a blood-boiler, bone-boiler, tanner, slaughterer of horses or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture."

[18] The phraseology of the sub-section appears to imply that the byelaws are applicable to all the businesses specified in sub-section 1, whether established prior to the commencement of the Act or not; but it is obvious that byelaws regulating the mode of application for the sanction of the local authority will apply only to businesses established after the commencement of the Act.

[19] That is, the application for sanction under sub-sec. 2.

(4.) Any such byelaw may, in addition to [20] any pecuniary penalty imposed by such byelaw, empower a sheriff 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 penalty not exceeding twenty-five pounds for every day during which such disobedience continues; and the decision of the sheriff under this sub-section shall be [21] appealable to the Lord Ordinary on the Bills in manner provided by section one hundred and fifty-six of this Act.

[20] As to penalties for breach of byelaws, see sec. 184.

[21] The note of appeal to the Lord Ordinary, under sec. 156, must be accompanied by a bond of caution to the amount of fifty pounds, and must be lodged and a copy served on the opposite party within eight days after the date of the judgment complained of.

(5.) There shall be charged for an [22] order of the local authority under this section, such fee not exceeding forty shillings as the local authority may fix.

[22] The order here referred to appears to be that under sub-sec. 2 giving sanction to the establishment of the business, and not that under sub-sec. 1.

(6.) For the purposes of this section a business shall be deemed to be [23]established after the commencement of this Act not only if it is established newly, but also if it is removed from any one set of [24]premises to any other premises, or if it is renewed on the same set of premises after having been discontinued for a period of twelve months or upwards, or if any premises on which it is for the time being carried on are [25]enlarged without the sanction of the local authority; but a business shall not be deemed to be established anew on any premises by reason only that the ownership or occupancy 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.

[23] See sub-sec. 1.

[24] For definition of "premises," see sec. 3.

[25] In order to constitute enlargement in the sense of this sub-section, there must be an extension of the premises, not simply an increase in the volume of business.

To prevent disputes as to whether a business to which consent has been given has or has not been afterwards enlarged, the local authority should ascertain and put on record the extent of every business to which they grant consent. The form of licence for slaughter-houses recommended by the Local Government Board, England, in their Model Byelaws, contains a schedule in which the site and premises are defined and described. See *Model Byelaws*, Nos. 3 and 4, *Local Government Board's Report*, 1878, App., p. 123; and Knight's "Byelaws," p. 188.

Licensing of slaughter-houses.

33.[1]—(1.) A person carrying on the business of a [2]slaughterer of cattle or horses, or knacker, shall not use any premises as a slaughter-house or [3]knacker's yard without a [4]licence from the local authority, and if he does he shall for each offence be liable to a penalty not exceeding five pounds, and [5]the fact that cattle or horses have been taken into unlicensed premises shall be *primâ facie* evidence that an offence under this section has been committed.

[1] This section is taken from the Public Health (London) Act, 1891, sec. 20, with certain modifications. It will be observed that while this section makes specific provisions regarding the businesses of a slaughterer of cattle or horses, and of a knacker, these two businesses also come under the section immediately preceding, and the provisions of both sections accordingly appear to apply. In cases where one or other of these businesses is newly established after

the commencement of this Act, it will apparently be necessary to obtain both the sanction of the local authority to the establishment of the business in terms of sec. 32, and their licence to use the premises for such business in terms of sec. 33. In such cases the fee for the order under sec. 32 and the fee for the licence under sec. 33 appear both to be exigible. One advertisement will probably be sufficient to meet the requirements of secs. 32 (2) and 33 (3), but the notice required by the latter provision being twenty-one days, while the former only requires fourteen, it will be necessary to allow the longer period.

The question of the effect of this and the previous section on the provisions of the Burgh Police Act with regard to slaughter-houses may give rise to some difficulty. It does not appear that the provisions of the Burgh Police Act are superseded by these two sections. Sec. 190 of this Act enacts that "except in so far as expressly provided, nothing in this Act shall prejudice or affect the provisions of . . . the Burgh Police (Scotland) Act, 1892." And sec. 171 declares that "all powers given by this Act shall be deemed to be in addition to, and not in derogation of, any power conferred by Act of Parliament not hereby specifically repealed." Accordingly, the provisions of secs. 32 and 33 of this Act must be held to be superadded to the slaughter-house provisions of the Burgh Police Act. Sec. 279 of that Act provides that no place shall be used as a slaughter-house within the burgh without a licence from the commissioners. Under this Act the *premises*, under the Burgh Police Act both the *premises* and the *person* using them, are to be licensed (secs. 279 and 282). In the event of the new establishment of a slaughter-house within a burgh, it may be doubted if it would be necessary to have two licences, one from the commissioners *qua* commissioners under the Burgh Police Act, and another from the same body *qua* local authority under the Public Health Act; but the requirements of the latter Act as to notice, &c., would have to be observed. The commissioners are also empowered to provide public slaughter-houses, and it would appear to be necessary that the requirements of the Public Health Act should be fulfilled before they are used.

In regard to places for the slaughtering of horses there is a difficulty. The commissioners of police burghs are, by sec. 285 of the Burgh Police Act, empowered to license such places, but they may give and recall such licences at pleasure. The question may arise whether the power to recall at pleasure is affected by the provision of this Act that licences under that Act have force for a year.

[2] The expressions "slaughterer of cattle or horses," "knacker," "slaughter-house," "knacker's yard," and "premises," are defined in sec. 3.

[3] Places for the slaughtering of horses and for the deposit of the carcases must in burghs be licensed in terms of sec. 285 of the Burgh Police Act, 1892; but the fact that on several occasions of emergency a horse-slaughterer has permitted the carcase of a horse to lie for a night within unlicensed premises will not justify a conviction under that section. (*Simpson* v. *Proctor*, Jan. 8, 1896, 23 R. (J.) 22; 33 S.L.R. 270; 3 S.L.T. 369.)

[4] The licence is subject to annual renewal, and a fee may be

charged for it—sub-sec. 2—but the licence will not operate as a bar to proceedings under sec. 16 (6) or sec. 36 of this Act, in the event of the business becoming a nuisance. See *Pentland* v. *Henderson*, March 2, 1855, 17 D. 542.

[5] The concluding provision of the sub-section is taken from sec. 20 of the Public Health (London) Act, 1891, with the addition of the words "or horses," but the object of the provision is not apparent. It appears to provide that if a cow or a horse be taken into any premises which are not licensed under this section (*e.g.*, into a byre or stable), that fact shall be *primâ facie* evidence that the byre or stable is being used as a slaughter-house or knacker's yard in contravention of the section.

(2.) A licence under this section shall expire on such day in every year as the local authority fix, and [6]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 may be charged for the licence or any renewal thereof.

[6] For instance, if the local authority fix that the licences shall expire on the 15th May of each year, a licence first granted in March 1898 will remain in force till 15th May 1899.

(3.) [7]Not less than twenty-one days before a new licence for any premises is granted under this section, notice of the intention to apply for it shall be [8]advertised as provided in sub-section two of the immediately preceding section by the local authority of the district in which the premises are situate, and any person interested may show cause against the grant or [9]renewal of the licence.

[7] Not less than twenty-one days means twenty-one clear days exclusive of the day of giving the notice and the day of granting the licence.

[8] The advertisement may be either in the newspapers or by hand-bills.

[9] The object of introducing the words "or renewal" here is not apparent, as the rest of the sub-section refers only to new licences. It does not appear that advertisement is necessary in the case of a *renewal* of a licence, but it would not be incompetent, and it may be advisable, for the local authority to advertise applications for renewals as well as for new licences.

(4.) An objection shall not be entertained to the renewal of a licence under this section, unless seven days' previous [10]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 local authority may, if they think it just so to do, direct [10]notice thereof to be served on the

applicant, and adjourn the question of the renewal to a [11]future day, and require the attendance of the applicant on that day, and then hear the case, and consider the objection, as if the said notice had been duly given.

[10] As to the service of notices, see sec. 159.

[11] Such future day will have to be before the expiry of the prior licence, otherwise the applicant will be prejudiced.

(5.) 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 [12]premises.

[12] As it is the premises that are licensed, and not the person who conducts the business, it appears to be immaterial whether the applicant for renewal is or is not the holder of the prior licence.

(6.) The local authority shall have [13]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 [14]byelaw made thereunder.

[13] Although right of entry without a warrant is given, there is no provision for making a forcible entry such as is provided in sec. 18, which would only be available if there was reason to believe that there was a nuisance.

It will be observed that the right of entry is not given expressly to the officers of the local authority, but only to the local authority itself. It will be necessary for the officers in acting under this sub-section to be armed with power from the local authority to exercise the right on their behalf.

The expression "by day" means between 9 A.M. and 6 P.M. See definition in sec. 3.

[14] There is no specific provision enabling a local authority to make byelaws for slaughter-houses or knackers' yards, but under sec. 32 (3) byelaws may be made with regard to any of the businesses dealt with in that section, including those of slaughterers of cattle or horses and knackers.

The Local Government Board, England, have issued model byelaws for slaughter-houses, which are printed in their Report for 1878, App., p. 120. See also Knight's "Byelaws," p. 185.

(7.) [15]Where any person carrying on the business of a slaughterer of cattle or horses or knacker at the passing of this Act is refused by the local authority a licence for the premises where such business is carried on, or where any person has been refused a renewal of any licence, such

person may appeal to the Board against such refusal, and the decision of the Board shall be final, [16]but in the case of a district other than a burgh the appeal to the Board shall only arise after the county council has given its determination on the matter, and a local authority may appeal to the Board against the determination of the county council.

[15] This sub-section provides for an appeal to the Board in cases where the local authority refuse to license premises in which the business was carried on at the passing of the Act, or where they refuse renewal of a licence. There is no provision for an appeal in the case of a new licence. But cases where a lew licence is required are cases which come under sec. 32, which provides for appeal to the Board whether the sanction of the local authority is granted or refused. It will be observed that there is no appeal at the instance of any person objecting to the granting of the licence.

[16] See note 16 to sec. 32 with regard to the means of bringing the matter under review of the county council. The fact that the only person who is entitled to appeal to the Board is the person who has been refused a licence or renewal, and that the appeal to the Board only arises after the county council has given its determination, suggests the implication that the person who is refused a licence is entitled to appeal to the county council against the refusal of the district committee to grant or renew it. But there is no express provision to that effect.

Local authorities may provide a slaughter-house.

34. [1]The local authority of any district other than a burgh may provide, establish, improve, or extend and maintain [2]within or without their district, and two or more such local authorities may combine to so provide, establish, improve, or extend and maintain fit shambles or slaughter-houses for the purpose of slaughtering cattle, and for that purpose may borrow such sums of money as they shall find necessary on the security of the [3]public health general assessment, and of the [4]rates to be taken and levied for the use of such shambles or slaughter-houses and [5]ground on which the same are erected, or on any one or more thereof, and the provisions of [6]section one hundred and forty-one of this Act shall, with the necessary modifications, apply to such borrowing.

[1] Under the 1867 Act there was no provision enabling a local authority to provide a slaughter-house. In burghs the commissioners have the power under the Burgh Police Act, and this sec-

tion extends that power to local authorities of landward districts. But the provision of the Burgh Police Act, which enacts that when a public slaughter-house has been provided, no other place within the burgh shall be used for slaughtering, is not extended to landward areas. The local authority, however, will be justified in exercising greater strictness in dealing with private slaughter-houses if a public slaughter-house has been provided.

It does not appear that the local authority will be exempted from the requirements of secs. 32 and 33 when they enter on the business of establishing a slaughter-house. There seems to be no reason why opportunity should not be given for objections being considered and appeals lodged when the business is established and carried on by the local authority, although *ex facie* it may appear somewhat strange that a local authority should be required to grant sanction to themselves, and to give themselves a licence.

There is no specific provision enabling the local authority to make byelaws for the slaughter-houses which they may provide under this section, but probably the power to make byelaws given by sec. 32 (3) will extend to such slaughter-houses. It is found, however, that public slaughter-houses, being under the management and control of the local authority, require few byelaws. On this point the English Local Government Board states: "The experience of the Board leads them to the conclusion that, to ensure good management, sanitary authorities may be advised to rely mainly upon the structural fitness of the premises, the provision of needful appliances and conveniences, and the efficient discharge by their officers and servants of duties having for their object the maintenance of the premises in a cleanly and wholesome condition. The control thus exercised by a sanitary authority, as owners of a public slaughter-house, may, if necessary, be supplemented by a few byelaws such as may be readily framed upon the basis of some of the clauses comprised in the model series relating to private slaughter-houses." See *Local Government Board's Report*, 1883, App., p. 13.

[2] The local authority have power to provide a slaughter-house without their district, but it is obvious that in going outside a certain amount of inconvenience is almost sure to arise. The local authority will have to obtain the sanction of another local authority, and be subject to another authority's byelaws, and they will find difficulty in enforcing byelaws of their own.

[3] See sec. 135.

[4] There is no direct authority given to levy rates for the use of slaughter-houses, but the power to borrow on the security of such rates implies a power to levy them. In burghs there is a specific provision (Burgh Police Act, sec. 284) authorising the commissioners to levy rates, and a further provision that in case of difference as to the rates the sheriff shall fix them.

The power of *rating* is not given to district committees (see sec. 12); it can be exercised in landward areas by the county council alone. The word *rates* as used in this section—meaning the fees or dues to be exacted for the use of the slaughter-house—can scarcely be included in the term "rating" as used in sec. 12,

and the district committee are probably therefore not precluded from levying the rates for the use of the slaughter-house.

[5] The phraseology of the clause is not clear, but it seems to provide that the local authority may convey the ground on which the slaughter-house is built in security for the loan. In burghs not only the ground but the buildings may be given in security. It will be within the power of the county council as local authority to acquire land for the purposes of a slaughter-house in terms of secs. 144 and 145.

[6] Sec. 141 contains the provisions for borrowing for offices, hospitals, mortuaries, &c. The loan must be repaid within thirty years.

And make byelaws as to pigstyes.

35.[1] The local authority may make [2]byelaws regulating the construction of pigstyes, the places in which they may be erected, and the mode of cleansing them at [3]proper intervals so as to prevent them from becoming a [4]nuisance or dangerous to public health.

[1] This section is new. It enables the local authority to regulate (1) the construction of pigstyes; (2) the places in which they may be erected; and (3) the mode of cleansing them at proper intervals so as to prevent them from becoming a nuisance or dangerous to health. The powers given to the commissioners of burghs by sec. 316 B (7) of the Burgh Police Act are similar, but extend to the prohibition of swine-keeping altogether. That provision enables byelaws to be made "for providing that cattle (the word 'cattle' in the Burgh Police Act, as in this Act, includes swine), dogs, and poultry shall not be kept in such places or in such manner as to be a nuisance or annoyance to the inhabitants; for prescribing the situations or places in which swine may be kept, and for prohibiting, on cause shown, the keeping of swine." And by sec. 381 (37) of the same Act a penalty is imposed on any one who in a burgh "keeps any swine near any dwelling-house so as to be a nuisance or an annoyance to the residents or passengers."

[2] For the provisions as to byelaws, see secs. 183 to 187.

[3] The byelaws will regulate not only the mode of cleansing, but the intervals at which the cleansing shall be carried out.

[4] See sec. 16 (4), and the note to the heading of Part II. with respect to the meaning of "nuisance."

Duty of local authority to complain to sheriff, &c., of nuisance arising from offensive trade.

36.[1]—(1.) Where it appears to the local authority [2]upon a certificate by their medical officer, or from a representation by a parish council, or on a requisition in writing under the hands of any ten ratepayers within the district that any

trade, business, process, or manufacture carried on in any manufactory, building, or [3]premises, and causing effluvia is a [4]nuisance or injurious or dangerous to the health of any of the [5]inhabitants of the district, such authority [6]may, if they think proper, and, if required by the Board shall, apply to the sheriff by [7]summary petition, and if it appears to such sheriff that any trade, business, process, or manufacture carried on in such manufactory, building, or premises is causing a [4]nuisance, or any effluvia which is a [4]nuisance or injurious or dangerous to the health of any of the inhabitants within the district, then, unless it is shown that the best practicable means have been used for removing the nuisance, or preventing or counteracting the effluvia, the [8]author of the nuisance, and failing him the occupier, and failing him the owner of the premises, shall be liable to a [9]penalty not exceeding fifty pounds.

[1] This section is new, and is based on sec. 21 of the Public Health (London) Act, 1891. It will have the effect of supplementing sec. 16 (6) of this Act, and of enabling the local authority to deal effectively with nuisances caused by effluvia, whether such come under the provisions of sec. 32 or not. The fact that a business has been established with the sanction of the local authority under that section will not remove it from the operation of this provision.

[2] The local authority will be unable to take action under this section save on a certificate by their medical officer of health, or a representation from a parish council, or a requisition by ten ratepayers. A similar requirement exists in the case of nuisances coming under sec. 16 (6) or (8), but it will be observed that in these cases it will be sufficient to have a certificate from any legally qualified medical practitioner, while in cases under this section a certificate by any other than the medical officer will not suffice.

[3] For definition of "premises," see sec. 3.

[4] As to meaning of the word "nuisance," see note to heading of Part II. *supra*.

[5] The section applies whether the manufactory or premises are within the district of the local authority or not, if there is nuisance to the inhabitants of the district. See sub-sec. 4.

[6] The words are permissive, but it will be the duty of the local authority to take action if the Board so require. Apart from the requirement of the Board, however, it would no doubt be held that it is the duty of the local authority to enforce the section if such action were necessary to secure the proper sanitary condition of their district. See sec. 17.

[7] As to proceedings, see sec. 154. The local authority may, if they think fit, take proceedings in the Court of Session instead of the Sheriff Court. See sub-sec. 3.

[8] The author of the nuisance will, in most cases coming under this section, be the occupier.

[9] As to recovery of penalties, see sec. 154.

(2) Provided that the court may [10]suspend its final determination on condition that the person so offending undertakes to adopt, within a reasonable time, such means as the court may deem practicable, and may order to be carried into effect, for removing the nuisance, or mitigating or preventing the injurious or dangerous effects of the effluvia.

[10] The provision here is not very clear, and does not declare what course shall be taken in the event of the offender failing to implement his undertaking, or in the event of the means adopted being unsuccessful in remedying the nuisance. The course indicated seems to be that the Court will sist procedure in the case, leaving it to the local authority to move again in the matter if the nuisance continues. Should the offender be in fault, it will be in the power of the Court to inflict the penalty and enforce the order which it has made.

(3) [11]The local authority may, if they think fit, [12]on such certificate as is in this section mentioned, cause proceedings to be taken in the Court of Session against any person in respect of the matters alleged in such certificate.

[11] This sub-section affords the local authority an alternative to applying to the sheriff. They may, in their discretion, apply to the Court of Session instead of to the sheriff. This course will probably only be taken in test cases, or in cases of unusual importance or difficulty.

[12] Proceedings are not to be taken under this sub-section save on such certificate as is in this section mentioned—that is, on the certificate of the medical officer of health mentioned in sub-sec. 1.

(4) The local authority may take proceedings under this section in respect of a manufactory, building, or premises [13]situate without their district, so, however, that the summary proceedings shall be had before a [14]sheriff having jurisdiction in the district where the manufactory, building, or premises are situate.

[13] If the business, though situated without the district of the local authority, is a nuisance or injurious to persons within the district, they may institute summary proceedings with regard to it before the sheriff who has jurisdiction in the district where the business is carried on, or they may take proceedings in the Court of Session. See also sec. 149.

[14] See *Tait* v. *Johnston*, Feb. 28, 1891, 18 R. 606; also *Kelso District Committee* v. *Fairbairn*, Dec. 18, 1891, 29 S.L.R., 284; 1 County Council Cases, 23.

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

37.[1]—(1.) The [2]removal of [3]house refuse and street refuse by a local authority [4]when collected or deposited by that authority, or by any contractor or other person authorised by such local authority, shall be deemed to be a [5]business carried on by that authority, or by such contractor or other person, within the meaning of this Act, and [6]a complaint or proceedings in relation to any such business may be made or taken by the county council of the [7]district, other than a burgh, where such business is carried on, or, in the case of any [7]district, by any person authorised by the Board in like manner as if such county council or such person were a local authority.

[1] This section is new, and is adapted from the Public Health (London) Act, 1891, sec. 22. It provides a means of dealing with a nuisance of which the local authority themselves or their contractors may be the author. It does not appear, however, that the provisions of this section will affect or prejudice the powers given by sec. 146; they are rather to be regarded as affording an alternative procedure. Sec. 32 (3) empowers the local authority to make bye-laws for regulating the conduct of any business under this section which is for the time being lawfully carried on within their district, and the structure of the premises in which any such business is being carried on, in order to prevent or diminish the noxious or injurious effect thereof.

[2] There is no provision in this Act enabling the local authority to undertake the removal of house and street refuse, nor was there any in the 1867 Act, but under that Act the Court held that a local authority was entitled to contribute to the cost of scavenging (*Robertson* v. *Parochial Board of Midcalder*, Dec. 19, 1883, 11 R. 350). Now that the local authorities of landward areas have power to form special scavenging districts under sec. 44 of the Local Government Act, 1894, it is probable that the cases where the local authority will undertake the removal of refuse under their general powers will be few, and subject to these rare exceptions this section will only apply in burghs and in special scavenging districts. See also sec. 39 as to payment of cost of cleansing highways out of the roads assessment.

[3] There is no definition of "house refuse" and "street refuse" in this Act. In the London Public Health Act, from which the clause is taken, there are definitions of these two expressions, and they are both distinguished from "trade refuse." In sec. 107 of the Burgh Police Act, which is in force in every burgh, and probably in every special scavenging district, house refuse and street refuse are not distinguished from each other, but they are distinguished from a certain class of refuse which might fairly be termed "trade refuse."

[4] The words "when collected or deposited," &c., appear to imply that there may be cases where the removal of refuse is undertaken by the local authority, but the refuse is not collected or deposited by them or by any contractor or other person authorised by them, and that in such cases the provision would not apply. The enactment accordingly appears to be directed rather against the "business" of collecting or depositing refuse than that of removing it.

[5] The effect of declaring that the collection or deposit of refuse is a "business" is to bring such an undertaking within the provisions of sec. 36 in the event of a nuisance being created or effluvia caused in the process.

[6] The word "complaint" appears to mean the petition to the sheriff under sec. 36. The provision apparently amounts to this, that in a landward area there are two courses of procedure: (1) the certificate by the medical officer, or the representation by the parish council, or the requisition by ten ratepayers, on one or other of which any proceedings must be based, may be forwarded to the county council, who will be empowered to take proceedings under sec. 36 against the local authority or contractor or other authorised person, as if the said county council were a local authority; or (2) the certificate, &c., may be forwarded to the Board, who are empowered to authorise any person to take proceedings as if he were a local authority. In a burgh the county council have no jurisdiction, and the only course is to approach the Board.

There is no provision as to the payment of the expenses of the proceedings, and accordingly that must be left to be dealt with by the Court in accordance with the general powers vested in them.

[7] See the definition of "district" in sec. 3.

(2.) [8]Any [9]premises used by a local authority, or by any contractor or other person authorised by such local authority, for the treatment or disposal of any street refuse or house refuse, as distinct from the removal thereof, which are a [10]nuisance or injurious or dangerous to health, shall be a nuisance liable to be [11]dealt with summarily under this Act, and [12]for the purpose of the application thereto of the provisions of this Act relating to such nuisances the county council, in the case of a district other than a burgh, and any person authorised as aforesaid by the Board shall be deemed to be a local authority.

[8] The distinction between sub-sections 1 and 2 must be attended to. Sub-sec. 1 deals with the removal of refuse when collected or deposited by the local authority or by any contractor or other person authorised by them, and provides that it shall be regarded as a business which may be dealt with under sec. 36; sub-sec. 2 deals with premises used for the treatment or disposal of refuse, as distinct from the removal thereof, and provides that when there is a nuisance, it shall be liable to be dealt with summarily

in the manner provided by this Act for nuisances coming under sec. 16.

[9] See definition of "premises" in sec. 3.

[10] See note to heading of Part II. *supra* as to meaning of "nuisance."

[11] For the procedure see secs. 20 to 27.

[12] In landward areas it will be the duty of the county council or person authorised by the Board, and in burghs it will be the duty of any person authorised by the Board, to serve a notice on the local authority requiring the removal of the nuisance, and if the notice is not complied with, to proceed against the local authority.

Scavenging and Cleansing.

Appeal against resolution of district committee as to formation of special scavenging, &c., districts.

38.[1] With respect to the formation of special districts for scavenging and [2]other purposes under section forty-four of the Local Government (Scotland) Act, 1894, the following provision shall have effect; (that is to say),

It shall be competent for any person interested to appeal to the sheriff against any resolution of a district committee or county council, as the case may be, under sub-section two of the recited section, and all the provisions of [3]sub-section one of section one hundred and twenty-two of this Act in regard to an appeal to the sheriff against a resolution of a local authority shall, with the necessary modifications, apply to an appeal against a resolution of a district committee or county council as aforesaid. Provided that in cases to which sub-section three of the said section forty-four of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), applies an appeal to the sheriff shall not be competent unless the resolution has been disposed of by the county council in terms of that sub-section.

[4]Where the boundaries of any burgh are extended so as to include the whole or part of any [5]such special district, then the town council or burgh commissioners shall, as regards the [6]whole of such special district, supersede the district committee or county council as the case may be in the administration of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), and other powers in regard to cleansing and scavenging upon such terms as shall be

agreed between the town council or burgh commissioners and the district committee or county council, as the case may be, or, failing agreement, upon such terms as shall be fixed by the sheriff, whose decision shall be final.

[1] This section is new. Sec. 44 of the Local Government (Scotland) Act, 1894, empowers district committees, or, in counties not divided into districts, the county council, on a requisition from a parish council or ten electors of a landward parish or landward part of a parish, to form special districts for scavenging and certain other purposes. The resolution of the district committee or county council, as the case may be (whether it be to form or not to form the special district, and whatever be the boundaries of the special district fixed by the district committee or county council), is expressly declared to be final, except in so far as it is subject to review by the county council in cases where the proposed special district is coextensive with or comprises the whole or any part of a special water-supply or drainage district. This section provides for an appeal to the sheriff from the resolution of the district committee or of the county council in exactly the same manner as is provided for in the case of a special drainage or water-supply district. It is to be observed that the right of appeal is not extended to resolutions under sub-section 5 of sec. 44 of the 1894 Act, which provides for the enlargement, alteration, or combination of special districts.

[2] The appeal is given not only in the case of scavenging districts but in the case of special districts for the other purposes referred to in sec. 44 of the Local Government Act, 1894—lighting, baths, wash-houses, &c.

[3] It is to be noted that sub-sec. 2 of sec. 122, which provides *inter alia* that the order of the sheriff shall be published in the district and transmitted to the Board and the county council, is not applied by this section.

[4] The latter part of the section deals with cases where the boundaries of a burgh have been extended so as to include the whole or part of any such special district. There is no provision for the case of the whole or part of a special district being formed into a new burgh. In such a case, if the new burgh comprised the whole of the special district, the commissioners would supersede the district committee in the administration of the scavenging enactments, and possibly this would be "subject to adjustment by the sheriff in regard to the property and debts and liabilities affected by such change," in terms of sec. 99 of the Local Government Act of 1889. If the new burgh comprised a part only of the special district, the commissioners would supersede the district committee in that part, while the remainder of the special district would continue subject to the administration of the district committee, and probably the best course would be for the commissioners and the district committee to agree to act jointly in carrying out the scavenging arrangements of the whole special district.

[5] The words "such special district" *ex facie* refer to a special district formed for any of the purposes specified in sec. 44 of the

Local Government Act, 1894; but the subsequent provision that the town council or commissioners are to supersede the district committee "in regard to cleansing and scavenging," without mention of other purposes, implies that the words must be construed as if they were "such special scavenging district."

[6] In cases where the extension of the burgh includes a part only of the special district, the town council or burgh commissioners will exercise jurisdiction in regard to cleansing and scavenging over the *whole* area of the special district, and not only over the part included in the extended area of the burgh. There will thus be an overlapping of jurisdiction in the extra-burghal part of the special district. There is no provision as to the levying of the assessment in the extra-burghal part of the special district, but this will doubtless fall to be settled by agreement between the parties, or, failing agreement, by the sheriff.

Scavenging of highways, &c., within special districts.

39.[1] Where a special scavenging district has been or may hereafter be formed under the provisions of the Local Government (Scotland) Act, 1894, the district committee of the district or the county council where the county is not divided into districts, in which such special scavenging district is or may be situated shall, [2] in their discretion, have power to cleanse and scavenge the highways and the footpaths under their management and control within such special scavenging district, or to pay or contribute out of the assessments raised under the Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), for a proportion of the cost of cleansing and scavenging such highways and footpaths.

[3] Where within such special district any private street or footway, or part thereof, is not levelled, macadamised, paved, channelled, and made good, to the satisfaction of the district committee (or, where the county is not divided into districts, the county council), such authority may, by [4] notice addressed to the respective owners of the premises fronting, [5] adjoining, or abutting on such street or footway, or parts thereof, as may require to be levelled, macadamised, paved, channelled, and made good, order them to do all such works or any of them, and that within a time to be specified in such notice.

If such order is not complied with, the said authority may, if they think fit, execute the works mentioned therein, and may [6] recover in a summary manner the expenses in-

curred by them in so doing from the owners in default according and in proportion to the frontage and valuation of their respective premises, or, in the case of dispute, in such proportion as may be settled by the sheriff.

Provided that it shall be competent to appeal to the sheriff against any such order, and all the provisions of section one hundred and twenty-two of this Act in regard to an appeal to the sheriff against a resolution of a local authority shall, with the necessary modifications, apply to an appeal against such order.

[1] This section is new. The object of the first part is to provide that the cost of scavenging the highways and footpaths within a special scavenging district may be charged to the road rate. The duty of keeping clean the highways and footpaths under their jurisdiction falls on the district committee (or county council) as the road authority, and the expense thereof is chargeable against the road rate. But when a special scavenging district has been formed, and the cleansing sections of the Burgh Police Act have been adopted, the scavenging of all the roads and streets in the special district falls to be carried out by the district committee in their capacity as public health local authority, and the cost is chargeable to the special scavenging district rate. This section, though by no means clearly expressed, seems to enact that the road authority may either themselves cleanse and scavenge the highways and footpaths under their control, or may pay out of the road rate a proportion of the cost of the cleansing and scavenging of such highways and footpaths, and *pro tanto* relieve the special scavenging district rate.

[2] The words "in their discretion" do not imply that the district committee may or may not, as they think fit, scavenge and cleanse the highways and footpaths under their control. They have no such discretion. The highways and footpaths must be kept clean. But the choice here given them appears to be this,—either they may themselves scavenge these streets at the cost of the road rate, or, leaving the whole scavenging to be done by the local authority, they may pay a share of the cost out of the road rate.

[3] The second part of the section provides a remedy for a very unsatisfactory state of matters. It frequently happens that some of the side streets in a village are not properly made, and in wet weather become so muddy and foul as to be extremely offensive, if not actually injurious to health. As they are not highways, the road authority has no duty to repair and maintain them, and hitherto there has been no means of enforcing their repair. The section provides a means of compelling the proprietors to put the street or footway in a proper state, or of having the work done at their expense. It will be observed that the provision is only operative in special scavenging districts. See also sec. 16 (2).

[4] As to service of notices, see sec. 159.

[5] As to a case where the liability of proprietors of a corner tenement divided into flats was determined, see *Campbell* v. *Magistrates of Edinburgh*, November 24, 1891, 19 R. 159; 29 S.L.R. 146.

[6] As to procedure for recovery of sums of money due to the local authority, see sec. 154.

Houses in filthy state to be purified.

40.[1] Where it appears to any local authority that any [2]house or part thereof, or any article of bedding or clothing therein, is in such a filthy or unwholesome condition that the [3]health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof, or any article of bedding or clothing therein, would tend to prevent or check infectious disease, the local authority shall give [4]notice in [5]writing to the [6]owner or occupier of such house or part thereof to whitewash, cleanse, or purify the same, or any such article, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

[1] This section is new, and is taken from sec. 46 of the English Public Health Act, 1875. It enables the local authority to deal with houses which are kept in a filthy state. Hitherto there has been no such power in rural districts. In burghs sec. 118 of the Burgh Police Act, 1892, supplies a means of reaching such cases. It is possible, however, that the want of power of forcible entry may interfere with the due execution of this section.

[2] See the definition of "house" in sec. 3.

[3] It will be observed that one or other of two conditions must be fulfilled before the provision can be made use of: Either (1) the impurity must be such as to affect or endanger the health of some person—whether a resident in the house or not; or (2) the local authority must be of opinion that the cleansing of the house or bedding or clothing would tend to prevent or check infectious disease, although it is not said that such disease must exist at the time.

[4] As to service of notices, see sec. 159. The notice should specify the time within which the cleansing is to be done.

[5] As to meaning of "writing," see note 7 to sec. 18.

[6] See definitions of "owner" and "occupier" in sec. 3. When whitewashing is necessary, the owner is the proper person on whom to serve the notice; when any article of bedding or clothing is filthy the notice should be served on the occupier.

Provision for obtaining order for cleansing offensive ditches lying near to or forming boundaries of districts.

41.[1] Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as [2]injuriously or dangerously to affect the district of such local authority, any sheriff having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear to show cause why an order should not be made for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such sheriff to be necessary; and such sheriff, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such sheriff may seem reasonable.

[1] This section is new, and is taken from the English Public Health Act of 1875, sec. 48. It supplements the power to deal with ditches and watercourses as nuisances under sec. 16 (2) and under sec. 28.

[2] It does not appear to be necessary to aver or prove injury to health. See note to heading of Part II. as to the meaning of the word "offensive."

Periodical removal of manure from mews and other premises.

42.[1] Notice may be given by any local authority ([2]by public announcement in the district or otherwise) for the [3]periodical removal of manure or [4]other refuse matter from mews, stables, or other premises, except cattle courts, in any special scavenging district, and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits

a further accumulation, and does not continue such periodical removal at such intervals as the local authority direct, shall be liable [5]without further notice to a [6]penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate, [7]and where in any scavenging district it appears to the sanitary inspector that any [8]accumulation of manure, dung, soil, or filth, or other offensive or noxious matters ought to be removed, he shall give [9]notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and [6]if such notice is not complied with within forty-eight hours from the service thereof, the manure, dung, soil, filth, or matter referred to shall be vested in and [10]be sold and disposed of by the local authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed, and the expenses of removal by the local authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be [11]recovered by the local authority in a summary manner from the person to whom the accumulation belonged, whom failing, from the occupier or [12]owner of the premises.

[1] The first part of this section re-enacts with some alterations sec. 51 of the 1867 Act. The most important change is the limitation of the application of the clause to special scavenging districts, and it is difficult to understand the reason for such restriction. In burghs the change will probably be found to be irksome, as the Burgh Police Act does not appear to contain an equivalent provision.

[2] The mode of public announcement is not specified. Probably an advertisement in the newspapers, or placarding the walls of mews, &c., would satisfy the term.

[3] The periods of removal must be so regulated by the local authority as to prevent such an accumulation of manure as would constitute a nuisance under sec. 16 (5).

[4] In administering this enactment regard must be had to the provisions of sec. 107 of the Burgh Police Act, if that section has been adopted within the special scavenging district. Under that section the refuse of the special district, with certain specified exceptions, is vested in the district committee, and falls to be removed by them. It would thus appear that there might be some doubt of the competency of a notice under this section to remove such refuse.

[5] After notice has been given and disregarded, the local authority may, without further notice, proceed to recover the penalty under secs. 153 and 154.

[6] It will be observed that the penalty is incurred only under the first part of the section. Under the latter part failure to comply with the notice does not result in liability to any penalty.

[7] The second part of the section is new, and is taken from sec. 49 of the English Public Health Act, 1875.

[8] See also sec. 16 (5), under which accumulations of manure are declared to be nuisances under this Act.

[9] For the service of notices, see sec. 159.

[10] See sec. 27 as to power to sell things removed in the course of abating nuisances.

[11] As to recovery of sums due to the local authority, see sec. 154.

[12] Failing the owner of the matter removed, either the occupier or owner of the premises is liable in payment of the expenses, although there is no provision for serving notice on the owner of the premises.

Unsound Food.

Inspection and destruction of unsound meat, &c.

43.[1]—(1.) Any medical officer or sanitary inspector or any [2] veterinary surgeon approved for the purposes of this section by the local authority may [3]at all reasonable times [4]enter any [5]premises within the district of the local authority, or search any cart or [6]vehicle, or any barrow, basket, sack, bag, or parcel, in order to inspect or examine and may inspect and examine

(*a*) any animal, alive or dead, [7]intended for the food of man which is exposed for sale, or deposited in any place or is in course of transmission for the purpose of sale or of preparation for sale; and

(*b*) any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale, or deposited in any place or in course of transmission for the purpose of sale or of preparation for sale,

the [8]proof that the same was not exposed or deposited or in course of transmission for any such purpose, or was not intended for the food of man, resting with the person charged; and if any such animal or article appears to such medical officer or sanitary inspector or veterinary surgeon to be diseased, or unsound, or unfit for the food of man, he [9]may seize and carry away the same himself or by an assistant, in order to have the same [10]dealt with summarily by a sheriff, magistrate, or justice.

Provided that in the case of any proceeding under this section with regard to a living animal the medical officer or

sanitary inspector, unless he is himself a [11]qualified veterinary surgeon, shall be accompanied by a veterinary surgeon [12]approved as aforesaid.

The [13]police force of each police area shall have power to search carts or vehicles, or barrows, baskets, sacks, bags, or parcels, and to assist generally in executing and enforcing this section.

[1] This section comes in place of sec. 26 of the 1867 Act, and contains more specific and stringent enactments. It also makes provision in sub-section 3 for having meat inspected and condemned or passed by a veterinary surgeon approved by the local authority—an arrangement sometimes described as a "clearing-house."

In addition to the provisions of this section there are special statutes dealing with food, *e.g.*, the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), and Amendment Act, 1879 (42 & 43 Vict. c. 30); the Margarine Act, 1887 (50 & 51 Vict. c. 29); and the Sale of Horseflesh, &c., Regulation Act, 1889 (52 & 53 Vict. c. 11). In addition to the provisions of the Food and Drugs Acts with regard to the sale of milk which has been watered or adulterated, or from which the cream has been abstracted, the sale and use of milk from diseased cows is prohibited by the Dairies, Cowsheds, and Milkshops Order, 1885, art. 15. And secs. 60 and 61 of this Act give further powers of dealing with milk which is likely to disseminate infectious disease. Persons suffering from an infectious disease, or living in an infected house, are by sec. 58 of this Act prohibited from milking any animal, picking fruit, or engaging in any occupation connected with food.

[2] "Veterinary surgeon" means a member of the Royal College of Veterinary Surgeons. See definition in sec. 3. The approval of the local authority should be by minute, and the veterinary surgeon should be supplied with a certified copy thereof.

[3] What a "reasonable time" is will depend on the circumstances of each case. It was held in an English case that a Sunday afternoon might in certain circumstances be a reasonable time for examining meat (*Small* v. *Bickley*, 32 L.T. (N.S.) 726; 39 J.P. 422).

[4] No warrant is required for entry. But there is no general power of *forcible* entry under this Act (sec. 18 being confined to cases of suspected nuisance), and there is no specific provision for forcible entry under this section. Sub-sec. 8 however provides a penalty for obstructing the medical officer, sanitary inspector, or veterinary surgeon acting under this section.

[5] See definition of "premises" in sec. 3.

[6] The word "premises" includes "vehicles"; see sec. 3.

[7] In any proceedings it must be averred and proved that the animal or article was "intended for the food of man" as well as "exposed for sale or deposit," &c. In an appeal against a conviction for an offence under sec. 26 of the 1867 Act it was held that the complaint was irrelevant as it did not state that the fish were exposed for sale, or were, in fact, intended for human food. *Phillips* v. *Auld*, January 9, 1892, 19 R. (Just.) 29; 29 S.L.R. 299;

1 County Council Cases, 30. It does not appear to be essential that the complaint should state the cause of the unfitness for human food. In *Cairns* v. *Ferguson*, June 8, 1886, 13 R. (Just.) 83, the Lord Justice Clerk (Moncreiff) said : "It has been suggested that the cause owing to which the fish were unfit for human food is not expressed in the complaint. It would have been better had it been expressed. But the absence of such expression is not fatal to the complaint." And in *Gibson* v. *Town Council of Ayr*, December 23, 1892, 20 R. (Just.) 47 ; 30 S.L.R. 331 ; 1 County Council Cases, 43, Lord M'Laren said : "I am clearly of opinion that it is not a good objection to the complaint that it does not set forth the special disease or cause of unfitness of the carcase for human consumption."

It will be noted that the words "sold or" are found under head (*b*), but not under head (*a*) ; accordingly it would appear that animals (dead or alive) cannot be seized in terms of this section after they have been sold (unless they are to be re-sold), but that other articles may be seized after sale.

[8] The occasion for leading the proof will be when proceedings are taken under sub-sec. 2 against the owner or exposer.

[9] The seizure may be effected without warrant, but the destruction or disposal of the animal or article can only be carried out on an order of a sheriff, or magistrate, or justice.

[10] See sub-sec. 2.

[11] The words "qualified veterinary surgeon" have the same meaning as "veterinary surgeon," viz., a member of the Royal College of Veterinary Surgeons.

[12] See note 2 *supra*.

[13] Officers of police are entitled to exercise this power of search without a warrant. As to the duty of the police to assist in the execution of this Act, see sect. 169.

(2.) If it appears to a sheriff, magistrate, or justice, that any animal or article which has been seized or is liable to be seized under this section is diseased, or unsound, or unfit for the food of man, he shall [14]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 ; [15]and the person to whom the same belongs or did belong at the time of sale or exposure for sale, or deposit or transmission for the purpose of sale, or of preparation for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty 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, unless he proves that he and the person acting on his behalf (if any) did not know, and could not with reasonable care have known, that it was in such a condition, or where the proceedings are before a sheriff, at the dis-

cretion of the court, if it finds that he has knowingly and wilfully committed the offence, he shall be liable without the infliction of a penalty, to imprisonment for a term of not more than three months with or without hard labour, and also to pay all expenses caused by the seizure, detention, or disposal thereof.

Provided [16] that if such person proves that the animal or part thereof condemned as aforesaid was within a reasonable time prior to the seizure thereof [17] examined upon the premises where the animal was slaughtered and passed by a veterinary surgeon [12] approved as aforesaid called in for the purpose, and who shall have granted a certificate of passing as nearly as may be as in the next sub-section provided, or by a veterinary surgeon in terms of that sub-section, he shall be exempt from penalty or imprisonment under this section for such offence.

[14] It would appear that the animal or article may be condemned without the necessity of giving notice to the owner.

It is competent to apply for a warrant to destroy a carcase without an application for a conviction of the person to whom it belongs, and an order to destroy, without a conviction for having exposed the carcase for sale, is not appealable to the High Court of Justiciary under the Summary Prosecutions Appeals Act, 1875. See *Couper* v. *Lang*, Dec. 12, 1889, 17 R. (Just.) 15.

[15] In *Cairns* v. *Ferguson*, June 8, 1886, 13 R. (Just.) 83, it was held that an order to destroy was not under sec. 181 of the Police and Improvement Act, 1850, a condition precedent to a conviction. But it may be doubted if that decision will apply in a case under this section, where it is provided that the penalty may be imposed for each animal, &c., "*so condemned.*" It does not appear to be necessary that the application for a conviction should be made at the same time as the application for an order to destroy. In *Gibson* v. *Town Council of Ayr*, Dec. 23, 1892, 20 R. (Just.) 47; 30 S.L.R. 331; 1 County Council Cases, 43; it was held that it was competent to present a petition for a warrant to destroy a carcase which had been seized by a sanitary inspector, and after obtaining the warrant to present a second petition against the same person for penalties and the expenses of the seizure. Lord M'Laren said: "As I read the statute the authority to seize may be given without a formal complaint in writing, and it may be necessary to take proceedings for the condemnation of a carcase before it is known whether there is a case for conviction. If unnecessary expense is caused by duplicate procedure, this may be dealt with by the magistrates in awarding expenses."

For a case where it was held that the accused had not the carcase "in his possession as or for human food," see *Cairns* v. *Linton*, March 4, 1889, 16 R. (Just.) 81, cited in note 20 *infra*. In another case where a person was charged under the Glasgow Police Amendment Act, 1890, secs. 19 and 20, with having been found in posses-

sion of diseased meat intended for sale for human consumption, the complaint set forth that the meat was seized in a barrow belonging to the accused, driven by his servant, and under his order. It was held that there was a relevant averment of possession by the accused. See *Neilson* v. *Parkhill*, Dec. 12, 1892, 20 R. (Just.) 24.

The full penalty may be exacted for each animal or article in respect of which an offence is committed. Under the Police and Improvement (Scotland) Act, 1850, sec. 181, a person offending was liable to a penalty not exceeding ten pounds for every animal or carcase. Two persons convicted under that section were adjudged each to pay two shillings for each of thirty herrings unfit for food found in their possession. In delivering judgment on appeal, Lord Young said: "It does not signify to the applicability of the statute whether the matter of complaint is a cow or a shrimp. Ten pounds is the penalty for each animal." See *Cairns* v. *Ferguson*, June 8, 1886, 13 R. (Just.) 83.

[16] The proviso applies only to animals, not to articles; and apparently only to carcases or parts of carcases, not to live animals.

[17] To comply with the terms of the proviso the animal must have been examined at the place of slaughter and passed by a veterinary surgeon approved in terms of sub-sec. 1, and either called in for the purpose or acting under the arrangement authorised by sub-sec. 3. A certificate of passing as set forth in sub-sec. 3 is likewise necessary.

(3.) [18]Each local authority, or two or more local authorities in combination, may, if they think fit, appoint a place or places within its district or their districts, and fix a time or times at which a veterinary surgeon [12]approved as aforesaid shall attend for the purpose of examining any animal alive or dead which may there be submitted to him, and passing or condemning the same, and such veterinary surgeon shall, on receipt of a fee to be fixed by the local authority or authorities and paid by the owner, examine and pass or condemn in whole or in part any animal or carcase so submitted to him; and if he shall pass the same he shall grant a certificate of passing which shall set forth the name of the owner, the date and hour of examination, and such particulars regarding the animal or carcase as the local authority or authorities may prescribe for the purpose of aiding in the subsequent identification of the same; and if he shall condemn the animal or carcase, or part thereof, the animal or carcase or part so condemned shall be retained and be forthwith destroyed by the local authority or authorities or so disposed of as to prevent it from being exposed for sale or used for the food of man, and the owner shall be entitled to the net price realised from the residual product

of the carcase or part so condemned, if any, after deducting the expenses of condemnation and destruction. Provided that no carcase shall be submitted for examination, either under this or the immediately preceding sub-section, unless as a whole carcase, including the thoracic and abdominal viscera, in such manner that the [19]examiner shall be readily able to satisfy himself that the organs are those of the carcase under inspection.

[18] This is an entirely new provision intended to protect the honest seller from the consequences of selling a diseased animal which he had no reason to believe to be other than sound.

[19] That is, the veterinary surgeon approved as aforesaid, and acting under this sub-section.

(4.) [20] Where it is shown that any animal or article liable to be seized under this section and found in the possession of any person was purchased by him or consigned to him from another person for the food of man, and when so purchased or consigned was in such a condition as to be liable to be seized and condemned under this section, the person who so sold or consigned the same shall be liable to be brought to trial in the district in which such animal or article was seized, and on conviction shall be liable to the penalty and imprisonment [21]above mentioned, unless he proves that, at the time he sold or consigned the said animal or article, he and the person acting on his behalf, if any, did not know, and could not with reasonable care have known, that it was in such a condition.

[20] The object of this sub-section is to enable proceedings to be taken against the original vendor of an unsound animal or article of food, who may be brought to the district where the animal or article was seized, and there convicted. See also sec. 429 of Burgh Police Act. Under this provision it may be possible to convict in a case such as *Cairns* v. *Linton*, March 4, 1889, 16 R. (Just.) 81, where a farmer in Perthshire sent, in the ordinary course of business, the carcase of a bull addressed to the Dead Meat Company, Fountainbridge, Edinburgh. The carcase was condemned as unfit for human food, and the farmer was convicted of a contravention of sec. 261 of the Edinburgh Police Act, 1879, in respect he had unsound beef in Edinburgh "in his possession as or for human food." On appeal the court (*dub.* Lord Trayner) quashed the conviction, holding that facts had not been proved sufficient to infer that the accused had the carcase in Edinburgh in his possession either actually or constructively as or for human food.

In *Walker* v. *Linton*, October 24, 1892, 20 R. (Just.) 1, it was held that sec. 22 of the Edinburgh Municipal and Police Amendment Act, 1891, which contains a similar enactment to that of this sub-

section, did not apply to an auctioneer to whom fish had been consigned for sale, and who had in the ordinary course of his business sold it by auction to a fish-hawker, by whom it was exposed for sale in an unsound condition.

[21] See sub-sec. 2.

(5.) [22]A copy of any certificate granted by a veterinary surgeon, under sub-sections two or three of this section, shall forthwith be sent by him to the chief constable of the jurisdiction in which the examination of the animal or carcase took place, and the certificate itself shall be sent by the person selling the animal or carcase forthwith after the sale, and not more than seven days from the date of the certificate, to the chief constable of the jurisdiction in which the sale of the animal or carcase took place, and if any veterinary surgeon or person shall contravene this enactment he shall be liable to a penalty not exceeding twenty pounds.

[22] The procedure is as follows: The veterinary surgeon who examines the animal or carcase gives to the owner a certificate of passing. This principal certificate will be transmitted with the animal or carcase to the place of sale, and the person selling is laid under the obligation of sending the certificate to the chief constable having jurisdiction in the locality where the sale took place. This must be done immediately after the sale, and not more than seven days from the date of the certificate. Meanwhile the veterinary surgeon, immediately after granting the certificate, is bound to send a copy of it to the chief constable having jurisdiction where the examination took place. The section does not lay down what the chief constables are to do with these certificates, but obviously the object is to enable the authorities to prevent fraud and evasion of the statute.

(6.) [23]Where a person convicted of an offence under this section has been within twelve months previously convicted of an offence under this section, the sheriff, magistrate, or justice may, if he thinks fit, and finds that the offender 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 sheriff, magistrate, or justice 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 penalty not exceeding five pounds.

[23] The affixing of the notice is in addition to any penalty or imprisonment which may have followed on the second conviction.

(7.) If the occupier of a [24]licensed slaughter-house is convicted of an offence under this section the sheriff, magistrate, or justice convicting him may cancel the licence for such slaughter-house.

[24] For the licensing of slaughter-houses, see sec. 33.

(8.) [25]If any person obstructs a medical officer, sanitary inspector, or veterinary surgeon as aforesaid in the performance of his duty under this section he shall, where the proceedings are before a sheriff, and where the sheriff is satisfied that the obstruction was with intent to prevent the discovery of an offence under this section, or that the accused has within twelve months previously been convicted of such obstruction, be liable to imprisonment for any term not exceeding one month in lieu of any penalty authorised by this Act for such obstruction.

[25] Sec. 163 provides a penalty of five pounds for obstruction of the execution of this Act. But if the sheriff finds that the party convicted of obstructing the persons acting under this section did so with intent to prevent the discovery of an offence under this section, or that he had been convicted of such obstruction within twelve months previously, he may sentence him to imprisonment for not more than one month in place of imposing the penalty sanctioned by sec. 163. If the previous conviction is proved, it is not necessary to satisfy the sheriff of the intent to prevent discovery of the offence.

The sub-section applies only when the medical officer, sanitary inspector, or veterinary surgeon is obstructed. When the police are obstructed, sec. 163 will be the only provision of the Act applicable.

(9.) [26]A sheriff, magistrate, or justice, may act in adjudicating on an offender under this section whether he has or has not acted in ordering the animal or article to be destroyed or disposed of.

[26] There seems to be little need for this provision, as there appears to be nothing in the section to suggest that the judge who convicts must necessarily be the judge who orders the destruction or disposal of the animal or article.

PART III.

General Prevention and Mitigation of Disease.

Infectious Diseases.—Notification.

Notification of infectious disease.

44. [1]From and after the commencement of this Act the provisions of the Infectious Disease (Notification) Act, 1889 (52 & 53 Vict. c. 72), shall extend to and take effect in every district in Scotland, whether it has or has not been adopted before the said commencement.

[1] The Notification Act provides that it shall only apply in districts where it has been adopted. It has been adopted over the greater part of Scotland, and this section provides that it shall now take effect in those districts where it has not been adopted. A few burghs have notification provisions in their local Acts, and where these differ from those of the public general Act, the question may arise as to which is to prevail. Probably the effect of the closing provision of sec. 17 of the Notification Act, taken along with sec. 192 (1) of this Act, which provides that—"Nothing in this Act shall supersede, prejudice, or affect the provisions of any local Act applicable to any burgh . . . but the provisions of this Act shall operate to confer additional powers on the local authorities of such burghs,"—is to save the notification provisions of the local Acts, and to bring into operation in the burgh any additional provisions which may be contained in the Notification Act.

Infectious Diseases.—Prevention.

Power to inspect premises where infectious disease supposed to exist.

45. [1]The medical officer may, at reasonable times, [2]in the daytime, enter and inspect any [3]house or premises in the district in which he has reason to believe that any [4]infectious disease exists, or has recently existed, and the medical officer may examine any person found on such premises with a view to ascertaining whether such person is suffering, or has recently suffered, from any infectious disease, and in the event of admission, inspection, or examination being refused, the sheriff, or magistrate, or justice may, on reasonable cause shown, grant warrant authorising such entry, inspection, and examination, and on such warrant being obtained and exhibited, any person refusing to admit the medical officer to

such house or premises, or [5]obstructing him in making the inspection or examination aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

[1] This is a new provision. It enables the medical officer to enter and inspect premises and examine persons with the object of ascertaining the existence of infectious disease. The entry and examination may be made without warrant, but if objection is taken, the entry, inspection, and examination cannot be made unless a warrant is obtained. No penalty attaches to the refusal of admission or examination without warrant; but, when warrant has been obtained, refusal of admission or obstruction to the inspection or examination is an offence which entails a penalty of forty shillings. Special power of inspecting tents, vans, sheds, &c., is given by sec. 73 (3).

[2] "In the daytime" means between 9 A.M. and 6 P.M. See definition in sec. 3.

[3] See definitions of "house" and "premises" and "district" in sec. 3.

[4] The expression "infectious disease" is not confined to the diseases notifiable under the Notification Act, but extends to all infectious diseases.

[5] There is a general clause (sec. 163) imposing a penalty of five pounds for obstruction of any person acting under the authority or employed in the execution of this Act; but probably the lower penalty here specified will alone be exigible for an offence under the section.

Provision of means for disinfecting bedding, &c.

46.[1]—(1.) Every local authority may, and when required by the Board shall, provide, either within or without their district, proper premises with all necessary apparatus and attendance for the [2]destruction and for the disinfection, and carriages or vessels for the [3]removal, of articles (whether bedding, clothing, or other) which have become infected by any infectious disease, and shall cause any such articles brought for destruction or disinfection to be destroyed, or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge.

[1] This section is taken from sec. 59 of the Public Health (London) Act, 1891, and comes in place of the first part of sec. 40 of the 1867 Act. In the earlier Act, however, there was no provision empowering the Board to require a local authority to provide means of disinfection. Sec. 141 gives power to borrow for the purposes of this section.

[2] As to power of destruction or disinfection of articles, see sec. 47; and as to disinfection of bedding and clothing, sec. 48.

[3] The transmission with proper precautions of any bedding,

clothing, or other articles for the purpose of disinfection is exempted from the provision prohibiting the transmission of infected articles. Sec. 56 (2).

(2.) [4]Any local 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, or of any apparatus or appliances, 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.

[4] Two or more local authorities may jointly provide the means of destruction and disinfection, or one may provide the means and others may contract to have the use of them.

Cleansing and disinfecting of premises, &c.

47.[1]—(1.) Where it appears to the local authority, upon the certificate of the medical officer or any other [2]legally qualified medical practitioner, that the cleansing and disinfecting of any [3]house, 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 infectious disease, the local authority may [4]serve notice on the [5]occupier, or where the house or part thereof is unoccupied on the [5]owner, of such house or part thereof that the same and any such articles therein will be cleansed and disinfected, or (as regards the articles) destroyed, by the local authority, unless the person so notified informs the local authority, within a time to be specified in the notice from the receipt of the said notice, that he will cleanse and disinfect the house or part thereof and any such articles, or destroy such articles, to the satisfaction of the medical officer or of any other legally qualified medical practitioner, as testified by certificate by him, within a time fixed in the notice.

[1] This section is taken from the Public Health (London) Act, 1891, sec. 60, which follows sec. 5 of the Infectious Disease (Prevention) Act, 1890. It comes in place of part of sec. 40 of the 1867 Act. See also the powers given by sec. 40 of this Act. It is further provided, sec. 79 (3), that, when any part of Scotland appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, the Board may make regulations *inter alia* for the promotion of disinfection, and for guarding against the spread of disease.

[2] See definition of "legally qualified medical practitioner" in sec. 3.

[3] See the last part of sub-sec. 5 of this section. Besides the premises there specified, the word "house" by the definition in sec. 3 includes "schools, also factories and other buildings in which persons are employed."

[4] As to service of notices, see sec. 159. If the owner or occupier gives consent, the notice is not necessary. See sub-sec. 2 (*c*).

[5] See definitions of "occupier" and "owner" in sec. 3. It is only when the house is unoccupied that the owner is liable.

(2.) If either—

(*a*) within the time specified as aforesaid from the receipt of the notice, the person on whom the notice is served does not inform the local authority as aforesaid; or

(*b*) having so informed the local 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 occupier or owner, as the case may be, without such notice gives his consent;

the house, or part thereof, and articles, shall be cleansed and disinfected, or such articles destroyed [6]by the officers of, and at the cost of, the local authority.

[6] The words "by the officers of," &c., qualify the expression "cleansed and disinfected" as well as "destroyed." There is no penalty provided for the neglect referred to in sub-heads (*a*) and (*b*). The expense of disinfection is to be met by the local authority; under the 1867 Act there was power to recover from the owner or occupier.

(3.) For the purpose of carrying into effect this section the local authority [7]may enter [8]by day on any premises.

[7] No warrant is required, but there is no provision for enforcing the power of entry.

[8] "By day" means between 9 A.M. and 6 P.M. See definition in sec. 3.

(4.) [9]If the local authority deem it necessary to remove from any house or part thereof, or from any tenement of houses, all or any of the residents [10]not being themselves sick, on account of the existence or recent existence therein of infectious disease, or for the purpose of disinfecting such house or part thereof, or such tenement or part thereof, they may make application to a sheriff, magistrate, or justice, and the sheriff, magistrate, or justice, if satisfied of the necessity of such removal, may grant a warrant authorising the local authority to remove such residents,

and imposing such conditions as to time and otherwise as to him may seem fit. Provided always that no such warrant shall be necessary when the removal is carried out with the consent of any such resident or his parent or guardian. The local authority shall, and they are hereby empowered, [11]to provide temporary shelter or house accommodation, and, if necessary, maintenance with any necessary attendants, free of charge, for such persons while prevented from returning to such house or part thereof or such tenement or part thereof.

[9] This is a new and useful provision, which had no counterpart in the 1867 Act.

[10] As to the removal of persons who are suffering from infectious disease, see sec. 54.

[11] See sec. 66 (1) as to power of local authority to provide, furnish, and maintain houses of reception for persons who have been exposed to infection.

(5.) When the local authority have disinfected any house, part of a house, or any article, under the provisions of this section, they [12]shall compensate the occupier or owner of such house, or part of a house, or the owner of such article, for any [13]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 reasonably compensate the owner thereof; and the amount of any such compensation shall be recoverable in a summary manner.

For the purpose of this section the word [14]"house" includes any [15]tent or van or any [16]ship lying in any sea, river, harbour, or other water or *ex adverso* of any place within the limits of the local authority.

[12] It will be observed that the words are imperative. For the general provision as to compensation for damage sustained under the Act, see sec. 164.

[13] The compensation is to be made only for *unnecessary* damage. It is not quite clear what the exact import of the word "unnecessary" is. Probably it means damage which might have been, or ought to have been, avoided. There is no provision for compensation in respect of necessary or unavoidable damage.

[14] See also the definition of "house" in sec. 3.

[15] For special provisions as to tents and vans, see sec. 73.

[16] See definition of "ship" in sec. 3; also sec. 177, which enacts that the provisions of this Act shall apply to a ship as if such ship were a house. See also sec. 79 (3) under which the Board has power to make regulations *inter alia* for promoting disinfection, and such regulations apply to ships.

Disinfection of bedding, &c.

48.[1]—(1.) Any local authority may [2]serve a notice on the owner of any bedding, clothing, or other articles which have been exposed to the infection of any infectious disease, requiring the delivery thereof to an officer of the local authority for removal for the purpose of destruction or disinfection; and if any person fails to comply with such notice he shall be liable to a penalty not exceeding ten pounds.

[1] This is a new provision taken from the Public Health (London) Act, 1891, sec. 61, which follows sec. 6 of the Infectious Disease (Prevention) Act, 1890.
[2] As to service of notices, see sec. 159.

(2.) The bedding, clothing, and articles if so disinfected by the local authority, shall be brought back and delivered to the owner free of charge, and if any of them suffer any [3]unnecessary damage, the authority shall [4]compensate the owner for the same, and the authority shall also reasonably compensate the owner for any articles destroyed; and the amount of compensation shall be recoverable in a summary manner.

[3] See note 13 to preceding section.
[4] See sec. 164, and note 12 to preceding section.

Persons engaged in washing or mangling clothes to furnish list of owners of clothes in certain cases.

49.[1] Whenever it shall be certified to the local authority by the medical officer of health that it is desirable, with a view to prevent the spread of infectious disease, that they should be furnished with a list of the customers of any [2]person or company [3]earning a livelihood or deriving gain by the washing or mangling of clothes, the local authority may require such person or company to furnish to them a full and complete list of the names and addresses of the owners of clothes for whom such person or company washes or mangles, or has washed or mangled, during the past six weeks, and such person or company shall furnish such list accordingly, and the local authority shall [4]pay to him, her, or them, for every such list, the sum of sixpence, and at the rate of sixpence for every twenty-five names contained

therein, but no such payment shall exceed three shillings, and every person who shall wilfully or knowingly [5]offend against this enactment shall, for each such offence, be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding twenty shillings.

[1] This is a new provision.

[2] The word "person" includes any body of persons corporate or unincorporate. See Interpretation Act, 1889, sec. 19.

[3] The object of the words "earning a livelihood or deriving gain" is probably to exempt laundries connected with philanthropic institutions.

[4] Sixpence is to be paid for the list, and an additional sixpence for every twenty-five names therein, but with a maximum fee of three shillings.

[5] The offence against the enactment will apparently consist of refusing to furnish a list, or of furnishing an incomplete or incorrect list.

Infectious matter thrown into ash-pits, &c., to be disinfected.

50.[1]—(1.) If a person knowingly casts, or causes or permits to be cast, into any [2]ash-pit, or otherwise [3]exposes any matter or article infected by infectious disease, he shall be liable to a penalty not exceeding five pounds, and, if the offence continues, to a further penalty not exceeding forty shillings for every day during which the offence so continues after the notice [4]hereafter in this section mentioned.

[1] This is a new provision, taken from sec. 62 of the Public Health (London) Act, 1891, which follows sec. 13 of the Infectious Disease (Prevention) Act, 1890.

[2] Ashpit means "any receptacle for the deposit of ashes or refuse matter." See definition in sec. 3.

[3] See sec. 56 (1) (*c*), by which a penalty is imposed on any person who exposes any article which may have been exposed to infection. Under this section it will apparently be necessary to prove that the matter or article is actually infected, not merely that it has been exposed to infection.

[4] See sub-sec. 2.

(2.) The local authority [5]shall cause their officers to [6]serve notice of the provisions of this section on the [7]occupier of any house, or part of a house, in which they are aware that there is a person suffering from an infectious disease.

[5] The word is imperative, and, as sec. 53 (2) contains a similar provision, it will be the duty of the local authority to serve a notice or notices in terms of these two sections whenever a case of infectious disease comes to their knowledge under the Notification Act or

otherwise. Although no obligation rests on the local authority to intimate any other provisions, the advisability of giving the occupiers of houses where infectious disease has occurred information as to other requirements of the law (*e.g.*, respecting disinfection, &c.) will doubtless commend itself to local authorities.

[6] As to service of notices, see sec. 159.

[7] See definition of "occupier" in sec. 3.

Penalty on letting houses in which infected persons have been lodging.

51.[1]—(1.) Any person who knowingly lets for hire any [2]house, or part of a house, [3]in which any person has been suffering from any infectious disease, without having such house or part of a house, and all articles therein liable to retain infection, disinfected to the [4]satisfaction of the medical officer as testified by a certificate signed by him, or (as regards the articles) destroyed, shall be liable to a [5]penalty not exceeding twenty pounds.

[1] This section repeats the provision of sec. 50 of the 1867 Act, but follows the phraseology of the Public Health (London) Act, 1891, sec. 63. By sec. 53 of this Act a person ceasing to occupy a house where there has been infectious disease within six weeks previously is bound either to disinfect or to give notice to the owner or occupier of the previous existence of the disease.

[2] See definition of "house" in sec. 3.

[3] There is no limit of time specified, and apparently the owner must disinfect before letting, whatever may be the interval since the existence of the infectious disease within the house.

[4] Under this section the medical officer of health must be satisfied as regards the disinfection. But see sec. 47 (1), where a certificate by any other legally qualified medical practitioner is sufficient. There seems to be no reason to doubt that if a house were disinfected under the provisions of sec. 47 to the satisfaction of a medical practitioner, an offence under this section would not arise, although there should be no certificate from the medical officer.

[5] For the procedure as to recovery of penalties, see secs. 153 and 154.

(2.) For the purposes of this section, the keeper of an inn or hotel shall be deemed to let for hire part of a house to any person admitted as a [6]guest into such inn or hotel.

[6] The word "guest" here means any person receiving lodging or food in the inn or hotel, not merely a person on a visit to the innkeeper.

Penalty on persons letting houses making false statements as to infectious disease.

52.[1] Any person letting for hire, or showing for the purpose of letting for hire, any [2]house or part thereof, 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 infectious disease, knowingly makes a false answer to such question, shall be liable, at the discretion of the sheriff, magistrate, or justice, to a penalty not exceeding twenty pounds, or, where the proceedings are before a sheriff, to imprisonment with or without hard labour, for a period not exceeding one month.

[1] This section is new, and is taken from sec. 64 of the Public Health (London) Act, 1891.
See also sub-sec. 1 (*c*) of sec. 53 following.
[2] See definition of "house" in sec. 3.

Penalty on ceasing to occupy house without disinfection or notice to owner, or on making false answer.

53.[1]—(1.) Where a person ceases to occupy any [2]house, or part of a house, in which any person has within six weeks previously been suffering from any infectious disease, and either—

(*a*) fails to have such house, or part of a house, and all articles therein liable to retain infection, disinfected to the [3]satisfaction of the medical officer, as testified by a certificate signed by him, or such articles destroyed; or

(*b*) fails to give to the [4]owner or [5]occupier of such house, or part of a house, notice of the previous existence of such disease; or

(*c*) on being questioned by the [4]owner or [5]occupier of, or [6]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 infectious disease, knowingly makes a false answer to such question,

he shall be liable to a penalty not exceeding twenty pounds.

[1] This section is new. It is taken from the Public Health (London) Act, 1891, sec. 65, which follows sec. 7 of the Infectious

Disease (Prevention) Act, 1890, but the penalty in these Acts is ten pounds.

[2] See definition of "house" in sec. 3.

[3] See note 4 to sec. 51.

[4] See definitions of "owner" and "occupier" in sec. 3.

[5] That is, the *new* occupier.

[6] See also sec. 52.

(2.) The local authority [7]shall cause their officers to [8]serve notice of the provisions of this section on the [4]occupier of any house, or part of a house, in which they are aware that there is a person suffering from an infectious disease.

[7] The word is imperative. It will be the duty of the local authority, in every instance in which a case of infectious disease comes to their knowledge, whether under the operation of the Infectious Disease (Notification) Act, 1889, or otherwise, to intimate the provisions of this section to the occupier of the house. See note 5 to sec. 50.

[8] As to the service of notices, see sec. 159.

Removal to hospital of infected persons without proper lodging.

54.[1]—(1.) A person suffering from any infectious disease, who is [2]without proper lodging or accommodation, or is so lodged that proper precautions cannot be taken for preventing the spread of the disease, or is lodged in a tent or van, or in a room occupied by others besides those necessarily in attendance on such person, or is on board a [3]ship, may, on a certificate signed by the medical officer or other legally qualified medical practitioner, and with the consent of the superintending body of the hospital to which he is to be removed, be [4]removed by order of a sheriff, magistrate, or justice, on the [5]application and [6]at the cost of the local authority of the [7]district where such person is found, to [8]any hospital in or within a convenient distance of such district, or, in the case of a combination as hereinafter provided, in or within a convenient distance of the combined district, [9]or the sheriff, magistrate, or justice may direct the removal from the room or house occupied by such person of all others not in attendance on him, the local authority [10]providing suitable accommodation for such person or persons; and [11]such person may be detained in such hospital so long as he continues in an infected condition. [12]Provided always

that no such order shall be necessary where the removal is carried out with the consent of the patient or his parent or guardian.

[1] This section comes in place of sec. 42 of the 1867 Act, which it re-enacts with certain modifications.

[2] The words "proper lodging or accommodation" probably mean accommodation suitable for the proper treatment of the patient; while the words following apply to cases where the accommodation is such that proper isolation cannot be attained. In applying for an order under this section, it appears that it may be necessary to prove, not only the want of proper lodging or other circumstance specified in the section, but also that the patient is capable of being removed. See decision of Sheriff Brown in *Petition, the Local Authority of Aberdeen*, September 23, 1893, 1 S.L.T. 210; 2 County Council Cases, 123. Such proof, however, may not be obtainable without power to enter the house and examine the patient, and it is not clear that such power exists; sec. 45 gives a power of entry and examination, "with a view to ascertaining whether such person is suffering, or has recently suffered, from any infectious disease," but apparently for no other purpose.

[3] See definition of "ship" in sec. 3. Sec. 180 gives power to the local authority to make byelaws for the removal to hospital of persons brought within their district by ship, and who are suffering from infectious disease.

[4] Voluntary removal may be carried out without a warrant (see proviso at end of this sub-section), but whenever objection is made, a medical certificate and order of the sheriff or magistrate or justice is necessary. In practice, however, such applications are seldom required, the knowledge that the power exists being in most cases sufficient to secure compliance with the order of the local authority.

No order is required for the removal of an infectious case from a common lodging-house. See sec. 97.

As to power to provide and maintain carriages suitable for the conveyance of persons suffering from infectious disease, see sec. 67.

[5] The application is to be at the instance of the local authority, but it would be advisable for the local authority to delegate to a small committee, in terms of sec. 14, their powers under this section, otherwise a meeting of the local authority would have to be called to authorise application in each case, and the object of the section would be defeated by the delay which would take place before the removal could be effected.

[6] See also sec. 67.

[7] It is the local authority of the district where the person is found suffering from infectious disease that is liable for the removal. If the patient resides in another district, there seems to be no recourse against the local authority of the latter district.

[8] It is only when there is a hospital in or within a convenient distance of the district that an order for removal can be made.

[9] It does not appear that under this section an order can be made for the removal of the patient to the hospital, and at the same time for the removal of the other persons; the one course is alternative to the other. But when a patient has been removed to the hospital, the other residents in the house or tenement may be removed under sec. 47 (4).

[10] As to power to provide reception houses for persons who have been exposed to infection, see sec. 66 (1).

[11] See next section as to power to detain in hospital patients who on leaving would not be lodged where precautions could be taken against infection.

[12] See *Mitchell* v. *Magistrates of Aberdeen*, January 17, 1893, 20 R. 253; 30 S.L.R. 351; also *Sutherland* v. *eosdem*, November 24, 1894, 22 R. 95; 32 S.L.R. 81; 2 County Council Cases, 24.

(2.) The order may be addressed to any constable or officer of the local authority as the sheriff, magistrate, or justice making the same, thinks expedient; and if any person wilfully disobeys or [13]obstructs the execution of such order, he shall be liable to a penalty not exceeding ten pounds.

[13] See also sec. 163, where the penalty for obstructing any person in the execution of the Act does not exceed five pounds.

Detention of infected persons without proper lodging in hospital.

55.[1]—(1.) A sheriff, magistrate, or justice, on being satisfied on the application of the local authority that a person suffering from any infectious disease is in a [2]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 local authority during the time limited by the sheriff, magistrate, or justice, who may enlarge the time as often as appears to him necessary for preventing the spread of the disease.

[1] This section is new. It is taken, with the necessary alterations, from sec. 67 of the Public Health (London) Act, 1891, which follows sec. 12 of the Infectious Disease (Prevention) Act, 1890.

[2] It is not stated that the hospital must be a hospital provided by the local authority under sec. 66, and the section appears to apply though it is not such a hospital.

(2.) [3]The direction may be carried into execution by any

officer of any local authority, or by any police constable, or any officer of the hospital.

[3] There is no penalty provided for violation or obstruction of the direction. But see sec. 163.

Penalty on exposure of infected persons and things.

56.[1]—(1.) If any person—

(*a*) while suffering from any infectious disease wilfully exposes himself [2]without proper precautions against spreading the said disease in any [3]street, [4]public place, shop, inn, hotel, church, or any place used in common by persons other than members of the family or household to which such infected person belongs; or

(*b*) being in charge of any person so suffering, so exposes such sufferer; or

(*c*) knowingly gives, lends, sells, pawns, transmits, removes, or [5]exposes, or permits to be washed or exposed in any wash-house or washing green which is used in common by persons other than the family or household to which the infected person belongs, [6]without previous disinfection, to the satisfaction of the medical officer or of some legally qualified medical practitioner as certified by him in writing, any bedding, clothing, or other articles which have been exposed to infection from any such disease; or

(*d*) [7]wakes or permits to be waked in any house, room, or place over which he has control the body of any person who has died of any infectious disease;

he shall be liable to a [8]penalty not exceeding five pounds.

[1] This section takes the place of sec. 49 of the 1867 Act, and is based for the most part on sec. 68 of the Public Health (London) Act, 1891, from which however it differs in certain important particulars.

[2] In prosecuting for an offence under sub-head (*a*) or (*b*) it is necessary to prove not only the exposure, but also the want of proper precautions. See *Hunter* v. *Malloch*, January 22, 1894, 21 R. (Just.) 22; 31 S.L.R. 332; 1 County Council Cases, 64.

[3] See definition of "street" in sec. 3.

[4] A farmer when suffering from an infectious disease went about the farmyard and fields where his workpeople were employed. The Board of Supervision were of opinion that the farm was not a "public place" in the sense of the corresponding section of the 1867 Act.

[5] See also sec. 50, which deals with the exposure of infected matter or articles. The provision as to washing and drying clothes

which have been exposed to infection in any wash-house or washing-green used in common is new.

[6] As to facilities for disinfection, see secs. 46, 47, and 48.

[7] This is a new provision. See secs. 62, 63, and 69 for provisions as to bodies of persons who have died of any infectious disease.

[8] The proper party to prosecute is the local authority of the district where the offence takes place. A complaint by a local authority under the corresponding section of the 1867 Act was dismissed by the sheriff on the ground of want of title to sue. On appeal the court expressed the opinion that if the *locus* of the offence had been set forth as having been within the jurisdiction of the complainers, they would have had a title to sue; but as that was not done, the complaint as stated was held to be irrelevant from want of specification, and the appeal was dismissed. (*Kelso District Committee* v. *Fairbairn*, December 18, 1891, 29 S.L.R. 284; 1 County Council Cases, 23.)

(2.) Provided that proceedings under this section shall not be taken against persons [9]transmitting with proper precautions any bedding, clothing, or other articles for the purpose of having the same disinfected.

[9] Sec. 46 provides for local authorities supplying carriages or vessels for the removal of articles for disinfection, and secs. 47 *et seq.* provide for the disinfection of infected articles.

Penalty on sending child to school, so as to spread infection.

57.[1] Every parent or person having care or charge of a child who is or has been suffering from infectious disease, or who resides in a house where such disease exists or has existed within a period of three months, who shall knowingly or negligently permit such child to attend school without procuring and producing to the teacher or other person in charge of such school a certificate from the medical officer, which he shall grant free of charge, or from some [2]legally qualified medical practitioner, that such child has become free from disease and infection, and that the house and everything therein exposed to infection has been [3]disinfected to the satisfaction of such medical officer or medical practitioner, shall be liable to a penalty not exceeding forty shillings.

[4]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 penalty, if he satisfies the court that he had reasonable cause to suppose that the notice had been duly sent.

Any teacher or person in charge of any school, who shall knowingly permit any child to attend such school in contravention of the provisions of this section, shall be liable to a penalty not exceeding forty shillings.

[1] This section is new. It is taken (all but the proviso) from secs. 12 and 13 of the Glasgow Police Amendment Act, 1890. It provides means of preventing children in an infective condition, or living in infected houses, from attending school, and thus becoming centres of infection. A parent sending to school a child suffering from infectious disease might probably also be prosecuted for an offence under sub-sec. (1) (*b*) of the preceding section.

The congregation of children in schools is the means whereby infectious disease is most extensively propagated, and the closing of schools is frequently resorted to with the view of checking the spread of infection.

Article 30 of the Scotch Education Code (1897) provides :—

"The managers must at once comply with any notice of the sanitary authority of the district in which the school is situated, or any two members thereof acting on the advice of the medical officer of health, requiring them for a specified time, with a view to preventing the spread of disease, or any danger to health likely to arise from the condition of the school, either to close the school or to exclude any scholars from attendance, but after complying they may appeal to the Department if they consider the notice to be unreasonable."

[2] See definition of "legally qualified medical practitioner" in sec. 3. In the case of a child who has not himself been suffering from infectious disease, a certificate that he has become free from disease and infection does not appear to be necessary. It will be sufficient to produce a certificate that the house and its contents have been disinfected.

[3] See provisions as to disinfection, particularly sec. 47.

[4] This proviso is extremely puzzling. It refers to the sending of a notice, and to a person being required to send notice not in the first instance, but in default of some other person. There is, however, no such requirement in this section.

Prohibitions on infected person carrying on business.

58.[1] No person suffering from an infectious disease, or who is living in an infected [2]house shall [3]milk any animal, or pick fruit, or shall engage in any occupation connected with food, or [4]carry on any trade or business in such a manner as to be likely to spread such disease, and any person who knowing himself to be suffering from any infectious disease contravenes this section shall be liable to a penalty not exceeding ten pounds.

[1] This section is new; it is taken from sec. 69 of the Public Health (London) Act, 1891.

[2] See definition of "house" in sec. 3. See also sec. 177.

[3] Art. 9 of the Dairies, Cowsheds and Milkshops Order of 1885 prohibits "any person suffering from a dangerous infectious disorder, or having recently been in contact with a person so suffering, to milk cows or to handle vessels used for containing milk for sale, or in any way to take part or assist in the conduct of the trade or business of the cowkeeper or dairyman, purveyor of milk, or occupier of a milkstore or milkshop, so far as regards the production, distribution, or storage of milk," until all danger therefrom of the communication of infection to the milk or of its contamination has ceased.

[4] A business so conducted as to be injurious or dangerous to health is a nuisance in terms of sec. 16 (6) of this Act.

Prohibition on conveyance, &c., of infected person in public conveyance.

59.[1] It shall not be lawful for any owner or person in charge of a [2]public conveyance or [3]ship knowingly to convey therein, or for any other person knowingly to place therein, a person suffering from any infectious disease, or for a person suffering from any such disease to enter any public conveyance or ship, and any person contravening any of the foregoing provisions shall be liable to a [4]penalty not exceeding ten pounds; and if any person so suffering is conveyed in any public conveyance or ship, the owner or person in charge thereof, as soon as it comes to his knowledge, shall give notice to the local authority, and shall cause such conveyance or ship to be disinfected, and if he fails so to do he shall be liable to a [4]fine not exceeding five pounds, and such owner or person in charge 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 local authority, when so requested by such owner or person in charge, to provide for the disinfection of the same, and they may do so free of charge. But nothing contained in this section shall prevent the removal by railway train or by ship of persons suffering from infectious disease, if they are conveyed within an [5]ambulance-waggon, or other proper vehicle provided or approved by the local authority.

[1] This section comes in place of sec. 48 of the 1867 Act, being taken, with some alterations, from sec. 70 of the Public Health (London) Act, 1891.

[2] There is no definition of "public conveyance" in the Act; the expression will probably include any railway-carriage, tramway-car, omnibus, stage-coach, or hackney-carriage. Under sec. 48 of the 1867 Act an offence did not arise if notification of the fact that the person conveyed was suffering from infectious disease was made to the owner or person in charge of the conveyance. By this section, however, the use of any public conveyance or ship by a person suffering from such disease, or for removing such cases is prohibited, and the decision in *Hunter* v. *Malloch*, January 22, 1894, 21 R. (Just.) 22; 31 S.L.R. 332; 1 County Council Cases, 64, will apparently not now apply.

[3] See definition of "ship" in sec. 3. See also sec. 177.

[4] It would appear that the local authority are only entitled to sue under this section if the offence has been committed within their district. See *Kelso District Committee* v. *Fairbairn*, December 18, 1891, 29 S.L.R. 284; 1 County Council Cases, 23. A man residing in Motherwell sent his servant in a cab to Airdrie, in the district of the local authority of New Monkland. He knew that in all probability the girl was at the time suffering from small-pox, but he made no notification to that effect. The local authority of New Monkland prosecuted for a contravention of secs. 48 and 49 of the 1867 Act. The sheriff dismissed the complaint *quoad* sec. 48, which dealt with persons placing infectious patients in a public conveyance, having some doubt as to the title of the local authority of New Monkland, the offence under that section not having been committed within their jurisdiction. But he convicted the respondent of a contravention of sec. 49, which deals with the exposure of infectious patients in public conveyances. (*Local Authority of New Monkland* v. *King*, November 4, 1873, P.L.M. 1874, p. 33.)

[5] As to power to provide ambulances, see sec. 67.

Inspection of dairies, and power to prohibit supply of milk.

60.[1]—(1.) If the medical officer of any [2]district has evidence that any person in the [2]district is suffering from an infectious disease attributable to milk supplied within the [2]district from any [3]dairy situate within the [2]district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer [4]shall visit such dairy, and the medical officer [4]shall examine the dairy and every person engaged in the service thereof or resident upon the premises or who may be resident in any premises where any person employed in such dairy may reside, and if accompanied by [5]a veterinary surgeon approved as aforesaid, [4]shall examine the animals therein, and the medical officer [4]shall forthwith report the results of his examination [6]accompanied by the report of the veterinary surgeon, if any, to the local authority or any

[7]committee of the local authority appointed under section fourteen to deal with such matters.

[1] This section is new, and is taken, with a number of modifications, from sec. 71 of the Public Health (London) Act, 1891, and sec. 4 of the Infectious Disease (Prevention) Act, 1890. Under the Contagious Diseases (Animals) Act, 1878, sec. 34, and the Amendment Act of 1886, sec. 9, power is vested in the Board and in local authorities to deal with the sanitary conditions of dairies, cowsheds, and milkshops. That power enables action to be taken to prevent the infection or contamination of milk, but it does not extend to the prohibition of the sale of milk which has become infected. This section is intended to supply that defect. Sub-sec. 1 deals with cases where the dairy from which the suspected milk comes is within the district where the disease has broken out; while sub-sec. 2 deals with those cases where the dairy is situated in the district of another local authority.

[2] See definition of "district" in sec. 3.

[3] See definition of "dairy" in sec. 3.

[4] The terms are imperative; the medical officer is bound to visit the dairy and to examine it, and the persons, and (when accompanied by the veterinary surgeon) the animals, and report the results. He requires no warrant. See sub-sec. 8 as to penalty for obstruction.

[5] "Veterinary surgeon" means a member of the Royal College of Veterinary Surgeons. See sec. 3.

The words "approved as aforesaid" appear to refer back to sec. 43 (1). Accordingly the veterinary surgeon authorised to accompany the medical officer appears to be the one approved by the local authority for the purposes of sec. 43.

[6] The veterinary surgeon is not required by this sub-section to examine the animals or to make a report,—it is the medical officer who is to examine the animals and to report; but no doubt the veterinary surgeon will examine the animals, and if he finds any indications of disease in them he will report. In sub-sec. 2 the phraseology is different.

[7] It will be convenient that there should be a standing committee having all the powers of the local authority to deal with cases under this section.

(2.) If the medical officer of any [2]district has evidence that any person in the district is suffering from any infectious disease attributable to milk from any [3]dairy without the district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer [4]shall forthwith intimate the same to the local authority of the district in which such dairy is situate, and such other local authority shall be bound, forthwith, by its medical officer to examine the dairy and the [8]persons aforesaid, and [9]by a [5]veterinary surgeon approved

as aforesaid, to examine the animals therein, previous notice of the time of such examination having been given to the local authority of the [10]first-mentioned district, in order that the medical officer or any [5]veterinary surgeon approved as aforesaid may, if they so desire, be present at the examinations referred to, and the medical officer of the [11]second-mentioned local authority shall forthwith report the results of his examination, accompanied by the report of the veterinary surgeon, if any, to [12]that local authority or any committee of that local authority appointed under section fourteen of this Act to deal with such matters.

[8] The persons aforesaid are the persons connected with the dairy as specified in sub-sec. 1.

[9] It will be observed that the phraseology of sub-sec. 2 differs from that of sub-sec. 1. Under the first sub-section the medical officer, if accompanied by a veterinary surgeon, is himself to examine the animals, while under the second the local authority is to examine them by a veterinary surgeon. There does not appear, however, to be any real difference between the two provisions; in both cases it will be the veterinary surgeon who will examine the animals, and if need be make a report.

[10] The first-mentioned district is the district which is affected or threatened with infectious disease from the dairy.

[11] The second-mentioned local authority is the local authority of the district where the dairy is situated.

[12] "That local authority" is the second-mentioned local authority —the local authority of the district where the dairy is situated.

(3.) [13]The local authority of the district in which the dairy is situated, or any committee appointed for the purpose, shall meet forthwith and consider the reports together with any other evidence that may be submitted by parties concerned, and shall either make an order requiring the [14]dairyman not to supply any milk from the dairy until the order has been withdrawn by the local authority, or resolve that no such order is necessary.

[13] This and the following sub-sections refer to the duty of the local authority of the district where the dairy is situated, whether the matter has been brought before them by their medical officer on his own initiative under sub-section 1, or on the intimation of the medical officer of another local authority in terms of sub-section 2.

[14] See definition of "dairyman" in sec. 3.

(4.) [15] Where proceedings are taken or any order is made under this section by the local authority of a district other than a burgh, it shall not be competent to appeal against the said proceedings or against said order to the county council.

[15] This sub-section precludes any appeal by five ratepayers under sec. 17 (2) (*c*) of the Local Government Act of 1889. Sub-section 7 provides for an appeal to the sheriff.

(5.) The local authority may, [16]if the dairy is within the district, require the dairyman not to supply milk either within or without the district, and [17]shall give notice of the fact to the local authority of any district within which they believe milk to be supplied from such dairy.

[16] The words "if the dairy is within the district" appear to be superfluous, as no order can be made unless when the dairy is within the district.

[17] The expression is imperative, and a duty is laid on the local authority to give the notice.

The notice appears to be required whether the prohibition to supply milk is confined to the district where the dairy is situated or not, so long as the local authority of that district believe that milk is supplied from the infected dairy to another district.

(6.) Any such order shall be forthwith withdrawn on the [18]local authority, or their medical officer on their behalf, being satisfied that the milk from the dairy is no longer likely to cause infectious disease.

[18] The local authority ought to delegate the power of withdrawal to their medical officer, either by himself or in conjunction with a small committee, so as to avoid delay.

(7.) [19]It shall be open to any local authority or dairyman aggrieved by any such [20]resolution or order, or withdrawal of order, to appeal in a summary manner to a sheriff having jurisdiction in the district in which the dairy is situated, and the sheriff may either make an order requiring the dairyman to cease from supplying milk, or may vary or rescind any order which has been made by the local authority, and he may at any time withdraw any order made under this section. Pending the disposal of any such appeal the order shall remain in force.

[19] It is open to the local authority of any district where the suspected milk is supplied to appeal to the sheriff against a resolution that no order is necessary, or against the withdrawal of the order; and it is open to any dairyman whose business is affected by the order to appeal against the order, or to petition for a withdrawal of the order.

[20] The "resolution" here referred to is the resolution that no order is necessary, mentioned in the last words of sub-section 3 *supra*.

(8.) If any person refuses to permit the medical officer or veterinary surgeon of either local authority to make examination [21]as above provided, or, after any order has been made under this section, supplies milk in contravention of the order, he shall be liable to a penalty not exceeding ten pounds, and, if the offence continues, to a further penalty not exceeding five pounds for every day during which the offence continues.

[21] See sub-secs. 1 and 2.

(9.) Provided that—

(*a*) proceedings in respect of the offence shall be taken before a sheriff having jurisdiction in the place where the dairy is situate; and

(*b*) [22]a dairyman shall not be liable to an action for breach of contract if the breach be due to an order under this section.

[22] This proviso appears to refer to a case where a dairyman is under contract to supply milk, and provides that he shall not be liable in damages for a breach of contract, if he is precluded from fulfilling his contract by an order to cease from supplying milk.

(10.) [23]Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or of any order, licence, or act of the Privy Council or the Board thereunder, or of any regulation, licence, or act of a local authority, made, granted, or done under any such order of the Privy Council or the Board, or exempt any dairy, building, or thing, or any person from the provisions of any general Act relating to dairies, milk, or animals.

[23] See note 1 *supra*. The Contagious Diseases (Animals) Acts, 1878 and 1886, are repealed by the Diseases of Animals Act, 1894, with the exception of sec. 34 of the 1878 Act, and sec. 9 of the 1886 Act. These two sections refer to dairies. Sec. 34 of the 1878 Act gave the Privy Council power to make orders as to the registration of cowkeepers, the inspection of cows, the sanitary condition of dairy premises, the protection of milk against infection or contamination, and the making of regulations by local authorities. In 1885 the Privy Council issued an order on the subject. Sec. 9 of the 1886 Act transferred the powers of the Privy Council to the Board. The order of the Privy Council of 1885, however, remains in force, and many local authorities have made regulations in terms of its provisions.

Dairymen to supply information and to produce list of customers and invoices.

61.[1] Whenever it shall be certified to the local authority, by the medical officer or [2]other legally qualified medical practitioner, that the outbreak or spread of infectious disease within the district is, in the opinion of such medical officer or medical practitioner, attributable to milk supplied by any [3]dairyman, whether wholesale or retail, or to milk supplied by one or other of several such dairymen, whether wholesale or retail,—

(1.) The local authority may require such dairyman, whether within or [4]without the district, to furnish to them within a time to be fixed by them, being not less than twenty-four hours, a full and complete list of the names and addresses of all his customers within the district so far as known to him, and such dairyman shall furnish such list accordingly, and the local authority shall [5]pay to him for every such list at the rate of sixpence for every twenty-five names contained therein; and every person who shall wilfully or knowingly offend against this enactment shall for each such offence be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

[1] This section is new. It will enable local authorities to obtain information both as to the sources whence milk is procured, and as to the persons to whom it is supplied.

[2] Any medical practitioner is entitled to take the initiative under this section, and the local authority is entitled to proceed on a certificate by any practitioner, without requiring one from their own medical officer.

[3] See definition of "dairyman" in sec. 3.

[4] Under the previous section the local authority can only deal directly with dairies situated within their own district; under this section they can compel information from persons outside.

[5] Under sec. 49 the local authority pay sixpence for a similar list and an additional sixpence for every twenty-five names; under this sub-section there is no separate payment for the list.

(2.) The local authority may require such dairyman to furnish to them, within a [6]time to be fixed by them, a full and complete list of the names and addresses of the farmers, dairymen, or other parties from whom, during a period to be specified, the milk, or any part

of the milk which [7] they sell or distribute, was obtained, and, if required, to produce and exhibit to the medical officer, or to any person deputed by him, all invoices, pass-books, accounts, or contracts, connected with the consignment or purchase of milk during such period, and such dairymen or others shall furnish such lists and produce and exhibit such invoices, pass-books, accounts, or contracts, accordingly; and every person who shall wilfully or knowingly offend against this enactment shall for every such offence be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

[6] There is no minimum time laid down here as there is in sub-section 1.

[7] Although the word "they" is used, it is obvious that it refers back to the "dairyman" mentioned at the beginning of the sub-section.

(3.) In any case where the person liable to any penalty under this section is not resident within the [8] district, such penalty may be sued for at the instance of the procurator fiscal before the sheriff of the county in which such person is either domiciled or carries on business.

[8] That is, within the district of the local authority which calls for the list, invoices, &c.

Prohibition of retention of dead body in certain cases.

62.[1]—(1.) A person shall not without the sanction in writing of the medical officer, or of a [2] legally qualified medical practitioner, retain unburied for more than forty-eight hours elsewhere than in a room not used [3] at the time as a dwelling-place, sleeping-place, or workroom, the body of any person who has died of any infectious disease.

[1] This section is new. It is taken from sec. 72 of the Public Health (London) Act, 1891, which follows sec. 8 of the Infectious Disease (Prevention) Act, 1890. It comes in place of part of sec. 43 of the 1867 Act, which section is more closely replaced by sec. 69 *infra*.

[2] See definition of "legally qualified medical practitioner" in sec. 3. The medical man in attendance on the deceased may grant the necessary sanction, which must be in writing. If sanction has

not been obtained, the body may be removed to a mortuary under sec. 69. See that section and notes.

[3] "At the time" apparently means during the time that the body remains there unburied.

(2.) If a person acts in contravention of this section he shall be liable to a penalty not exceeding five pounds.

Body of person dying of infectious disease in hospital, &c., to be removed only for burial.

63.[1]—(1.) If a person dies in a [2]hospital or place of temporary accommodation for the sick from any infectious disease, and the medical officer, or any legally qualified medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating such disease or of spreading infection, that the body be not removed from such hospital or place 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 or place shall be forthwith taken direct to the place of [3]burial and there buried.

[1] This section is new. It is taken from sec. 73 of the Public Health (London) Act, 1891, which follows sec. 9 of the Infectious Disease (Prevention) Act, 1890.

[2] The word "hospital" here is not confined to hospitals provided under this Act, but appears to extend to any hospital or infirmary in which a case of infectious disease may be treated. For the provisions as to hospitals, see sec. 66.

[3] The word "burial" includes cremation. See definition of the word in sec. 3.

(2.) If any person wilfully offends against this section he shall be liable to a penalty not exceeding ten pounds.

(3.) Nothing in this section shall prevent the removal of a dead body from a hospital to a [4]mortuary, and [5]such mortuary shall, for the purposes of this section, be deemed part of such hospital.

[4] For the provisions as to mortuaries, see secs. 68–71.

[5] The effect of the enactment that the mortuary shall be deemed part of the hospital is that if the medical officer or a medical practitioner so certify, a body cannot be removed from a mortuary save for the purpose of burial.

Disinfection of public conveyances if used for carrying corpses.

64.[1] If—

(*a*) a person hires or uses a public conveyance or a conveyance that is let for hire, other than a hearse, for conveying the body of a person who has died from any infectious disease without previously notifying to the owner or driver of the conveyance that such person died from such disease; or

(*b*) the owner or driver, immediately on its coming to his knowledge that such conveyance is being or has been used for conveying such body, does not take all reasonable precautions to prevent the spread of infection, or does not forthwith give intimation to the local authority and provide for the disinfection of the conveyance to the satisfaction of the local authority,

such person or such owner or driver shall be liable to a penalty not exceeding five pounds, and, if the offence continues, to a further penalty not exceeding forty shillings for every day during which the offence continues.

[1] This section is new. It is taken from sec. 74 of the Public Health (London) Act, 1891, which follows sec. 11 of the Infectious Disease (Prevention) Act, 1890. The section makes a similar provision with regard to corpses as is made by sec. 59 with regard to living beings. See also sec. 69 (3), which prohibits the transport of bodies of persons who have died of infectious disease by railway or other public conveyance without a certificate by the medical officer or other practitioner that every precaution for the public safety has been adopted.

Byelaws as to public conveyances.

65.[1] The local authority may make [2]byelaws for securing the cleanliness and sanitary condition of [3]public conveyances [4]plying within its district, and [5]for preventing overcrowding in such conveyances.

[1] This section is new. The Burgh Police Act, 1892, Schedule V., gives regulations for hackney-carriages which, under sec. 271, are to be observed in the burgh; and No. 23 of these regulations empowers the magistrates to make byelaws for certain specified purposes, which do not, however, include cleanliness and sanitary conditions. They include however the regulation of the number of persons to be carried in such vehicles.

[2] For the provisions as to byelaws, see secs. 183–187.

[3] No definition is given of "public conveyance." It will no

doubt include hackney-carriages, stage-coaches, omnibuses, and tramway-cars.

[4] It is not clear whether the byelaws will apply to a public conveyance passing through the district, but starting from within another district. See *Gairns* v. *Main*, Mar. 16, 1888, 15 R. (Just.) 51 ; *Croall* v. *Linton*, May 29, 1869, 7 M. 849.

[5] It will be for the consideration of local authorities whether, if they have occasion to take precautions for preventing overcrowding, they should not fix by byelaws the number of persons who may be accommodated in each class of conveyance.

Hospitals and Ambulances.

Power of local authority to provide hospitals.

66.[1]—(1.) Any local authority may, and [2]if required by the Board shall, provide, [3]furnish, and maintain for the use of inhabitants of their district suffering from [4]infectious disease, hospitals, [5]temporary or permanent, and [6]houses of reception for convalescents from infectious diseases, or for persons who have been exposed to infection, and for that purpose may—

(*a*) themselves build [7]such hospitals or houses ; or

(*b*) [8]contract for the use of any such hospital or house or part thereof ; or

(*c*) [9]enter into any agreement with any [10]person having the management of any such hospital or house or part thereof on payment of such annual or other sum as may be agreed on ;

(*d*) any local authority, with consent of the Board, may [11]also or in place of providing such hospitals or houses as aforesaid, employ nurses to attend the persons suffering from infectious disease in their own houses, and also supply medicines and medical attendance for such sick.

[1] This section comes in place of sec. 39 of the 1867 Act, which it re-enacts with several important modifications.

The hospitals provided by the parochial boards as local authorities under the 1867 Act were, under the Local Government Act of 1889, transferred to the county councils, and a question arose whether the right to use these hospitals was limited to the parishes for which they were originally provided, or was common to the extended district in which the hospital was situated. The county council of Lanarkshire took the opinion of counsel (the Right Hon. J. P. B. Robertson—now Lord President—and the Right Hon. J. B. Balfour), who advised that the hospitals in question were to be held by the county council for the purposes of the new and enlarged

public health district (Board's Report, 1891, App., p. 55). See, however, the case of *Lanark Town Council* v. *Upper Ward of Lanarkshire District Committee*, November 28, 1895, 33 S.L.R. 148 ; 3 S.L.T. 289 ; P.L.M. 1896, p. 24, where it was held by the First Division, in the case of a hospital which had been provided jointly by the town council and parochial board of Lanark, that the right of the district committee to send patients was limited to the landward part of the parish of Lanark.

The question of the liability of a patient in a hospital for the cost of his treatment and maintenance there has been frequently discussed. There is no statutory provision on the subject. The local authority are empowered to provide medical attendance, medicines, and nursing for cases of infectious disease either in the hospital or in the patients' own houses, and no power of recovering the cost from a patient or his relatives is given in the Act. If they remove a person to hospital under sec. 54, or if they undertake to supply nursing and medical attendance under sec. 66 (1) (*d*), they have no recourse. But if a person who is able to provide accommodation and treatment desires to have for himself or any of his household the use of the hospital and the benefit of the medical attendance and nursing at the command of the local authority, they may refuse to furnish it except on condition of payment of the expenses ; it does not appear, however, that if they do furnish it they can recover the cost, unless the person receiving the benefit has come under an obligation to pay for the same.

Some difference of opinion has arisen over the question of the respective obligations of parish councils and local authorities in regard to the treatment of paupers suffering from infectious disease, or of persons who, though not paupers when attacked, have become proper objects of relief by reason of infectious disease.

Reference may be made to the following opinions and sheriff-court decisions :—

Opinion of Sheriff Glassford Bell on a reference to him by the inspectors of Port-Glasgow and Govan, P.L.M. 1870–71, p. 224 ; opinion of Rt. Hon. J. B. Balfour, obtained by the parochial board of Govan, Jan. 9, 1877, P.L.M. 1877, p. 274 ; and the following sheriff-court decisions : *Local Authority of Burgh of Airdrie* v. *Inspector of New Monkland*, P.L.M. 1870–71, p. 398 ; *Inspector of Glasgow* v. *Inspector of Killarow*, March 18, 1881, P.L.M. 1881, p. 322 ; *Shotts* v. *New Monkland*, July 28, 1885, 1 S.L. Rev. 349 ; P.L.M. 1885, p. 498 ; *Glasgow* v. *Shotts*, Dec. 14, 1886, P.L.M. 1887, p. 198 ; *Glasgow* v. *Bothwell*, March 4, 1887, P.L.M. 1887, p. 203 : *Kilmartin* v. *North Knapdale*, April 17, 1889, P.L.M. 1889, p. 326 ; *Barony* v *Shotts*, June 30, 1890, P.L.M. 1890, p. 494 ; *Midlothian County Council* v. *Parochial Board of Burntisland*, August 17, 1892, P.L.M 1892, p. 484 ; *Local Authority of Hamilton* v. *Parochial Board of Glasgow*, January 11, 1893, P.L.M. 1893, p. 89 ; *Denny* v. *Duddingstone*, June 21, 1893, 1 S.L.T. 112 ; P.L.M. 1893, p. 443 ; *Local Authority of Motherwell* v. *Parochial Board of Shotts*, March 13, 1894, 1 S.L.T. 667 ; P.L.M. 1894, p. 265 ; *Calder District Committee* v. *Parochial Board of Kirknewton*, Nov. 14, 1894, 2 S.L.T. 296. See also the views of the Board of Supervision as contained in their Report for 1870, p. xxii, and for 1889, App. A, p. 27.

The trend of opinion appears to be towards enlarging the duty and responsibility of the local authority as regards infectious disease, and the policy of the new Act points in the same direction. The following appears to be the view of the question which commends itself most widely.

The parish council is responsible for all paupers, and bound to supply them with maintenance as well as with medical treatment when they are suffering from infectious as from any other disease. But the parish council are under no legal obligation to *isolate*, in the public interest, paupers suffering from infectious disease. On the other hand a pauper suffering from infectious disease is to be regarded by the local authority as in exactly the same position as any other person so suffering. If the case of the pauper is one calling for removal to hospital in terms of sec. 54, it is the duty of the local authority to remove him, and they have no claim against the parish council. The local authority may also exercise in the case of paupers, as in other cases, their power to provide nursing, medicine, and medical attendance for persons suffering from infectious disease, and if they do exercise this power, they cannot recover the cost from the parish council unless that body has come under an obligation to pay.

With regard to the power of removal of infectious cases to hospital and their detention there, see secs. 54 and 55 ; and as to the power to make byelaws for the removal to hospital of infectious cases brought into the district by ships, see sec. 180. See also secs. 96 and 97 as to the removal to hospital of infectious cases from common lodging-houses.

In large hospitals resident medical officers are necessary. In smaller hospitals the local authority must appoint a medical man in the neighbourhood, whose services would be readily available, to attend to the patients. Except with the permission of the local authority, no medical practitioner is entitled to attend patients who have been conveyed to the hospital. A divided medical authority in the hospital is highly inexpedient, even were it clearly legal.—B.

The local authority have the entire control of their hospital, and may make such rules as they think necessary for regulating it. These rules do not require the approval of the Board. If the local authority think it necessary, they may publish them in such manner as they see fit (sec. 188).

Useful information and plans of hospitals will be found in a memorandum issued in 1895 by the Medical Department of the Local Government Board, "On the Provision of Isolation Hospital Accommodation by Local Sanitary Authorities," printed in their medical officer's Report, 1894–95, App., p. 195. More detailed information will be found in Sir Richard Thorne's Report, "On the Use and Influence of Hospitals for Infectious Diseases," issued by the Local Government Board in 1882. See also Dr. M'Neill's "Epidemics and Isolation Hospitals."

When any part of Scotland is threatened or affected by any formidable infectious disease, the Board are empowered by sec. 79 to make regulations for (*inter alia*) the provision of accommodation.

Under secs. 144 and 145 of this Act, a local authority may acquire

land compulsorily for the purpose of a hospital. A defect in the 1867 Act is thus supplied.

[2] The provision empowering the Board to require local authorities to provide hospitals is new; and as under sub-sec. 3 the consent of the Board is required before any contract for the use of a hospital is entered into, and their approval is required to the site and plans of any hospital which may be projected, every safeguard is provided to secure the adequacy and completeness of any building which may be erected.

[3] Sec. 141 gives power to borrow for furnishing as well as for providing hospitals.

[4] Under the 1867 Act, the power of providing hospital accommodation was not confined to hospitals for infectious disease; under this Act there is no power to provide for other than infectious disease.

[5] While there is power to provide temporary as well as permanent hospitals, there is no power to borrow for the former (see sec. 141). See also sub-sec. 4 as to "portable hospitals."

[6] The houses of reception which the local authority are empowered, or may be required, to provide are of two classes, viz., (1) for convalescents from infectious diseases, and (2) for persons who have been exposed to infection. The provisions of sub-sections 2 and 3 of this section apply to such houses in the same way as to hospitals, and the power of borrowing also extends thereto (see sec. 141). Such houses may be used for persons who though not themselves sick have been removed from their houses in terms of sec. 47 (4), or sec. 54, as well as of persons who may have been in any other way exposed to infection, and whom it may be necessary to place under observation.

[7] When a local authority builds a hospital, the site and plans must be approved by the Board. See sub-sec. 3. The words "such hospitals" in sub-head (*a*) refer exclusively to hospitals for infectious disease, but it does not appear that the same words in sub-heads (*b*) and (*c*) imply that the hospitals in respect of which the local authority may make contracts or enter into agreements must be hospitals used exclusively for infectious cases. It is obvious, however, that there is a risk in treating infectious and non-infectious cases in the same building, and such an arrangement will only be possible when effectual isolation can be secured.

[8] Every such contract is subject to the consent of the Board. See sub-sec. 3. Under sub-head (*b*) the local authority may obtain for their own use either the whole or any part of an existing hospital, and probably under this sub-head they may also hire or lease any building (whether intended for a hospital or not) and convert it into a temporary or permanent hospital or into a house of reception.

[9] Under sub-head (*c*) the local authority are empowered to enter into an agreement under which they would be enabled to send patients to a hospital entirely under the management of other persons. See also sub-sec. 2 as to power to combine with other local authorities for the purpose.

[10] The word "person" includes any body of persons, corporate or unincorporate. See Interpretation Act, 1889, sec. 19.

[11] The power to employ nurses may, subject to the consent of

the Board, be exercised either in addition to or in place of providing hospitals or places of reception. See also sub-sec. 2, which empowers local authorities to combine in employing nurses.

The provision giving power to employ nurses to attend patients suffering from infectious disease in their own houses is new, as is also the further provision giving power to supply medicines and medical attendance for such sick. No power is given to recover the costs from the patient or any other person. See note 1 *supra*. It does not appear that the medical attendance which the local authority are hereby authorised to supply falls to be performed by their medical officer of health as part of the duties of his office. It rather appears that, if he is employed by the local authority in this service, his remuneration should be made matter of special arrangement. See also note 6 to sec. 15 *supra*.

Where the local authority undertake to provide medical attendance, it is advisable that, with a view to avoid disputes, there should be a clear contract between them and the practitioner employed. See *Keddie* v. *Bathgate District Committee*, June 17, 1897, 5 S.L.T. 65.

(2.) [12]Two or more local authorities may, and if required by the Board shall, combine in providing, furnishing, and maintaining a common hospital or house of reception, or in employing nurses [13]on terms to be agreed on, and failing agreement to be fixed by the Board, whose determination shall be binding.

[12] The provision of sub-sec. 2 takes the place of the corresponding provision at the end of sec. 39 of the 1867 Act. Under the earlier provision only *contiguous* local authorities could combine; under this Act, contiguity is not essential. A number of local authorities have taken advantage of the power of combining to provide common hospitals, and have been able in almost every case to allocate the expenses fairly. In cases of dispute, a reference may in terms of the statute be made to the Board. In settling such questions, the Board have regard to the population, assessable rental, &c., of the respective districts, and any local circumstances affecting the case.

The power to compel local authorities to combine in providing hospitals and in employing nurses is new.

[13] The words "on terms," &c., to the end of the sub-section refer not only to the employment of nurses, but to the providing of hospitals and houses of reception.

(3.) No [14]contract for the use of any such hospital or house or part thereof shall be entered into without the consent of the Board, and no such hospital or house of reception shall be [15]provided, unless and until the site and plans for the construction thereof have been [16]approved of by the Board. Provided always that [17]such site shall be in or within a convenient distance of the district of the local

authority, or, in the case of a [18]combination in terms of this section, in or within a convenient distance of the combined district.

[14] See sub-head (*b*) of sub-sec. 1. It does not appear that the consent of the Board is required to an agreement under sub-head (*c*).

[15] Under the 1867 Act the approval of the Board to the site and plans of hospitals was only required when the hospital was built by the local authority, or was provided by two or more local authorities as a common hospital. It would appear that the approval of the Board is now required in every case where a hospital is *provided*, whatever be the method of providing it.

[16] For the purpose of approval the Board require an Ordnance Survey map, having the site marked on it, and plans and sections of the buildings, with the cubic contents of each ward, the number and position of the beds, also the lines of drainage, and information as to the water-supply, &c.

Before sanctioning the occupation of a hospital, the Board require to be furnished with certificates by the architect and the medical officer as to the fitness of the building for occupation. These certificates are made on forms supplied by the Board.

The approval of the Board may be given subject to conditions and limitations. The Magistrates of Edinburgh petitioned the Dean of Guild of Leith for warrant to erect a temporary hospital within his jurisdiction. They produced the approval of the Board. The site was approved subject to these conditions: (1) for three years only; (2) for cholera only; (3) drains to be used for non-infected matter only; (4) all infected matter to be disposed of by incineration. The plans were also approved, subject to provision being made for the proper disinfection of clothing. It was pleaded for the respondents that this was not an approval in terms of the statute, in respect that it was not an absolute approval. The court held that it was a valid approval under sec. 39 of the 1867 Act. (*Magistrates of Edinburgh* v. *Magistrates of Leith*, January 11, 1896, 23 R. 383; 33 S.L.R. 285; 3 S.L.T. 357.)

In no circumstances are the local authority, in providing a hospital, entitled to create a nuisance, and the approval of the Board to the site and plans will not relieve them of liability, if nuisance should arise. In the case of *Mutter* v. *Fyfe*, December 23, 1848, 11 D. 303, the Court of Session held that a cholera hospital is not necessarily a nuisance, and refused to grant interdict. In an English appeal case, *Metropolitan Asylum District* v. *Hill*, L.R. 6 App. Cas. 193; 44 L.T. (N.S.) 653; 45 J.P. 664, the rule of law was thus laid down by Lord Blackburn: "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 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 landward districts a hospital, being a "capital work" in the sense of sec. 18 (6) & (7) of the Local Government Act of 1889, cannot be erected without the consent of the standing joint committee. The district committee not being authorised to acquire

or hold lands, the site must be taken in name of the county council, and the building vested in them.

[17] Under the 1867 Act the local authority were not entitled, in erecting a hospital, to go beyond the limits of their own district. By the Amendment Act of 1890 local authorities of burghs were empowered to go outside their district, but landward local authorities remained under the old restriction. Under this Act the site may be either in or within a convenient distance of the district, whether burghal or landward. In the *Edinburgh* v. *Leith* case (see preceding note) the respondents contended that it was *ultra vires* of the local authority of one burgh to erect a hospital within the boundaries of another burgh, but the court held that they were empowered by the Public Health (Scotland) Amendment Act, 1890, to do so. As matters now stand, the local authority of Leith have a hospital within the burgh of Edinburgh.

[18] For the power to combine, see sub-sec. 2.

(4.) [19] A local authority may with the sanction and subject to regulations made by the Board provide and maintain one or more portable hospitals for the use of their district.

[19] This provision is new, but the practice of providing portable hospitals has already been established. It is obvious that a portable hospital cannot be subjected to the same conditions as a stationary building—it cannot, for instance, have the *site* approved by the Board as is obligatory in the case of other hospitals. It is not clear whether under sec. 141 money can be borrowed for portable hospitals. The question seems to depend on the meaning of the word *permanent* in that section. A portable hospital may be of durable materials, and may be regarded as permanent in that sense; but it is not permanent in the sense that the materials are at all times put together so as to be ready for use as a hospital.

Provision of conveyance for infected persons.

67.[1] A local authority may provide and maintain, or may combine with one or more local authorities in providing and maintaining, 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.

[1] This section re-enacts part of sec. 40 of the 1867 Act, with the additional provision enabling local authorities to combine for the purpose of the section. It is similar to sec. 78 of the Public Health (London) Act, 1891, and sec. 123 of the English Public Health Act, 1875.

As a general rule ambulances are maintained in connection with hospitals, and usually accommodation is provided for them at the hospital buildings.

As to conveyance of infected persons in ambulances by railway or ship, see proviso at the end of sec. 59.

Mortuaries, &c.

Power of local authority to provide mortuaries.

68.[1] Every local authority may provide and fit up a proper place or places for the reception of dead bodies before interment (in this Act called a mortuary), and may make [2]byelaws with respect to the management and charges for the use of the same.

[1] This section comes in place of the first part of sec. 43 of the 1867 Act, but the power to make byelaws is new. The local authority will be entitled to acquire land for the purposes of the section in terms of secs. 144 and 145; they may also borrow for this purpose under sec. 141. By sec. 71 local authorities are empowered to combine with other local authorities in providing a mortuary.

As to the removal of dead bodies to a mortuary, see sec. 69, also sec. 63 (3).

The Burial Grounds (Scotland) Act, 1855, empowers parish councils (or in parliamentary burghs, town councils) to provide places for the reception of the dead previous to interment, and authorises the Secretary of State (now the Secretary for Scotland) to make such regulations for these places as may seem proper for the protection of the public health and the maintenance of public decency. See the Act 18 & 19 Vict. c. 68, secs. 20, 21.

[2] The Local Government Board (England) have issued model byelaws for mortuaries, along with a memorandum containing suggestions as to the site, construction, and management of such places, also a plan of a mortuary. These will be found in their Report for 1883, App., p. 15.

As to the provisions of this Act respecting byelaws, see secs. 183–187.

Power of sheriff, &c., in certain cases to order removal of dead body to mortuary.

69.[1]—(1.) Where either—

(*a*) [2]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*) [3]the body of a person who has died of any infectious disease is retained without the sanction in writing of the medical officer 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 work-room; or

(*c*) [4]any dead body is retained in any [5]house or room or [6]ship under circumstances which, if continued, may

endanger the health of the inmates thereof, or of any adjoining or neighbouring [5]house or building; or

(*d*) [7]any dead body found within the district is unclaimed or no sufficient person undertakes to bury it,

a sheriff, magistrate, or justice may, on a certificate signed by a medical officer or other legally qualified medical practitioner, direct that the body be removed, at the [8]cost of the local authority, to any available mortuary, and be buried within the time limited by the sheriff, magistrate, or 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 body be buried immediately, without removal to the mortuary.

[1] This section comes in place of the greater part of sec. 43 of the 1867 Act, and is taken, with the necessary variations, from sec. 89 of the Public Health (London) Act, 1891, sub-head (*d*), however, being added.

[2] But see sub-head (*b*) and note.

[3] See sec. 62. This provision applies when the sanction required by sec. 62 has not been obtained.

[4] Sub-heads (*a*) and (*b*) refer to bodies of persons who have died of infectious disease, sub-heads (*c*) and (*d*) refer to any dead bodies.

[5] See sec. 3 for definition of "house." It includes "schools, also factories and other buildings in which persons are employed."

[6] The express mention of ships is unnecessary, looking to the provisions of sec. 177.

[7] Under sec. 43 of the 1867 Act the local authority were entitled, in the circumstances set forth in sub-head (*d*) hereof, to bury the body without further authority; it appears that they can no longer do so save under the direction of a sheriff, magistrate, or justice.

The parish council are bound to bury the bodies of all persons who at the time of death are in receipt of parochial relief, but the poor law assessment cannot be applied to the burial of others. However destitute a man may be at the time of death, the parish council are not liable to bury him, unless he is on the roll of poor. —B. See also the following sheriff-court decisions: *Police Commissioners of Alyth* v. *Inspector of Alyth*, Aug. 15, 1880, P.L.M. 1880, p. 602; and *Bothwell* v. *Shotts*, Nov. 1885, P.L.M. 1886, p. 87; *Parochial Board of Kincardine* v. *Dunfermline District Committee*, Sept. 29, 1892, P.L.M. 1892, p. 613.

If the relatives of a poor person are unable from poverty to bury the body, it is the duty of the local authority to undertake the burial. In cases of doubt or dispute the local authority should at once take steps with a view to bury the body, leaving the question of liability to be afterwards settled; the object of the section being to prevent a nuisance. But when the duty of burial is in any case undertaken by the parish council or other persons, the duty of the local authority does not arise, and no liability attaches to them.—B.

The only duty of the local authority is to bury. If the police think it necessary for police purposes to keep a body unburied, they must keep it in their own custody and at their own expense. It is only when the body is ready for burial that the duty of the local authority emerges. Preserving the clothes for identification and taking charge of articles found on the body are duties that lie on the police.—B.

A body found at sea and brought into harbour must be held to have been "found" within the district in which the harbour is situated, and the local authority of that district are liable to bury it.—B.

[8] It does not appear that the cost of removal to a mortuary can be recovered. As to recovery of cost of burial, see sub-sec. 2.

(2.) Unless the friends or relations of the deceased undertake to bury and do bury, the body [9]within the time so limited, it shall be the duty of the local authority to bury such body, and [10]any expense so incurred may be recovered by them in a summary manner from [11]any person legally liable to pay the expenses of such burial.

[9] The direction by the sheriff, magistrate, or justice under sub-sec. 1 will fix the time within which the body is to be buried, or will require that it be buried immediately, and if this direction is not carried out by the friends or relations it will be the duty of the local authority to bury.

The Board were consulted by a local authority as to the liability for the burial of persons who were brought from other districts into an infirmary within the burgh and died there. The Board were inclined to hold in that case that, as the patient had been brought from an outlying district, and no relative or other person had undertaken to bury the body, the expense should be defrayed by the infirmary which had been the means of bringing him within the district.

See also note 4 to sec. 190 *infra*.

[10] As to recovery of sums of money due to the local authority, see sec. 154.

[11] As to the liability of parish council, see note 7 *supra*.

(3.)[12] It shall not be lawful to transport the body of any person who has died of any infectious disease by railway or other public conveyance, not being a conveyance reserved [13]for such purpose, unless and until the medical officer, or other legally qualified medical practitioner, has certified that every precaution necessary for the public safety has been adopted to his satisfaction, and any undertaker or other person who shall without such certificate knowingly remove or assist in removing, and any person who shall procure or endeavour to procure the removal of such dead body without having obtained such certificate shall be liable to the [14]penalty hereinafter mentioned in this section.

[12] This sub-section is to be read along with sec. 64, to which it may be regarded as supplementary.

[13] The words "for such purpose" apparently are to be construed as meaning for the conveyance of dead bodies generally (*e.g.*, a hearse), and not as meaning a conveyance expressly reserved for the bodies of persons who have died of *infectious* disease.

[14] See sub-sec. 4. See also sec. 64, which provides a further penalty for a continuing offence.

(4.) If any person obstructs the execution of any [15]direction given by a sheriff, magistrate, or justice, under this section, he shall be liable to a penalty not exceeding five pounds.

[15] See sub-sec. 1.

Power of local authority to provide places for post-mortem examinations.

70.[1]—(1.) Any local authority may provide and maintain a proper building (otherwise than at a poorhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a lawful authority, and may make [2]regulations with respect to the management of such building.

[1] This is a new provision, and corresponds to sec. 143 of the English Public Health Act, 1875, and sec. 90 of the Public Health (London) Act, 1891. The local authority will have power to acquire land under secs. 144 and 145 for the purpose, but the power of borrowing does not extend to such buildings.

[2] See sec. 188. The provisions as to byelaws do not apply to such regulations.

(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.

Power to sanitary authorities to unite for providing mortuary.

71.[1] Any local authorities may, with the approval of the Board, execute their [2]duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contract-

ing authorities, and may so combine or contract upon such terms as may be agreed upon.

[1] This section is new, and is taken from the Public Health (London) Act, 1891, sec. 91. The power may be exercised in one of two ways. Either the local authorities may combine to provide a common mortuary or post-mortem room, sharing the cost among them, or one may provide the building, the others having the use of it at such charges as may be agreed on.

[2] The word "duty" is here used, but it will be seen on referring to secs. 68 and 70 that the terms of these sections are permissive and not obligatory.

Byelaws as to Houses let in Lodgings.

Power of local authority to make byelaws as to lodging-houses.

72.[1]—(1.) Every local authority may, and if required by the Board shall, make and enforce for the whole or [2]any part of their district such [3]byelaws as are requisite for the following matters; (that is to say,)

(*a*) for fixing the number of persons who may occupy a [4]house or part of a house which is let in lodgings or occupied by members of more than one family:

(*b*) for the registration of houses so let or occupied:

(*c*) for the inspection of such houses:

(*d*) for enforcing sufficient privy or water-closet accommodation and other appliances and means of cleanliness in proportion to the number of lodgers or occupiers, drainage for such houses, and for promoting cleanliness and ventilation in such houses, and for the cleansing and ventilation of the common passages and staircases:

(*e*) for the cleansing and limewashing at stated times of the premises:

(*f*) for the giving of [5]notices and the taking of precautions in case of any infectious disease.

[1] This section takes the place of sec. 44 of the 1867 Act, which it re-enacts with the following important alterations: The powers which under the earlier Act were confined to local authorities of burghs or populous places having a population of 1000 or upwards are now available to all local authorities; the Board may now require a local authority to exercise its powers under this section; and the purposes of the section are extended, power being given to make byelaws for giving notices and taking precautions in case of infectious disease.

[2] If the byelaws are to apply only to a part of the district, it will

be necessary to specify, either in the byelaws themselves or in the advertisement required by sec. 185, the part of the district to which they are to be confined.

[3] For the provisions as to byelaws, see secs. 183–187. Under the 1867 Act, the regulations had to be published *in extenso* in the newspapers; under this Act the intention to apply for confirmation is all that need be published. A model set of byelaws under this section has been issued by the Board.

[4] See sec. 3 for definition of "house." The byelaws will be applicable to boarding-schools, and to places of business where the employees reside in the premises.

It will be observed that there is no provision authorising byelaws for the separation of the sexes in houses to which this section applies.

The provisions of this section as to the regulation of houses let in lodgings or occupied by members of more than one family must not be confounded with the provisions of sec. 92 as to the regulation of common lodging-houses. In all towns and populous places it is a general practice for the smaller houses to be let in lodgings. These are not included in the definition of "common lodging-house" in sec. 3, and are not subject to the provisions as to common lodging-houses. But in many cases it is desirable to place such houses under sanitary control. This object can be attained under the present section, which applies to all houses let in lodgings irrespective of the charges made.

When byelaws are made under this section it is not necessary to place on the register every house in the district which is let in lodgings or occupied by members of more than one family. The usual practice is for the sanitary inspector, subject to the directions of the local authority, to select the houses which it is desirable to supervise, to place these on the register, and to see that in these cases the byelaws are observed. In this way the necessary supervision is exercised, while no restrictions are imposed upon houses where supervision is not required. In the model byelaws under the corresponding section of the English Public Health Act, 1875, issued by the Local Government Board (England), this object is attained by inserting a clause limiting the application of the byelaws to houses under a specified rental. See the byelaws printed in the Report of the English Local Government Board, 1881, App., p. 157.

[5] See also the Infectious Disease (Notification) Act, 1889, which by sec. 44 of this Act is applied generally throughout Scotland.

(2.) This section shall not apply to [6]common lodging-houses within the provisions of this Act relating to common lodging-houses, but shall apply to [7]farmed-out houses, that is to say, to houses of one or two apartments taken on lease by any person, and let or rented to several occupiers for [8]limited periods as furnished apartments, as also to [9]all boarding-houses for seamen and emigrants, irrespective of the charge made for the board and lodging therein.

[6] For the definition of "common lodging-house" see sec. 3, and for the provisions relating to such houses see Part V., sects. 89–100.

This section does not apply to common lodging-houses as defined in this Act, but it will apply to those common lodging-houses which, but for the charges made, would come under the definition. See also note 4 *supra*.

[7] The definition of "farmed-out houses" here given is extremely restrictive. To come within the definition a house must be of one or two apartments,—accordingly, if it contain more it is outwith the provision; it must be taken on lease by the person letting the lodgings,—consequently, if the person who lets is the proprietor the provision does not apply; and it must be let as furnished apartments,—so that, if let unfurnished, the provision will not apply.

[8] The word "limited" is not unambiguous. If it means "fixed" or "definite" periods, it appears to be hardly necessary, as houses where let are so let for fixed periods; while if it means "short"—a sense in which the word is colloquially used—it is wanting in definition.

[9] There is an apparent inconsistency here. It is expressly provided that the section shall not apply to common lodging-houses, but shall apply to boarding-houses for seamen and emigrants. By sec. 3, however, "common lodging-house" as used in this Act includes "any place where emigrants are lodged, and all boarding-houses for seamen, irrespective of the rate charged for lodging or boarding." The result is that these boarding-houses will come under both series of provisions. There is no lack of enactments for regulating seamen's lodging-houses. Not only do they come under the byelaws and other provisions relating to common lodging-houses and under the byelaws authorised by this section, but the Merchant Shipping Act, 1894, makes a specific provision with regard to such houses. Sec. 214 of that Act provides:—

"(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.

"(7.) In this section the expression 'local authority' means . . . in Scotland the local authority under the Public Health (Scotland) Act, 1867, and the Acts amending the same."

Tents and Vans.

Tents and vans used for human habitation.

73.[1]—(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 [2]is so overcrowded as to be injurious or dangerous to the health of the inmates, shall be a [3]nuisance liable to be dealt with summarily under this Act.

[1] This section is new. Similar provisions appeared in sec. 9 of the Housing of the Working Classes Act, 1885, and as that section was not repealed by the Housing of the Working Classes Act, 1890, they are still in force, but the clause containing the application of the 1885 Act to Scotland having been repealed, it may be that sec. 9 no longer takes effect in Scotland.

There does not seem to be much necessity for express provisions as to tents, vans, &c., seeing that such places are included in the word "premises" (see definition in sec. 3).

[2] An overcrowded house is a nuisance under sec. 16 (7).

[3] See note to heading of Part II. *supra*.

(2.) A local authority may make [4]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.

[4] For the provisions as to byelaws, see sects. 183–187.

(3.) Where the medical officer or [5]sanitary inspector has reasonable cause to believe either—

(*a*) that any tent, van, shed, or similar structure, used for human habitation, is [6]in such a state or so overcrowded as aforesaid, or that there is any contravention therein of any [7]byelaw made under this section; or

(*b*) that there is in any such tent, van, shed, or structure, any person suffering from an infectious disease, or that any infectious disease has recently existed therein,

he may enter at reasonable times [8]in the daytime, such tent, van, shed, or structure, and examine the same and every part thereof, and the medical officer may examine any person found therein, 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 an infectious disease, and the [9]provisions of this Act with respect to the entry into any premises by an officer of the local authority shall be in force for the purposes of this section.

[5] The sanitary inspector is one of the persons authorised by sec. 18 to enter premises where a nuisance is believed to exist, but under this sub-section his power is extended, and he is authorised to enter tents, vans, &c., and examine them with the view of ascertaining whether there is infectious disease therein, a power which as regards other premises can only be exercised by the medical officer in terms of sec. 45. The sanitary inspector is not authorised to examine the *persons* in the tent, &c.

[6] See sub-sec. 1 *supra*.

[7] See sub-sec. 2 *supra*.

[8] That is, between 9 A.M. and 6 P.M. See definition in sec. 3.

[9] See sec. 18.

(4.) [10]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.

[10] As to the general exemption of Government property from the provisions of this Act, see sec. 194.

Underground Dwellings.

Rules as to underground dwellings.

74.[1] It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be [2]occupied as a dwelling-place, any cellar or any vault or underground room, [3]whether conjoined or not with another apartment not having one of its external sides entirely above the level of the street or ground adjoining the same, and not having a window or other opening in such side, which cellar, vault, or room in every part shall be less in height from the floor to the ceiling than [4]eight feet in the case of houses built prior to the [5]commencement of this Act, or less in height than [4]nine feet in the case of houses built subsequently to the [5]commencement of this Act, or which shall be less than one-third of its height above the level of the street or ground adjoining the same, or otherwise shall not have three feet at least of its height from the floor to the ceiling above the said level, with an open area of two feet six inches wide from the level of the floor of such cellar, vault, or room, up to the level of the said street or ground, or

which shall not have appurtenant thereto the use of a water-closet [6]or earth-closet or privy and ashpit, or which shall not also have a glazed window made to open to the full extent of the half thereof, the area of which is not less than nine superficial feet clear of the frame, and a fireplace with a chimney or flue, or which cellar, vault, or underground room, being an inner or back vault or cellar let or occupied along with a front vault or room as part of the same letting or occupation, has not a ventilating flue (unless such inner or back vault or cellar shall be part of a house built before the [5]commencement of this Act) or which shall not be well and effectually drained by means of a drain, [7]constructed of a gas-tight pipe or otherwise effectually sealed, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, [8]after the local authority have given notice to the owners thereof that the letting or occupation of such cellars, vaults, or underground rooms, as dwelling-places is prohibited from that time forth, and it shall be [9]the duty of the local authority to issue such notices from time to time, as soon as is convenient, until such notice has been given with respect to every cellar, vault, or underground room, occupied as a dwelling-house within the district; and [10]it shall not be lawful, after such notice, to let or continue to let, or to [11]occupy or suffer to be occupied, separately as a dwelling-house any such vault, cellar, or underground room.

[1] This section re-enacts sec. 45 of the 1867 Act, with a few alterations.

[2] A definition of what constitutes or amounts to *occupation* is given in sec. 74 of the English Public Health Act, 1875, which provides that "any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act."

[3] The words "whether conjoined" to "opening in such side" are new, and replace the words in the 1867 Act, "not being entirely open on one or other of its sides." The effect of them is that the section applies to a cellar, vault, or underground room, whether it be let separately as a dwelling or along with another room, unless such other room has one of its external sides wholly above the level of the adjoining street or ground, and has a window or other opening in that side.

[4] In the 1867 Act these heights were seven and eight respectively. Sec. 172 of the Burgh Police Act, 1892, requires that in new houses every habitable room on the ground floor shall be at least 9½ feet in height, and every other room except attics 9 feet. There is no special provision in that Act as to underground rooms.

[5] That is, January 1, 1898. See sec. 2.

[6] The words "or earth-closet" are new. For the definition of "ashpit," see sec. 3. As to the size of windows in habitable rooms in burghs, see sec. 173 of the Burgh Police Act, 1892.

[7] The words "constructed of a gas-tight pipe or otherwise effectually sealed" are new.

[8] It will be observed that an offence under the section does not arise until notice has been given. As to service of notices, see sec. 159.

[9] See also sec. 17 as to the duty of the local authority to exercise their powers. The notices are to be issued "as soon as is convenient."

[10] As to the penalty for offences against this section, see sec. 75, and note 3 thereto.

As the section is somewhat complicated, it may be well to enumerate what requirements a cellar, vault, or underground room must fulfil in order that it may be legally let separately or occupied as a dwelling-place.

(*a*) Its height in every part from floor to ceiling must, if built before January 1, 1898, be 8 feet; if built thereafter, 9 feet.

(*b*) Not less than one-third of its height, or alternatively 3 feet of its height, must be above the level of the adjoining street or ground.

(*c*) It must have an open area 2½ feet wide from the level of the floor up to the street or ground level.

(*d*) It must have the use of a water-closet, earth-closet, or privy, and also an ashpit.

(*e*) It must have a glazed window of at least 9 square feet in area, and made to open to half its extent.

(*f*) It must have a fireplace with a chimney or flue.

(*g*) If it is an inner or back cellar or vault let or occupied along with a front vault or room, it must have a ventilating flue, unless the house was built before January 1, 1898.

(*h*) It must be effectually drained; the drain must either be a gas-tight pipe or be otherwise effectually sealed, and the top of the drain must be at least one foot below the level of the floor.

[11] To occupy any vault, &c., contrary to the section is an offence, but no penalty is provided for one who so occupies. See sec. 75 and note 3 thereto.

Penalty on letting underground dwellings.

75.[1] Every person who lets separately, or who knowingly suffers to be occupied for hire, or permits to be occupied as a dwelling, any vault, cellar, or underground room, contrary to the provisions of this Act, shall be liable to a penalty not exceeding twenty shillings for every day during which such vault, cellar, or room, is so occupied [2]after conviction of the first offence.

[1] This section is the same as sec. 46 of the 1867 Act.

[2] It is only for an offence continued after the first conviction that a penalty is provided. There seems to be no penalty for the first offence itself, but see sec. 163.

Cases in which two convictions have occurred within three months.

76.[1] Where two convictions against the provisions of this Act relating to the [2]overcrowding of any house, or the [3]occupation of any cellar, vault, or underground room, as a separate dwelling-place, shall have taken place within the period of three months, whether the person so convicted was or was not the same, it shall be lawful for the [4]sheriff to direct the closing of such premises for such time as he may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the local authority to permanently close the same in such manner as they may deem fit.

[1] This section re-enacts sec. 47 of the 1867 Act with the alteration referred to in note 4 *infra*.

[2] See sec. 16 (7).

[3] See sec. 74.

[4] Under the 1867 Act the power was vested in any magistrate or justice as well as in the sheriff. Sub-sec. 7 of sec. 16 is not one of the sub-sections with respect to which it is provided that proceedings must be before the sheriff, but if the closing of the premises is desired, it will be necessary to apply to the sheriff in terms of this section.

Vaccination.

Cost of vaccination.

77.[1] The local authority may defray the cost of vaccinating or [2]re-vaccinating such persons as to them may seem expedient.

[1] This section comes in place of sec. 57 of the 1867 Act, which empowered local authorities to defray the cost of vaccinating any persons save paupers or children of paupers. It made no mention of re-vaccination, but re-vaccination was constantly being carried out by local authorities.

Although a general power of vaccination is given by this section, it does not appear that the object of it is in any way to supersede the operation of the Vaccination Act, 1863 (26 & 27 Vict. c. 108). By that Act the duty of having every child vaccinated within six months of birth is laid on the parent or guardian, the parish council being responsible for pauper children as well as generally for seeing that the requirements of the Act are duly carried out. The Vaccination Act is imperative in its terms; this section is permissive, and will be most usually put in operation when an outbreak of small-pox has occurred or is threatened. The limitation in the 1867 Act to persons not paupers is discarded, and the local authority will be at liberty to vaccinate and re-vaccinate paupers and non-paupers

alike. But the local authority have no power to compel persons to submit to the operation.

Vaccination is special work, and cannot fairly be held to be covered by the salary of the medical officer under the Public Health Act. In fixing the remuneration, the local authority may safely be guided by the scale provided in sec. 2 of the Vaccination Act—viz., one shilling and sixpence for each vaccination within two miles of the medical officer's residence, and two shillings and sixpence when beyond two miles.—B.

[2] The importance of re-vaccination is explained in a Memorandum issued by the Local Government Board (England), in March 1888, and printed in their Report, 1889, App., p. 88. This Memorandum states :—

"The protection against small-pox, conferred by vaccination in infancy, becomes diminished as age advances, and the protection against attack appears to more rapidly diminish than the protection against death by the disease. Even before puberty a portion of the original protection is often lost; and this is particularly the case when the vaccination in infancy has been incomplete, having produced one vesicle instead of several, small vesicles instead of large.

"Before vaccination was discovered, small-pox was for the most part a disease of children. Among the unvaccinated members of a community it is so to this day. But among vaccinated people, owing to the protection of the children and the decline of this protection as life advances, such small-pox as now prevails is principally seen in adolescents and adults. . . .

"A properly performed re-vaccination gives a second measure of protection at least equal to the first. Whether the protective influence of this second vaccination becomes impaired, and if so, under what conditions, is not known. . . .

"Medical and sanitary officers, and the medical profession generally, are therefore invited to urge upon parents and guardians the importance of having their children re-vaccinated at the age of twelve years or thereabouts, and to urge upon all persons beyond this age, who have not yet been successfully re-vaccinated, the duty of obtaining for themselves the additional protection which may be had by this means."

PART IV.

[1]Prevention of Epidemic Diseases.

General power of Board to make regulations.

78.[2] The 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 any [3]epidemic, endemic, or infectious disease, and preventing the spread of such diseases, as well on the seas, rivers, and waters of Scotland, and on the high seas within three miles of the coast thereof, as on land; and may declare by what

[4]authority or authorities such regulations shall be enforced and executed.

[1] Part IV. of this Act supersedes and comes in place of Part III. of the 1867 Act, as amended by the Public Health Act, 1896, both of which are repealed by this Act, the latter, however, only in so far as it relates to Scotland. The effect of the 1896 Act was to assimilate the law in the two portions of the kingdom with respect to the matters dealt with therein, and in re-enacting the provisions of that Act in Part IV. hereof that principle has been adhered to. Under the 1867 Act, Part III. could not be put in force except by an Order of the Secretary of Scotland; this requirement was repealed by the 1896 Act, and is not re-enacted here.

[2] This section is taken from sec. 130 of the English Public Health Act, 1875. The regulations under this section are not very clearly differentiated from those under the following section, the matters enumerated in sub-sections 3 and 4 of the latter being somewhat similar to those dealt with in this section. It will be observed, however, that sec. 79 only comes into operation when any part of Scotland appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, while this section may be put in force at any time.

[3] These diseases are thus defined in Hoblyn's "Medical Dictionary": *Epidemic*, an epithet for a popular prevailing but not native disease, arising from a general and temporary cause, as excessive heat. *Endemic*, an epithet for diseases peculiar to the inhabitants of particular countries—*native* diseases, as ague in marshy countries, goître in Switzerland, &c. The term is somewhat analogous to the term *indigenous* as applied to plants. *Contagious.*—The terms *contagion* and *infection* generally denote the transmission of a poisonous principle. When the transmission is effected by a material substance, and is brought about by actual contact, the term *contagion* (immediate *contagion*) is employed; but when transmission is effected through the agency of the winds, and at a distance, the mode of communication is called *infection* (mediate contagion). In other words, when the poisonous principle is volatile, and communicable through the medium of the atmosphere, it is *infectious;* when this diffusibility is absent, it is *contagious.*

[4] See secs. 81, 83, and 85 as to the authorities which may be required to execute the regulations; also sec. 169 as to the assistance of the police. As to port local authorities, see Part X., secs. 172–176 *infra.*

Power of Board to make regulations for certain purposes.

79.[1] Whenever any part of Scotland appears to be threatened with or is affected by any formidable [2]epidemic, endemic, or infectious disease, the Board may make and from time to time alter and revoke regulations for all or any of the following purposes; (namely),

(1.) [3]For the speedy interment of the dead;
(2.) [4]For house to house visitation;
(3.) For the provision of [5]medical aid, dispensing of medicine, and [6]accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease;
(4.) For any such matters or things as may to them appear advisable for preventing or mitigating such disease;

and may by order declare all or any of the regulations so made to be enforced within the whole or any part or parts of the district of any local authority, and to apply to any [7]ships, whether in ports or on inland waters or on arms or parts of the sea within the jurisdiction of the Admiralty, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

The Board may, with the consent of the Treasury, [8]employ such additional clerks as may be necessary during such period, and the remuneration of such clerks, and the office expenses incurred under this Part of this Act by the Board, shall be defrayed out of money to be provided by Parliament.

[1] See note 2 to sec. 78 with regard to the distinction between this and the preceding section. The purposes for which regulations may be made under this section are those set forth in sec. 35 of the 1867 Act, together with others specified in sec. 134 of the English Public Health Act, 1875. In addition to the powers given by this Act to deal with infectious disease on board ships, sec. 324 of the Merchant Shipping Act, 1894, provides: "Her Majesty may by Order in Council make regulations—

"(i) For preserving order, promoting health, and securing cleanliness and ventilation on board emigrant ships proceeding from the British Islands to any port in a British possession; and

"(ii) For prohibiting emigration from any port at any time when choleraic or any epidemic disease is generally prevalent in the British Islands or any part thereof."

The Quarantine Act, 1825, 6 Geo. IV. c. 78, under which the Privy Council had power to deal with ships coming from infected ports, or having infectious cases on board, was repealed by the Public Health Act, 1896 (59 & 60 Vict. c. 19).

[2] See note 3 to sec. 78.

[3] See also the powers of the local authority under secs. 62 and 69.

[4] As to power of entry, see sec. 82.

[5] See sec. 66 (1) (*d*) as to power of local authority to supply medicines and medical attendance for persons suffering from infectious disease; also sec. 179 as to power to recover expenses of medical service performed on board ship.

[6] The word "accommodation" is unqualified, and will include hospital accommodation as well as any other kind of accommodation which may in the circumstances be required. Under sec. 180 power is given to make byelaws for removing to hospital persons brought into the district by ship who are suffering from infectious disease.

[7] See definition of "ship" in sec. 3. See also sec. 177, which provides that this Act shall apply to ships as if they were houses, and sec. 178, which provides for the jurisdiction of the local authority over ships. See also sec. 88 and note thereto; and the provisions of sec. 324 of the Merchant Shipping Act, 1894, quoted in note 1 *supra*.

[8] See sec. 11 as to general power to appoint clerks. The power to appoint a special medical officer given by sec. 32 of the 1867 Act is not repeated here.

Publication of regulations and orders.

80. [1]All regulations and orders made by the Board in pursuance of this Part of this Act shall be published in the *Edinburgh Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

[1] See also the requirements of the Rules Publication Act, 1893. As to proof of Orders and Regulations of Board, see sec. 5 (2) of the Local Government Act, 1894. See also case of *Sharp* v. *Leith*, Oct. 24, 1892, 20 R. (J.) 12.

Local authority to see to execution of regulations.

81. [1]The local authority of any district within which or part of which regulations so issued by the Board are declared to be in force, shall superintend and see to the execution thereof, and shall [2]appoint and pay such medical or other officers or persons, and [3]do and provide all such acts, matters, and things as may be necessary for mitigating any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require.

[1] The local authority is bound to see that the regulations are carried out, except in so far as the order lays the duty on any other authority. See sec. 78 and note 4 thereto, also sec. 85.

[2] The execution of these regulations appears to be regarded as work of an extraordinary nature, for which special provision must be made by the local authority. When additional medical and other officers are appointed, it will be advisable to make regulations under sec. 15 defining their duties and their relations to the permanent medical officer or officers of the local authority.

[3] The duty of the local authority is not confined to the execution of the regulations. They are also required to do everything that may be necessary for mitigating the disease.

Power of entry.

82.[1] The local authority and their officers shall have power of entry on any premises for the purpose of executing or superintending the execution of any regulations so issued by the Board as aforesaid.

[1] This section is taken from sec. 137 of the English Public Health Act, 1875, and takes the place of sec. 36 of the 1867 Act. As to power of entry for ascertaining the existence of nuisances see sec. 18, for ascertaining the existence of infectious disease see sec. 45, and for purposes of disinfection see sec. 47 (3). See also sec. 87 as to penalty for obstruction or violation of any regulation under this Part of the Act. Under this section no warrant is necessary.

Board may combine local authorities.

83.[1] The Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of this Part of this Act, and may prescribe the mode of such joint action, and of defraying the costs thereof.

[1] See also Part X. sects. 172–176 as to the constitution of port local authorities, the jurisdiction of the same, the delegation of duties to them, and the mode of meeting their expenses.

When regulation in force, overcrowded houses to come under common lodging-houses provisions.

84.[1] When any such regulation so issued by the Board is in force in any place, on the certificate of a medical officer, or of two duly qualified medical practitioners, or on the report of a sanitary inspector, or other sufficient evidence, that [2]any house, or part of a house is so overcrowded as to be dangerous to health, the local authority shall have power to [3]regulate the same according to the provisions of this Act in reference to common lodging-houses.

[1] This section reproduces sec. 37 of the 1867 Act.

[2] See definition of "house" in sec. 3. A house or part of a house so overcrowded as to be dangerous or injurious to health is a nuisance under sec. 16 (7), and may be dealt with under the powers of the local authority with regard to nuisances.

[3] See Part V. secs. 89 to 100. Sec. 92 gives power to the local

authority to make byelaws for, *inter alia*, fixing the number of lodgers which may be received in each such house and in each room therein; sects. 96 and 97 provide for dealing with infectious cases in such houses; and sec. 98 provides for access to such houses by the officers of the local authority.

Enforcement of regulations by Government officers, &c.

85.[1]—(1.) Regulations of the Board made in pursuance of this Part of this Act 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 this Part of this Act may provide for—

(*a*) the [2]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.

[1] This section is taken from sec. 1 of the Public Health Act, 1896, which, so far as it relates to Scotland, is repealed by this Act. See sec. 78, which empowers the Board to declare by what authority or authorities the regulations are to be enforced and executed.

[2] As to signals, see also note to sec. 88 *infra*.

(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.

Regulations to be uniform.

86. [1]In the making of the regulations referred to in this Part of this Act regard shall be had to the expediency of

uniform regulations throughout the whole of the United Kingdom.

[1] It is eminently advisable that regulations which affect shipping, and may place restrictions on imports, should be the same over the whole of the United Kingdom, but this provision will not affect the power of the Board under sec. 79 to make regulations which are applicable to Scotland alone, or to only a part of Scotland, or even to only a part of the district of a local authority.

Penalties.

87.[1] If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under this Part of 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 shall be recoverable with expenses at the instance of the Lord Advocate on behalf of the Board, or by any local authority with the consent of the Board, in any competent court.

[1] See sec. 146, which provides for cases where the local authority neglect or fail to carry out the regulations issued under this Part of the Act. See also sec. 163.

Transfer of power under 39 *&* 40 *Vict. c.* 36, *s.* 234.

88.[1] 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, shall be exerciseable by the Board, provided that any Orders of the Board shall apply to ships coming to any port in Scotland; and the penalties under that section may be sued for, prosecuted, and recovered with expenses at the instance of the Lord Advocate on behalf of the Board, or of any local authority with consent of the Board, by proceedings in any competent court.

[1] This section is taken from sec. 2 of the Public Health Act, 1896, which, so far as it relates to Scotland, is repealed by this Act. Sec. 234 of the Customs Consolidation Act, 1876, as amended by the Public Health Act, 1896, and by this Act, provides: "It shall be lawful for the Board, from time to time, by their order, to require that no person on board any ship coming to any port in Scotland from, or having touched at, any place out of the United Kingdom abroad, where they have reason to apprehend that yellow

fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, and any person so quitting any such vessel shall forfeit a sum not exceeding one hundred pounds; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties, or either of them, if incurred, shall be subject to reduction to any sum not exceeding one hundred pounds, and may be sued for, prosecuted, and recovered with expenses, at the instance of the Lord Advocate on behalf of the Board, or of any local authority with consent of the Board, by proceedings in any competent court."

PART V.

[1] Regulation of Common Lodging-Houses.

Common lodging-houses to be registered.

89.[2] The local authority shall cause a register to be kept, in which shall be entered the names and residences of the [3]keepers of all [4]common lodging-houses within the district of the local authority, and the situation of every such house, and the number of lodgers authorised according to this Act to be kept therein, and in each apartment thereof; [5]provided that the keeper of every common lodging-house shall apply to the local authority at or previous to the fifteenth day of May in every year for a renewal of such registration; and the local authority may [6]refuse to register any house which they do not consider suitable for the purposes of a common lodging-house, and as the keeper of a common lodging-house any person who does not produce to the local authority a [7]certificate of character in such form as the local authority shall direct, but [8]notwithstanding such certificate the local authority may, if they see fit, make further inquiry, and may thereafter refuse to register, if they are satisfied that the person applying is not qualified to be the keeper of a common lodging-house; and the local authority may from time to time, with the approval of the Board, [9]raise or diminish the sum payable per night, according to which, as in this Act mentioned, it is ascertained whether a house or

part thereof is a common lodging-house, but so as not to exceed sixpence per night.

[1] The provisions of Part V. secs. 89–100 of this Act correspond to Part V. secs. 59–70 of the 1867 Act. Several alterations have been made in the law, the most notable being—(1) Registration must now be renewed annually; (2) the local authority may refuse to register if they are satisfied that the applicant is not qualified; and (3) there is now a means of removing a house or keeper from the register if the local authority are of opinion that the house or the keeper has ceased to be suitable.

Misapprehensions being frequently entertained regarding Part V. of the 1867 Act, the Board of Supervision in a circular explained that the whole of the enactments in that part of the statute were compulsory, with the exception of the permissive power to make rules and regulations; that in the great majority of parishes there must be one house, or more, falling under the statutory appellation of "common lodging-house," and that, with regard to all such houses, the imperative enactments of the statute applied; further, that it was in every case obligatory on the local authority to keep a register, and on the keepers of such houses to comply with the provisions of the statute.

They also pointed out that these very useful provisions would be altogether defeated if the local authority failed to exercise a strict supervision over the houses referred to, and to prosecute the keepers who disregarded the statutory requirements. They also suggested to the local authority in every district where such houses existed the expediency of exercising their powers under the Act, by making rules and regulations, to be submitted to the Board, for the well ordering of such houses, the separation of the sexes therein, the promotion of cleanliness and ventilation, &c. The Board added that they were satisfied that a strict enforcement of the laws relating to common lodging-houses would have a beneficial effect, both upon the health of the resident population and upon the habits of the vagrant classes who frequent them.—*Board's Circular*, December 16, 1869; Report, 1870, App., p. 57.

In burghs contraventions of the provisions of Part V. may be prosecuted as police offences under sec. 153.

There is no provision under this Act enabling a local authority to erect or provide a common lodging-house. Under Part III. of the Housing of the Working Classes Act, 1890, power is given to the local authority, subject to certain restrictions, to provide lodging-houses for the working classes. The Board were asked by a local authority whether they would be entitled under that enactment to provide a common lodging-house for the accommodation of tramps and vagrants. The following was the view expressed by the Board: "If the persons for whom the accommodation is required are 'the working classes' in the sense of the Act of 1890, then there is provision in that Act for the erection of lodging-houses for them by the local authority. But the tramp or vagrant class cannot be said to belong to the working or labouring population for whose benefit such accommodation was intended. The fact that some of the conditions which under the Act justify the

erection of such accommodation are that the accommodation is necessary in the area in question, that there is no probability of its being otherwise provided, and that it is prudent from a financial point of view to undertake it, shows that it was not the vagrant class which was in contemplation of the legislature. To house tramps and vagrants with the working classes in such buildings seems quite against the spirit of the Act. The buildings appear to be intended for permanent occupation, not as a roof for the night."

[2] This section re-enacts sec. 59 of the 1867 Act, with certain alterations, as to which see preceding note.

[3] See definition of "keeper of a common lodging-house" in sec. 3.

[4] See definition of "common lodging-house" in sec. 3. They are to be distinguished from houses let in lodgings, which may be regulated under sec. 72. See sub-sec. 2 of that section and note 9 thereto as to seamen's boarding-houses.

[5] This proviso is new.

[6] The provision as to refusal to register a house which they consider unsuitable is new, but as sec. 60 of the 1867 Act, which is followed by sec. 90 of this Act, required that a house had to be "approved" for the purpose of a common lodging-house before it could be so used, the local authority had in this indirect way the power to refuse to register a house.

[7] The certificate under the 1867 Act had to be signed by three inhabitant householders of the parish assessed for relief of the poor. This Act contains no such requirement.

[8] Under the 1867 Act there was considerable doubt if the local authority could refuse to register a keeper who produced the statutory certificate, even if they were satisfied that he was an unsuitable person. The new provision enables them to do so.

[9] The sum payable per night, according to which it is ascertained whether a house is a common lodging-house, is fixed by sec. 3 at fourpence. Under this section the local authority may, with the approval of the Board, raise or diminish this sum, but so as not to exceed sixpence. The Board have in many cases approved of its being raised, never of its being diminished.

No lodger to be received in common lodging-house till it has been inspected and registered.

90.[1] It shall not be lawful to keep or use as a common lodging-house any house, or to receive or retain any lodgers therein, unless such house shall have been inspected for that purpose by the [2]inspector of common lodging-houses for the district, and [3]approved by the local authority, and shall have been and be registered as by this Act provided: and if any person shall contravene this enactment he shall be [4]guilty of an offence under this Act, and [5]if, in the opinion of the local authority, any common lodging-house on the register, or the keeper thereof, shall cease to be suitable

for the purpose, the local authority may [6]present a petition to the sheriff for authority to remove such house from the register either permanently or until there is a change of circumstances, and the sheriff, if he thinks fit, may grant warrant accordingly.

[1] This section re-enacts sec. 60 of the 1867 Act, with the important addition admitting of a house being removed from the register.

A man whose premises were registered as a common lodging-house let to a monthly tenant two of the rooms which had a separate access from the street, cut off the communication between these rooms and the rest of the house, and returned the tickets for these rooms to the local authority. Lords Young and M'Laren expressed the opinion that, while he was entitled to let the two rooms separately, he could not do so consistently with retaining his licence, and that his conduct in doing so would have justified the local authority in cancelling his licence. (*Gunn* v. *Cadenhead*, May 25, 1888, 15 R. (Justiciary) 57 ; P.L.M. 1888, p. 351.)

[2] The sanitary inspector is *ex officio* the inspector of common lodging-houses. See sec. 15.

The Board have issued model byelaws for common lodging-houses, to which they have prefixed a number of recommendations. These indicate the requirements which that Board consider ought to be fulfilled before a house should be placed on the register.

"Before any premises are placed upon the register of common lodging-houses, it is the duty of the local authority to satisfy themselves that such premises are in every respect suitable for the purpose.

"With this view the attention of the local authority should be directed to the following points :—

"1. *Structure and Drainage.*—The premises should be well drained, and the foundations of the buildings thoroughly dry. The structure should be substantial, and the walls, roof, and floors in good repair. Suitable rhones, gutters, and spouts, properly placed and fixed, and discharging into disconnecting or ventilating traps, ought also to be in connection with the roof and outside walls. Any area or yard should be well paved, or otherwise have a surface which can be easily swept and cleansed.

"2. *Internal Arrangements.*—The suitability of the internal arrangements must be carefully considered, special attention being paid to the situation, construction, and state of repair of sinks, basins, water-closets, and cisterns. The waste and soil pipes should be efficiently disconnected and ventilated.

"3. *Water Supply.*—The water supply must be of good quality, and in quantity proportionate to the number of lodgers which the house is registered to accommodate. Where the water is stored in cisterns, these should be properly situated, covered, and not exposed to pollution from sewer-gas or otherwise. Cisterns for the domestic supply should be separate from those provided for w.-c.'s. Where the supply is derived from wells, the local authority should satisfy themselves that it is secure from any danger of contamination.

"4. *Cubic Space.*—The proper amount of cubic space for each lodger will vary according to circumstances. In rooms of good construction, and having ample means of ventilation, not less than 300 cubic feet for each person may be adequate provision; but in some cases, as, for example, in a room where there is no fireplace, or in premises situated in a crowded neighbourhood, a larger provision will have to be made.

"5. *Ventilation.*—All rooms, passages, and stairs should possess means of complete ventilation. All windows should be of adequate size, and able to be opened to the full extent. No room should be registered which has not a window opening directly to the outer air.

"6. *Privy Accommodation.*—Closet or privy accommodation should be proportionate to the number of lodgers which the house is registered to accommodate, and should be in the proportion of not less than one closet or privy for every twenty lodgers. These conveniences should be in suitable situations, of proper construction, and in good repair.

"7. *Washing Accommodation.*—Washing accommodation should be ample, and provided in a place set apart for the purpose.

"8. *Kitchen.*—No kitchen or apartment used as such should be registered as a sleeping apartment."

[3] See sec. 89 and note 6 thereto as to power of local authority to refuse to register an unsuitable house.

[4] As to the penalty for offences under this Act, see sec. 163.

[5] The power of removing a house or keeper from the register is new. Under the 1867 Act the only circumstances in which such removal might take place were when a proper water-supply was not provided, or when a keeper was convicted of a third offence.

[6] As to applications to the sheriff, see sec. 154.

Evidence of register.

91.[1] A copy of an entry made in a register kept under this Act, purporting to be certified by the person having the charge of such register to be a true copy, shall be received in all courts and on all occasions whatsoever as evidence, and shall be *primâ facie* proof of all things therein registered, without the production of the register, or of any document, act, or thing, on which the entry is founded, or proof of the signature; and every person applying at a reasonable time shall be furnished by the [2]person having such charge with a certified copy of any such entry for payment of twopence.

[1] This section simply repeats sec. 61 of the 1867 Act.

[2] That is, the person having charge of the register. In general, it will be the sanitary inspector or the clerk.

Power to local authority to make byelaws.

92.[1] The local authority may from time to time make [2]bye-laws respecting common lodging-houses within its jurisdiction for the keeping and well ordering of such houses, and for the separation of the sexes therein, and for fixing the number of lodgers which may be received in each such house, and in each room therein, [3]and for enforcing sufficient privy or water-closet accommodation and other appliances and means of cleanliness in proportion to the number of lodgers and occupiers, as also proper drainage and ashpits for such houses, and for promoting the cleanliness and ventilation of such houses, and with respect to the [4]inspection thereof, and the conditions and restrictions under which such inspection may be made.

[1] This section comes in place of sec. 62 of the 1867 Act, which it re-enacts with a number of additions. It omits the provisions as to advertisement and confirmation, these being now contained in separate clauses applicable to all byelaws.

[2] For the provisions as to byelaws, see secs. 183–187. The Board have issued model byelaws for common lodging-houses.

Seamen's boarding-houses are included in common lodging-houses under the definition in sec. 3. For the special provisions regarding byelaws applicable thereto see note 9 to sec. 72 *supra*.

[3] The words "and for enforcing" to "ashpits for such houses" are new, and represent additional matters which may be regulated by byelaws. Local authorities would be well advised, however, not to depend on byelaws for securing sufficient privy or water-closet accommodation or proper drainage and ashpits. These matters should be seen to before the house is placed on the register.

[4] As to access for purposes of inspection, see sec. 98 and case there cited.

Copy of byelaws, to be furnished gratis to keepers.

93.[1] A copy of all such byelaws made by the local authority in pursuance of this Act, when [2]confirmed as hereinafter provided and printed, shall be furnished gratis to every keeper of a common lodging-house, and such keeper shall be bound to keep a copy thereof hung up in some conspicuous place in each room in which lodgers are received.

[1] This section replaces sec. 63 of the 1867 Act.

[2] As to confirmation of byelaws, see sec. 185; and as to printing the same and delivering copies to ratepayers, see sec. 186.

Power to local authority to require additional supply of water.

94.[1] Where it appears to the local authority that a common lodging-house is without a proper supply of water [2]or without sufficient privy or water-closet accommodation for the use of the lodgers, and that such a supply of water can be furnished thereto at a reasonable rate, the local authority may, by notice in writing, require the owner or keeper of the common lodging-house, within a time specified therein, to [3]obtain such supply, and to execute all works necessary for those purposes; and if such notice be not complied with accordingly, the local authority may remove the common lodging-house from the register until it be complied with. [4]It shall be competent to any person interested to appeal to the sheriff against any resolution of the local authority removing a common lodging-house from the register under this section; but in the case of a district other than a burgh the appeal to the sheriff shall only arise after the [5]county council has disposed of any appeal which may have been brought before them.

[1] This section takes the place of sec. 64 of the 1867 Act, which it re-enacts with the addition of the provisions as to want of privy or water-closet accommodation, and as to appeal to the sheriff.

[2] The words "or without sufficient privy or water-closet accommodation" are new, the object apparently being to give the local authority power to require such accommodation to be provided; but as there is no provision enabling the local authority to call upon the owner or occupier to provide such accommodation, it is doubtful if that object is secured.

[3] See sec. 125 of this Act as to the power of the local authority of a landward area to compel owners to obtain a supply of water for their houses; also sec. 246 of the Burgh Police Act, 1892, for the corresponding provision in burghs.

[4] The provision as to appeal to the sheriff is new. "Any person interested" may appeal; it does not appear, however, that any person other than the owner or keeper would be able to qualify an interest.

[5] As to power of five ratepayers to appeal to the county council, see sec. 17 (2) (*c*) of the Local Government Act, 1889. The provision that "any person interested" may appeal to the sheriff, and that such appeal shall only arise after the county council have disposed of any appeal taken to them, suggests the implication that "any person interested" may appeal to the county council.

Power to local authority to order reports from keepers.

95.[1] The keeper of a common lodging-house shall from time to time if required by any order of the local authority served on such keeper, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

[1] This section re-enacts sec. 65 of the 1867 Act in the same words.

Local authority may remove sick persons to hospitals, &c.

96.[1] When a person in a common lodging-house is ill of any infectious disease, the local authority may, [2]without further warrant than this Act, cause such person to be removed to a hospital or infirmary, with the consent of the authorities thereof, where different from the local authority, and on the certificate of the medical officer, or of any legally qualified medical practitioner, that the disease is infectious, and that the patient may be safely removed, [3]but if removal be considered dangerous to life by such officer or medical practitioner, and is so certified, no lodger shall be admitted to such lodging-house until it is certified free from infection; [4]and the local authority may, so far as they think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and [5]may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof.

[1] This section re-enacts sec. 66 of the 1867 Act with a number of variations. The phraseology is permissive, but the succeeding section shows that there is a duty to remove in such cases. See note 1 to that section as to the overlapping provisions.

[2] The words "without further warrant than this Act" are new, and appear to be unnecessary, as it does not seem to have been disputed that the local authority had power, under the 1867 Act, to remove without a warrant. As to power to remove under warrant, see sec. 54. The removal is to be directed by the medical officer. See sec. 97.

[3] In the 1867 Act there was no provision setting forth the pro-

cedure to be followed if the patient could not be removed. As to power to remove persons other than the patient, see sec. 54; also sec. 47 (4).

[4] As to power to disinfect or destroy articles which have been exposed to infection, see sec. 47.

[5] As to provisions respecting compensation, see sec. 164.

As to giving notice of fever, &c., occurring.

97.[1] The keeper of a common lodging-house shall, when a person in such house is ill of any infectious disease, give immediate [2]notice thereof either to the medical officer or to the [3]inspector of common lodging-houses, who shall forthwith inform the medical officer, and if he is satisfied that the person is suffering from an infectious disease, he shall cause the patient to be [4]removed without delay, and shall [5]cause the premises to be disinfected.

Provided always, that if the medical officer considers the patient not fit to be removed with safety, until it is certified by him that the premises are free from infection the house shall not be used as a common lodging-house, except such part thereof as may be certified by the medical officer to be free from infection, and the local authority may make [6]provision for the temporary shelter or house accommodation, and, if necessary, maintenance at a rate not exceeding the same payment per night as usually paid by persons frequenting said lodging-house while such persons are prevented from returning to such common lodging-house.

[1] This section comes in place of sec. 67 of the 1867 Act, but differs materially therefrom. Its provisions repeat to some extent those of the preceding section, but with so many differences that it is difficult to reconcile the two. Under sec. 96 it is the local authority who are empowered to remove the patient, under sec. 97 it is the medical officer. The solution seems to be that the local authority are to act through their medical officer. Again, under sec. 96 the removal may be conducted on a certificate either of the medical officer or of any legally qualified practitioner, while under sec. 97 the medical officer alone is charged with the responsibility. On the question whether the patient can safely be removed the local authority would no doubt be guided by the advice and certificate of their medical officer, who would give due weight to any considerations that might be urged by the medical practitioner, if any, who had seen the case. Further, under sec. 96, when the patient is not removed, the prohibition of receiving other lodgers into the house is unqualified; while under sec. 97 lodgers may be admitted to any part of the house which may be certified by the medical officer to be free from infection.

[2] See also sec. 3 (1) (*a*) of the Infectious Disease (Notification) Act, 1889, which necessitates a notice to the medical officer, and is not complied with by intimation to the sanitary inspector.

[3] That is, the sanitary inspector. It is his duty to inform the medical officer at once.

[4] No warrant is required. See sec. 96.

[5] As to disinfection of premises, see sec. 47; and as to the disinfection or destruction of the bedding and clothing, see sec. 96, also secs. 47 and 48. As to compensation, see secs. 96 and 164.

[6] See secs. 47 (4) and 54 as to the power of the local authority to provide temporary accommodation for persons dislodged on account of infectious disease. The provision of this section is not very clearly expressed. It is not stated for whom accommodation and maintenance may be provided, and even assuming that the persons to be so provided are those "frequenting said lodging-house," it is not clear whether the temporary accommodation is to be confined to those who have been actually turned out of the house or may be extended to those who habitually resorted to the house at more or less frequent intervals, although they were not resident there when the house was closed.

Inspection.

98.[1] The [2]keeper of a common lodging-house shall, at all times when required by any officer of the local authority, give him free [3]access to such house and [4]every part thereof.

[1] This section repeats sec. 68 of the 1867 Act in the same words.

[2] See definition of "keeper of a common lodging-house" in sec. 3.

[3] See sec. 92, under which byelaws may be made for the inspection of common lodging-houses and the conditions and restrictions under which such inspection may be made.

[4] Access may be required to all parts of the premises, whether registered or not. A keeper of a common lodging-house refused access to a room which was not registered, the only access to which was through one of the registered rooms. *Held* that the room was subject to inspection, and that the keeper was rightly convicted. (*Gunn* v. *Cadenhead*, May 25, 1888, 15 R. (Justiciary) 57; P.L.M., 1888, p. 351.)

Cleansing.

99.[1] The keeper of a common lodging-house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, water-closets, earth-closets, privies, ashpits, cesspools, and drains thereof, to the satisfaction of the inspector, and so often as shall be required by or in accordance with any regulation [2]or byelaw of the local authority, and shall well and sufficiently, and to the like satisfaction, lime-wash the walls and ceilings thereof in the

first week of each of the months of April and October in every year, and at such other times as the local authority may by special order appoint or direct.

[1] This section re-enacts sec. 69 of the 1867 Act with one necessary alteration.

[2] The words "or byelaw" are new, being rendered necessary by the change of the expression "rules and regulations" to "byelaws" in sec. 92.

Conviction for third offence, &c., to disqualify persons from keeping common lodging-houses.

100.[1] Where a keeper of a common lodging-house is convicted of a third or any subsequent offence under this Act, it may be adjudged as the punishment or part of the punishment for such offence that he shall not, at any time within five years, or any shorter period after such conviction, keep or have or act in the care or management of a common lodging-house.

[1] This section re-enacts sec. 70 of the 1867 Act, the last words of which are omitted as unnecessary.

Offences against the provisions of the Act or of the byelaws relating to common lodging-houses may be prosecuted as police offences (see sec. 153). Under the new provisions contained in secs. 89 and 90, the local authority would also have power to refuse to register, or to apply to the sheriff to remove from the register, a person who had proved himself unfit for the position of keeper of a common lodging-house.

PART VI.

SEWERS, DRAINS, AND WATER-SUPPLY.

[1]SEWERS AND DRAINS.

Sewers to be vested in local authority, &c.

101.[2] All sewers existing within a district and [3]not being private property, or not being and continuing under the management of persons appointed by the Crown or by or in pursuance of any Act of Parliament [4]or provisional order, together with all manways, lampholes, ventilating shafts, cesspools, surface gratings and their connections, sluices, and all appliances pertaining thereto, shall be [5]vested in the local authority: [6]Provided always, that nothing in this Act contained shall affect the rights of any person or persons to

the property or management of any sewers in virtue of any existing local or general police statute.

[1] In ordinary usage the word "drain" is a general term, including all pipes or channels, whether on the surface or underground, and whether used for rain-water, agricultural drainage, or sewage; while "sewer" is usually applied to the main underground structures for carrying sewage. No definition of the words has been given in the Public Health Acts relating to Scotland, but in the English Act of 1875, sec. 4, the two words are thus defined:—

"Drain" means 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 therefrom 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.

"Sewer" includes sewers and drains of every description except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act.

(See Glen, pp. 7, 27; Lumley, p. 18.) Roughly speaking, then, a *drain* in the sense of the English Public Health Act conveys sewage from a single house, and becomes a *sewer* as soon as two or more houses are connected with it. This distinction, though not expressly recognised, is in a general way observed both in this Act and in the Burgh Police Act. Sometimes, however, the word "drain" seems to include "sewer," as in sec. 119 of this Act.

The provisions of the Burgh Police Act as to public sewers are contained in secs. 215–237; those as to drainage of houses in secs. 238–245.

[2] This section re-enacts sec. 71 of the 1867 Act with certain additions and alterations.

[3] Questions may arise, and have already arisen, as to whether a sewer is private property or not. In one case a local authority took proceedings for the removal of a nuisance consisting of a ditch into which sewage flowed. The sheriff held that the author of the nuisance had not been discovered, and ordained the local authority themselves to remove the nuisance, which they did by enclosing the flow of water in a pipe and constructing two cesspools. Subsequently, on an action by an inferior heritor concluding for interdict against the local authority discharging sewage into the stream, and so rendering it unfit for primary purposes, it was held by a majority of seven judges—*diss.* Lord Justice Clerk (Moncreiff) and Lord Craighill, and *rev.* judgment of Lord Adam—that as the local authority were not owners of the drain, and as it formed no part of a drainage system under their control, the action was wrongly directed against them. (*Barony Parochial Board* v. *Local Authority of Cadder*, Jan. 26, 1883, 10 R. 510; P.L.M. 1883, p. 179.)

In *Glasgow, Yoker, & Clydebank Railway* v. *Macindoe*, Nov. 20, 1896, 24 R. 160, a dispute arose as to whether a burn which passed through a police burgh, and which was to some extent polluted by sewage, was a sewer vested in the commissioners by virtue of sec.

215 of the Burgh Police Act, 1892. (See note 6 *infra*.) The Lord Ordinary (Kyllachy) held that the burn was not a sewer in the sense of that section, and expressed the opinion that "what is meant in sec. 215 by a sewer or drain is an *opus manufactum*," and that the Act "carefully distinguishes between sewers—that is, made or built drains—on the one hand, and natural watercourses, polluted or unpolluted, on the other." On appeal, the judgment of the Lord Ordinary was affirmed, but the Court left it an open question whether sec. 215 applied only to *opera manufacta*. As to cases where a watercourse has come to be used as a sewer, see *Jameson* v. *Police Commissioners of Dundee*, Dec. 10, 1884, 12 R. 300; and *Magistrates of Portobello* v. *Magistrates of Edinburgh*, Nov. 9, 1882, 10 R. 130.

[4] The words "or provisional order" to "appliances pertaining thereto" are new.

[5] As to the rights implied in ownership of sewers, and the interest in the soil thereby conferred on the local authority, see Glen, p. 48; Lumley, p. 34.

[6] This proviso will apparently save the rights of burgh commissioners under sec. 215 of the Burgh Police Act, 1892, which provides that all sewers and drains within the burgh "except private branch-drains, drains made and used for the purpose of draining, preserving, or improving land, and sewers made under any local or private Act of Parliament, shall vest in and belong to and be entirely under the management and control of the Commissioners."

Power to purchase sewers.

102.[1] The local authority may, in terms of sections one hundred and forty-four and one hundred and forty-five of this Act, acquire the rights and powers vested in any person to make sewers or to use any sewer, with or without the buildings and other things thereto pertaining. [2]Provided that they shall make compensation for the rights so acquired, and shall also make compensation to the proprietors and occupiers of any lands and heritages which may be damaged by reason of the exercise of the powers hereby conferred, in terms of this Act.

[1] This section re-enacts sec. 72 of the 1867 Act, with the necessary alterations. Under sec. 216 of the Burgh Police Act the commissioners have power to acquire rights and powers to make and use sewers, but there is no provision enabling them to do so compulsorily.

[2] As to compensation, see sec. 164 and sec. 145 (11).

Power to make sewers.—Sewers to be cleansed.

103.[1] The local authority shall [2]have power to construct within their district, and also [3]when necessary for the purpose of outfall or distribution [4]or disposal or treatment of

sewage, without their district, such [5]sewers as they may think necessary for keeping their district properly cleansed and drained, and may carry such sewers through, across, or under any public or other road, or any [6]street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any [6]street or road, and after reasonable notice in writing (if upon the report of a surveyor it should appear to be necessary), [7]into, through, or under any [8]lands whatsoever, and from time to time [9]to enlarge, lessen, alter, arch over, or otherwise improve, or to close up or destroy, all sewers [10]vested in them, provided no nuisance is created by such operations; and [11]if any person is thereby deprived of the lawful use of any sewer, the local authority shall provide another sufficiently effectual for his use. The local authority shall cause their sewers to be so [12]constructed, maintained, kept, and cleansed as not to be a [13]nuisance, and for the purpose of cleansing and emptying them may [14]construct and place, either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary, and may, subject to the provisions of the [15]Rivers Pollution Prevention Acts, cause such sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or, if necessary for the purpose of outfall or distribution or disposal or treatment of sewage, without their district, and [16]to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, [17]but so as not to create a nuisance.

[1] This section re-enacts, with a few alterations, sec. 73 of the 1867 Act. It may be made use of by both burghal and landward local authorities. It provides a general power for constructing sewerage works either for the whole district of the local authority or for any special drainage district formed under sec. 122 of this Act. In burghs powers similar to those of this section are given to the commissioners by sec. 219 of the Burgh Police Act, 1892; accordingly the commissioners of a burgh may elect to proceed under either one Act or the other. One of the defects of the Burgh Police Act is that it gives no power to construct works beyond the burgh, so that if it should be necessary for the purpose of outfall or otherwise to go beyond the burgh, the commissioners will have to proceed under this Act, or obtain a local act or provisional order. The commissioners of a burgh carried out certain drainage works under the Police Act, and finding it necessary afterwards to provide purification works, they had to carry out that part of the scheme under the Public Health Act. (See *Commissioners of Kirkintilloch* v. *M'Donald*, Oct. 31, 1890, 18 R. 67; 28 S.L.R. 57; P.L.M. 1891, p. 92.)

The construction or extension of drainage works being "capital works" in the sense of sec. 18 (7) of the Local Government Act, 1889, proceedings under this section cannot be undertaken in a landward district without the consent of the Standing Joint Committee in terms of sec. 18 (6) of that Act.

Sec. 139 gives power to borrow for the purposes of this section.

See also sec. 28 and the power there given to make sewers in certain circumstances.

[2] The terms of this section are enabling only, but under sec. 17 it is the duty of the local authority to put in force the powers vested in them relating to public health so as to secure the proper sanitary condition of all premises within their district, consequently if the exercise of the powers here given is necessary in the interests of the sanitation of the district, it is the duty of the local authority to make use of them, and they may be compelled to do so under sec. 146 and following sections. The corresponding section of the Burgh Police Act, 1892 (sec. 219), is imperative in its terms.

[3] The local authority are not empowered to construct sewers outwith their district save when such are necessary for the purpose of outfall, or distribution, or disposal or treatment of sewage. See note 1 as to the absence in the corresponding section of the Burgh Police Act of power to go beyond the burgh. As to procedure when works are to be constructed outwith the district, see secs. 104–106. See also sec. 234 of the Burgh Police Act, which empowers the local authority of any district to connect their drains or sewers with the sewers of the commissioners.

[4] The words "or disposal or treatment" are new, and extend the powers of the local authority. Secs. 144 and 145 empower the local authority to acquire lands, either by agreement or otherwise, for the purposes of this section.

[5] See note 1 to sec. 101 *supra* as to meaning of "sewer." It does not appear that the sewers authorised by this section must of necessity be underground. The Board of Supervision were of opinion that open or surface drains might be constructed under the corresponding section of the 1867 Act.

[6] See definition of "street" in sec. 3. See also sec. 107 as to sewers passing under or across railways or canals, and sec. 189, which protects navigation, irrigation, and other interests.

[7] The local authority have power to carry sewers "into, through, or under any lands whatsoever" without the necessity of acquiring the lands. All that is required is reasonable notice in writing to the owner and occupier, and a report by a surveyor that the course resolved on is necessary. It has been held in an English case that the word "necessary" here must be reasonably interpreted. In such a case it might mean "necessary for the efficient discharge of the duty in the way which is most for the public interest;" although some other course might be quite practicable. (Justice Stirling, in case of *Lewis* v. *Weston-super-Mare Local Board*, November 1888, *Sanitary Record* for 1888–89, p. 242; L.R. 40 Ch.D. 55; 59 L.T. (N.S.) 769; Glen, p. 58.)

Sec. 219 of the Burgh Police Act, 1892, empowers the commissioners to carry sewers "into or through any enclosed or other lands, making full compensation to the owners and occupiers

thereof," and provides that "compensation under that section shall be settled in the same manner as compensation for land to be taken under the provisions of the Lands Clauses Acts is directed to be settled." Under the present section it does not appear that compensation is to be made to the owners or occupiers of the lands into, through, or under which a sewer is made in terms of this section, but compensation will have to be made for any damage done, as directed by sec. 164 *infra*.

As to power of entry for the purposes of this section, see sec. 109.

[8] See definition of "land" in sec. 3. By the Interpretation Act, 1889, sec. 3, the word "land" includes "messuages, tenements, and hereditaments, houses, and buildings of any tenure."

[9] Similar powers are given to the commissioners in burghs by sec. 224 of the Burgh Police Act, 1892. Sec. 139 of this Act empowers local authorities to borrow for enlarging or reconstructing sewers.

[10] As to vesting of sewers in the local authority, see sec. 101.

[11] A similar provision is contained in sec. 225 of the Burgh Police Act, 1892, and it is therein further provided that, if the commissioners do not restore the sewer or provide another, they shall forfeit to the person aggrieved a sum not exceeding forty shillings for every day during which he is deprived of the sewer.

[12] Under sec. 115 all sewers and drains must be sufficiently trapped and ventilated by the persons to whom they severally belong.

[13] For the meaning of the word "nuisance," see note 1 to heading of Part II. *supra*.

[14] Secs. 144 and 145 give power to acquire land, either compulsorily or by agreement, for the purposes of this section, thus supplying a want in the Act of 1867, which was frequently felt.

[15] See particularly sec. 3 of the Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75, which prohibits the discharge of sewage into streams; also *Magistrates of Portobello* v. *Magistrates of Edinburgh*, Nov. 9, 1882, 10 R. 130.

[16] See sec. 108 as to the power of utilising sewage.

[17] The local authority are not entitled in any circumstances to create a nuisance. If they do, action may be taken against them under sec. 146. But such action is not competent until a nuisance actually exists; the mere allegation that it will arise is insufficient; the court has no power to review the resolution of a local authority on a complaint that the scheme may prove a nuisance. (*Steel* v. *Commissioners of Gourock*, July 11, 1872, 10 M. 954; P.L.M. 1873, p. 84.) But see also the observations of Lord Chancellor Selborne and Lord Halsbury in *Fleming* v. *Hislop*, March 1, 1886, 13 R. (H.L.) 43.

A watercourse may be a nuisance under sec. 16 (2) of this Act by the discharge into it of sewage. But it does not appear that the word "nuisance" is here used in the restricted sense of a nuisance which may be dealt with summarily in terms of this Act. It includes a nuisance at common law, and as the powers of riparian proprietors at common law are probably more effective than any of the statutory provisions for preventing the pollution of streams, the local authority by discharging sewage into streams incur the risk of

being interdicted. (See *Milne Home* v. *Police Commissioners of Duns*, June 10, 1882, 9 R. 924; *Moncreiffe* v. *Police Commissioners of Perth*, June 4, 1886, 13 R. 921; also *Caledonian Railway Company* v. *Baird*, June 14, 1876, 3 R. 839.) For a case where it was held that irrigation with refuse water from baths was not a nuisance, see *Lady Willoughby d'Eresby's Trustees* v. *Strathearn Hydropathic Co.*, Oct. 21, 1873, 1 R. 35.

Notice to be given before commencing sewage works without district.

104.[1] A local authority shall, three months at least before commencing under the provisions of this Act the construction of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more newspapers circulating in the [2]district, or by the posting of handbills throughout the district where the work is to be made. Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes and the public roads and streets and other lands (if any) through, across, under, or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be [3]served on the [4]owners or reputed owners, tenants or reputed tenants, and [4]occupiers of the said lands, and on [5]the local authority and county council where such district is situate.

[1] This provision is new, having no counterpart in the 1867 Act. It is taken from sec. 32 of the English Public Health Act, 1857. The power of the local authority to construct sewers or other works for sewage purposes without their district is confined to cases where it is necessary to go beyond the district for the purpose of outfall, or distribution, or disposal, or treatment of sewage, and it is only in these cases that the provisions of this and the two succeeding sections will be in force.

[2] That is, the district where the work is to be made.

[3] As to the service of notices, see sec. 159.

[4] See definitions of "owner" and "occupier" in sec. 3.

[5] The last part of the section is not very clearly expressed, but seems to mean that the notice is to be served on the local authority of the district and the county council of the county within which the sewer or other work is to be made.

In case of objection, work not to be commenced without sanction of Board.

105.[1] If any such owner, tenant, or occupier, or any such local authority or county council, or any other owner, tenant, or occupier who would be affected by the intended work, objects to such work and serves notice in writing of such objection on the local authority at any time within the [2]said three months, the intended work shall not be commenced without the sanction of the Board after [3]such inquiry as hereinafter mentioned, unless such objection is withdrawn.

[1] This section is taken from sec. 33 of the English Public Health Act, 1875.
[2] See preceding section.
[3] See following section.

Inspector to hold inquiry and report to Board.

106.[1] The Board may, on application of the local authority desirous of constructing said work, [2]appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector the Board may make an order disallowing or [3]allowing, with such modifications (if any) as they may deem necessary, the intended work.

[1] This section is taken from sec. 34 of the English Public Health Act, 1875.
[2] As to the power of the Board to appoint commissioners to conduct special inquiries, see sec. 8. See also their powers under sec. 39 (2) of the Local Government (Scotland) Act, 1894.
[3] The word used in the preceding section is "sanction."

Protection for railways, canals, &c.

107.[1] Where any sewer shall pass under or across, or in any way affect any railway or canal, or any [2]bridge, tunnel, or other work in connection therewith, the following provisions for the protection of such railway or canal, or bridge, tunnel, or other work, shall apply and have effect:—

(1.) The whole works connected with such sewer, so far as affecting any railway or canal, or bridge, tunnel, or

other work, shall be executed and thereafter maintained under the superintendence and to the reasonable satisfaction of the engineer of the railway or canal company, and according to plans and specifications to be previously submitted to such engineer and approved by him in writing. Provided that if such engineer shall not have expressed his approval or disapproval of such plans and specifications within fourteen days after the same shall have been submitted to him, he shall be deemed to have approved thereof;

(2.) Such works, and any alteration which it may at any time be necessary to make in such works, may be executed either by the local authority or by the railway or canal company at the option of the engineer of the railway or canal company;

(3.) In the event of the local authority and the engineer of the railway or canal company differing in opinion in regard to any works affecting the railway, or canal, or bridge, tunnel, or other work, or as to the mode of carrying out such works, or otherwise in relation thereto, such difference shall, on the application of the local authority, or of the railway or canal company, be referred to an engineer to be appointed by the sheriff, and shall be decided by the sheriff upon the report of such engineer, and such decision shall be final.

[1] This section is new. See also sec. 189 as to saving rights of canal and other companies, and power of such persons to alter or divert sewers laid by local authorities.

[2] In *Glasgow and South-Western Railway Company* v. *Magistrates of Glasgow*, May 13, 1895, 22 R. (H.L.) 29; 32 S.L.R. 733, it was held that the magistrates were not entitled to carry a water-pipe through the abutments of a railway bridge and sling it by iron bars from the girders underneath the roadway of the bridge.

Powers of utilising sewage.

108.[1] The local authority may from time to time, for the purpose of utilising sewage, agree with any person as to the supply of such sewage or the distribution or disposal or treatment thereof over land, and as to the works to be made for the purpose of such supply or distribution or disposal, or treatment, and as to the parties to execute the same and to bear the costs thereof, and as to the sums of money, if any, to be paid for that supply; [2]provided that no contract shall

be made for the supply of sewage for a period exceeding five years, unless with the authority of the Board, and not for any period exceeding twenty-five years; and the local authority may, in terms of the provisions of sections one hundred and forty-four and one hundred and forty-five of this Act contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, distributing, or disposing of or treating sewage.

[1] This section re-enacts sec. 74 of the 1867 Act with certain alterations. Local authorities may themselves undertake works for the application of sewage to land, or they may contract for the supply of sewage to other persons, and they are empowered to acquire, either by agreement or otherwise, lands, buildings, engines, materials, or apparatus for the purpose, in terms of secs. 144 and 145. They have power also under sec. 139 to borrow for the purpose of utilising sewage.

A proprietor had, prior to the passing of the 1867 Act, constructed sewers for carrying to his lands sewage from his property within a burgh. The local authority of the burgh subsequently constructed a new system of drainage, by which a greater quantity of sewage was discharged upon the lands in question, and a nuisance was created. The proprietor brought an action against the local authority to interdict them from discharging sewage on his lands. The local authority maintained that the facts of the case implied an agreement between the parties for the supply of sewage, and further, that the pursuer was barred by acquiescence from complaining of a nuisance which he might have prevented at the time the extended works were being constructed. *Held* that the pursuer had not bound himself to submit to the continuance of the nuisance in perpetuity, and that he was not barred from maintaining the action by acquiescence. (*Houldsworth* v. *Local Authority of Wishaw*, July 14, 1887, 14 R. 920; 24 S.L.R. 667; P.L.M. 1887, p. 488.)

[2] If the contract is for the supply of sewage for a period not exceeding five years, the authority of the Board is not required; if for a period exceeding five and not exceeding twenty-five years, the authority of the Board is required; a contract for a period exceeding twenty-five years is incompetent, and it would appear that a contract for an indefinite period is also invalid, as being an evasion of the statute.

Power of entry.

109.[1] In case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, making or repairing, altering or enlarging sewers or drains, or other purposes ancillary to the powers herein given as to sewers and drains,

and the owner or occupier of premises refuses or withholds access and leave to perform the said operations, the local authority may, after written [2] notice to such owner and occupier, [3] apply to the sheriff, who, if no sufficient cause be shown to the contrary, shall grant warrant to the local authority, their officers and others thereby authorised, to enter and do all or any of the works or operations foresaid [4] at all reasonable times in the daytime.

[1] This section re-enacts sec. 75 of the 1867 Act, with the addition of a few words at the end.

A sanitary inspector presented a petition to the sheriff for power to enter upon lands with the view of repairing a drain. The sheriff granted the warrant, and ordered the sanitary inspector to appear before him again with a written report of his proceedings. The sanitary inspector appeared as ordered, and craved expenses of process. The respondent maintained that the local authority had exceeded their powers, and that instead of being awarded costs, they should be amerced in damages in respect that the gable of a woodshed had been injured by the operations. The sheriff awarded expenses to the local authority, held that the proceedings were in accordance with the statute, and suggested to the respondent that if he had sustained injury, he might make a claim against the local authority. (*Local Authority of Campsie* v. *Brown*, P.L.M. 1874, p. 148.)

[2] As to service of notices, see sec. 159.

[3] As to applications to the sheriff, see sec. 154.

[4] The words "at all reasonable times in the daytime" are new. "Daytime" means between 9 A.M. and 6 P.M.; see definition in sec. 3.

Power to drain into sewers of local authority.

110.[1] Any owner or occupier of premises within the district of a local authority liable for the public health general assessment or special sewer assessment shall be entitled to cause his drains to empty into the sewers of such local authority on condition of his giving twenty days previous notice of his intention so to do to the local authority, and of complying with their [2] regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications. [3] Provided always that the sewage so emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

[1] This section re-enacts sec. 77 of the 1867 Act, with the addition of the proviso. See following section as to the right of persons beyond the district to use sewers; sec. 112 as to making of unauthorised communications with the sewers; and sec. 7 of the Rivers Pollution Prevention Act, 1876, as to the duty of the local authority to give facilities to manufacturers within their district to carry liquids from their factories into the sewers. See also sec. 222 of the Burgh Police Act, 1892.

If the requirements of the statutes are complied with, it does not appear that the local authority are entitled to refuse to allow communication to be made with their sewers. A manufacturer presented a petition in the Sheriff Court, founding on sec. 77 of the Public Health Act, 1867, and sec. 7 of the Rivers Pollution Act, 1876, to have a local authority ordained to allow him to empty the drains containing the discharge from his works into the burgh sewers. The local authority, founding on the latter section, stated that the discharge in question would prejudicially affect the sewers and the quality of the sewage. The case was appealed to the Court of Session, and it was held, upon a report by two men of skill, that the local authority's averments were not proved, and that, therefore, under the statutes they were bound to allow the manufacturer to empty his drains into the burgh sewers. (*Guthrie, Craig, Peter & Co.* v. *Magistrates of Brechin*, February 3, 1888, 15 R. 385; 25 S.L.R. 288; P.L.M. 1888, p. 304.)

In planning a system of sewerage, therefore, it will be incumbent on the local authority to make the sewers of sufficient capacity to carry all the liquid effluents from factories and other works in their district.

[2] The local authority have power to make such regulations as they may deem expedient with regard to drainage connections, provided that compliance with their regulations does not cause a nuisance.—B.

As to regulations of local authorities, see sec. 188.

[3] The proviso is new. A somewhat similar proviso is contained in sec. 7 of the Rivers Pollution Act, 1876.

Use of sewers by persons beyond district.

111.[1] Any owner or occupier of premises beyond the limits of the district of a local authority or within said limits who is not liable for public health general assessment or special sewer assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority; [2]provided always, that such sewer of the local authority and any works connected therewith are of sufficient capacity and otherwise suitable for receiving such additional drainage; and that [3]upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, and any dispute which may arise under this section shall be determined summarily

by the sheriff. [4] Provided always that the additional sewage so to be emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

[1] This section re-enacts sec. 78 of the 1867 Act, with the addition of the two provisos. See the preceding section and notes thereto. See also the following section as to making of unauthorised communications with the sewers. Sec. 234 of the Burgh Police Act, 1892, makes a similar provision with regard to sewers in burghs.

[2] This proviso is new. A proviso to a similar effect is found in sec. 7 of the Rivers Pollution Act, 1876.

[3] If the terms of the section are fulfilled, it does not appear that the local authority have power to prohibit persons outside the district from draining into their sewers. See decision in Sheriff Court of Lanarkshire (*Allan* v. *Commissioners of Partick*, May 23, 1887, P.L.M. 1887, p. 541).

[4] This proviso is new. It is similar to a proviso in sec. 7 of the Rivers Pollution Act, 1876.

Penalty for making unauthorised drains.

112.[1] Every person, not being authorised by the local authority, who shall make any drain into any sewer vested in the local authority shall be liable in a [2]penalty not exceeding five pounds, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may [2]recover in a summary manner from the person so offending any expenses incurred by them.

[1] This section re-enacts sec. 79 of the 1867 Act, with alterations on the latter part taken from sec. 21 of the English Public Health Act, 1895. Sec. 227 of the Burgh Police Act, 1892, contains a similar provision.

[2] As to recovery of penalties and of expenses, see secs. 153 and 154.

If damage be caused to the sewers by the unauthorised connection made with them, the person will also be liable in the penalty provided by sec. 151, in addition to the cost of repairing the sewer.

Estimates for work.

113.[1] Before entering into any contract for executing any such work as hereinbefore or after mentioned, falling under [2]this part of this Act, or connected with sewage or drainage, if the expense thereof may exceed thirty pounds, the local authority shall procure from a surveyor an estimate of the probable expense of constructing the same in

a substantial manner, and of the yearly expense of maintaining the same in repair; and such surveyor shall accompany such estimate with a report as to the most advantageous mode of constructing such work, whether under a contract for constructing the same merely, or a contract for constructing the same and maintaining it in repair during a given term of years.

[1] This section re-enacts sec. 80 of the 1867 Act.

It does not appear that the effect of the section is to limit the local authority to proceeding by contract in every case in the execution of works. But the prudence of undertaking any considerable work except by contract is doubtful.—B.

[2] The provision will therefore apply also to contracts for waterworks, these being included in Part VI. of the Act.

Not to build over sewers, &c.

114.[1] Unless with consent of the local authority, no [2] building shall be erected over any sewer belonging to the local authority, and no vault, arch, or cellar, or subway, or other structure shall be made, and no pipes of any kind shall be laid so as to interfere with any such sewer.

[1] This section re-enacts sec. 81 of the 1867 Act with some alterations. Sec. 228 of the Burgh Police Act, 1892, contains similar provisions.

[2] "Building" includes "house," and is a word of wider signification. For English decisions as to the meaning of "building," see Glen, p. 328, and Lumley, p. 17.

Sewers to be trapped.

115.[1] All sewers and drains, whether public or private, shall be sufficiently trapped and ventilated by the persons to whom they severally belong to the satisfaction of the local authority.

[1] This section re-enacts sec. 82 of the 1867 Act with certain alterations. The local authority is responsible for the sewers belonging to them, and they are required to see that no nuisance is created (sec. 103). With regard to drains, the persons to whom they belong are liable. Secs. 229 and 241 of the Burgh Police Act, 1892, require that all sewers and drains of houses and buildings in burghs be ventilated and trapped.

Distilleries, &c., to deposit refuse.

116.[1] The [2]owners or occupiers of distilleries, manufactories, and [3]other works [4]shall be compelled, where possible, to dig, make, and construct pools or reservoirs within their own ground, or as near their works as possible, for receiving and depositing the refuse of such works so far as [5]offensive or injurious [6]or dangerous to the health of those living [7]in the vicinity thereof, or to use the best practicable means for rendering the same inoffensive or innoxious before [8]discharging it into any river, stream, ditch, sewer, or other channel.

[1] This section re-enacts, almost without change, sec. 83 of the 1867 Act. See also sec. 233 of the Burgh Police Act, 1892.

[2] See definitions of "owner" and "occupier" in sec. 3.

[3] It would probably be held that the "other works" must be *ejusdem generis* with those specified.

[4] The words are imperative. The section, however, does not say by whom they are to be compelled; probably the local authority is to be regarded as the compelling body.

[5] The Board of Supervision, shortly after the passing of the 1867 Act, received a complaint as to the pollution of the river Leven in Fife by discharges from manufactories. They took the opinion of counsel, and were advised: "1st, That 'offensiveness' in the 83rd section of the Public Health Act (sec. 116 of this Act) is to be construed as distinct from 'injury to health'; and that, in proceedings under that section, it is not necessary, if the pollution is offensive, to prove also that it is prejudicial to the health of those living in the vicinity thereof. 2nd, That the manufacturers polluting the river Leven are likewise liable to be prosecuted for penalties under the 27th and 29th sections of the Act (secs. 127 and 129 of this Act) as 'persons who wilfully do, or permit to be done, an act whereby the water in a stream is fouled.' . . . 4th, That the remedy under the 27th and 29th sections (secs. 127 and 129 of this Act), and that under the 83rd section (sec. 116 of this Act), are not alternative but cumulative;—the former imposing penalties for a thing done, and the latter enacting a remedy whereby the continuance of the mischief may be prevented."—*Board's Report*, 1869, p. xix.

[6] The words "or dangerous" are new, and did not occur in the 1867 Act.

[7] Unless the refuse is offensive or injurious or dangerous to the health of those living near the works, it does not appear that the owner or occupier can be compelled to do what the section requires. Where complaint was made by a riparian proprietor of nuisance caused by refuse from gas-works, &c., some distance off, the commissioners of a burgh were advised that they could not take action against the owners or occupiers of the works, under a similar provision in sec. 193 of the General Police Act of 1862. See opinion of counsel—Mr. (afterwards Lord) Rutherfurd Clark, and the Rt. Hon. J. B. Balfour—quoted in Irons' Burgh Police Act, p. 384.

[8] See also the provisions of the Rivers Pollution Acts, 1876 and 1893. Secs. 127–9 of this Act provide penalties for the pollution of water used for drinking or domestic purposes. But probably the powers which riparian proprietors have at common law supply a more effectual remedy for the pollution of streams. See the cases cited in note 17 to sec. 103 *supra*; also *Buccleuch* v. *Cowan*, Dec. 21, 1866, 5 M. 214; and *M'Gavin* v. *M'Intyre*, May 30, 1890, 17 R. 818.

Prohibition against interrupting free flow of sewage.

117.[1]—(1.) It shall not be lawful for any person to throw or suffer to be thrown or to pass into any sewer of a local authority, or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any [2]such sewer or drain may be injured.

(2.) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.

[1] This section is new. It is taken from the English Public Health Amendment Act, 1890, sec. 16. See also sec. 30 of this Act.

[2] See also sec. 151 as to penalty for damaging the works or property of the local authority.

Placing carcases in running water, &c.

118.[1] It shall not be lawful for any person to throw, or suffer to be thrown into any running water, spring, well, lake, pool, reservoir, drain, or ditch, the carcase of any animal or part thereof, and any person offending against this section shall be liable to a penalty not exceeding ten pounds.

[1] This section is new. See also sec. 2 of the Rivers Pollution Act, 1876, which prohibits the putting of "any putrid solid matter" into a stream so as to interfere with its flow or pollute its water. Sec. 223 of the Burgh Police Act, 1892, prohibits the throwing of any rubbish, whether offensive or not, into the channel or on the banks or sides of any river, burn, or watercourse, flowing through or on the boundary of the burgh; and under sec. 381 (36) of the same Act it is an offence to throw or lay "any carrion, fish, offal, or rubbish . . . into the channel or on the banks of any river or into any harbour within the burgh."

Drain discharging below low-water mark.

119.[1] If the local authority shall consider it necessary for public health that any [2]drain should discharge itself below

[3]low-water mark, they shall be [4]entitled, with the consent of the Board of Trade and of the Commissioners of Woods and Forests (without prejudice to any question as to the right to the foreshores) to construct the requisite works for that purpose.

[1] This section re-enacts sec. 84 of the 1867 Act with two alterations—(1) "*low*-water" is substituted for "*high*-water," and (2) the consent of the Commissioners of Woods and Forests is required in addition to that of the Board of Trade. Sec. 235 of the Burgh Police Act, 1892, makes a similar provision.

[2] The word "drain" here appears to include "sewer"; see note 1 to sec. 101.

[3] The alteration of the word "high-water" in the 1867 Act to "low-water" in this Act is not to be construed as having the effect of authorising the local authority to make the outfall of their drains between high-water and low-water mark without obtaining the consent of the Board of Trade. It would appear that a local authority is entitled to carry their sewage in a pipe to the sea and discharge it at the mouth of a burn at or above high-water mark. See opinion of counsel—Mr. (afterwards Lord) Rutherfurd Clark, and the Rt. Hon. J. B. Balfour—quoted in Irons' Burgh Police Act, p. 393. As to the rights of the Crown in the sea below low-water mark, see *Lord Advocate* v. *Clyde Navigation Trustees*, November 25, 1891, 19 R. 174, where it was held that the Crown could prevent the Clyde Navigation Trustees depositing dredgings from the Clyde in Loch Long. The Crown has a right in the water and the *solum* of sea-lochs *intra fauces terrae* below low-water mark such as will entitle it to prevent any person from using them for purposes other than the recognised public uses, and that without any allegation of injury, actual or prospective, to these public uses. In the same case opinions were expressed that the right of the Crown to the *solum* of sea-lochs *intra fauces terrae* is a proprietary right and not a mere trust for public uses; also that the Crown has a like proprietary right in the *solum* of the sea from low-water mark as far as the three-mile limit, upon the open coast. In *Bowie* v. *Marquis of Ailsa*, March 18, 1887, 14 R. 649, it was held by the Lord Ordinary (Trayner) that the right of the Crown in the sea-shore extends to the line of high-water of ordinary spring tides, and is not limited (as is the rule in England) to the line reached by the average of the medium high tides between the spring and the neap. See also Rankine on Land Ownership, p. 223.

[4] A local authority issued an order compelling all proprietors to carry their drains to low-water mark. The Board of Supervision held that the order was one which could not be enforced; and that, if the local authority considered the extension of the drains to low-water mark to be necessary in the interests of the public health, they must make the extension themselves under sec. 84 of the 1867 Act with the consent of the Board of Trade.—B.

As to drainage of houses.

120.[1] If a [2]house, distillery, manufactory, or other work, [3]within the district of a local authority, is without a drain, or without such drain as is sufficient for effectual drainage, the local authority may, by [4]notice, require the owner of such house, distillery, manufactory, or work, within a reasonable time therein specified, to make a sufficient drain emptying into any [5]sewer which the local authority are entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred [6]yards from the site of the said premises of such owner; but if no such means of drainage are within that distance, then emptying into such covered [7]cesspool or other place, not being under any house, as the local authority may direct; and if the person on whom such notice is served fails to comply with the same, the local authority may, at the expiration of the time specified in the notice, do the work required, and the [8]expenses incurred by them in so doing may be recovered from such owner in a summary manner.

[9] Provided that where in the opinion of the local authority greater expense would be incurred in causing the drains of two or more [2]houses to empty into an existing sewer pursuant to this section than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such sewer and require the owners of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of construction of such sewer among the owners of the several houses, and [8]recover in a summary manner the sums apportioned from such owners, or [10]in case of dispute the matter shall be determined summarily by the sheriff.

[1] This section re-enacts sec. 85 of the 1867 Act, with a few alterations, and with the addition of the proviso at the end. Secs. 238 and 239 of the Burgh Police Act, 1892, contain similar provisions. As to the power of the local authority to make byelaws for the drainage of common lodging-houses, see sec. 92; of houses let in lodgings, sec. 72; and of new buildings, sec. 181.

[2] See definition of "house" in sec. 3. It includes "schools, also factories and other buildings in which persons are employed."

[3] The words "or any erection or enclosure for the keeping of live stock" which occurred in the 1867 Act are dropped out of this Act.

[4] As to service of notices, see sec. 159. See also definition of "owner" in sec. 3.

Under this section the local authority can compel an owner to drain his property; but neither under the statute nor at common law can an owner be compelled to make or maintain a drain to carry away sewage from a higher level than his own. Such sewers must be made by the local authority themselves.—B.

[5] Under sec. 238 of the Burgh Police Act, 1892, the provision is met if the house is drained by a pipe communicating with the sea.

[6] The word "feet" in the 1867 Act is altered to "yards" in this Act; 100 yards is the distance in secs. 238 and 239 of the Burgh Police Act, 1892.

[7] The cesspool must not be a nuisance. See sec. 16 (2), which provides that a cesspool "so foul or in such a state or so situated as to be a nuisance or injurious or dangerous to health," shall be a nuisance liable to be dealt with in terms of this Act.

It is not expressly stated that the owner is to provide the necessary cesspool (if none exists), or that, in default of the owner, the local authority may provide it, and recover from the owner, but this seems to be the intention of the section.

[8] As to the recovery of expenses, see secs. 153 and 154.

[9] This proviso is new. It is taken from sec. 23 of the English Public Health Act, 1875.

[10] The concluding words are not clear, and there may be a doubt as to what matters of dispute the sheriff is authorised to determine. Is it a dispute (1) as to the apportionment of the cost of the sewer, or (2) as to the amount of the cost, or (3) does it extend to disputes as to whether there be a case for putting the proviso in force?

Local authorities may combine as to sewerage.

121.[1] Two or more local authorities may, with the [2]sanction of the Board, combine together for the purpose of executing or [3]acquiring an interest in or maintaining any works by this Act [4]or any other Act authorised in regard to sewerage or drainage that may be for the benefit of their respective districts; and all moneys which they may agree to contribute for the execution or acquisition or maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution, acquisition, or maintenance of works [5]within their district.

[1] This section re-enacts sec. 87 of the 1867 Act, with a few alterations. See last part of note 12 to sec. 122.

[2] It is immaterial in what form the application for the Board's sanction is made. It may be either a joint application or an application at the instance of each of the local authorities.

[3] The words "or acquiring an interest in" are new. One effect is to enable local authorities to combine for the purposes of sec. 102 as well as sec. 103.

[4] The words "or any other Act" are new. Under the Burgh

Police Act, 1892, joint drainage works can only be carried out by means of provisional orders. See sec. 45 of that Act.

[5] If the works are for the benefit of the whole district other than a burgh the expense will be payable out of the public health general assessment authorised by sec. 135; if the works are for a special drainage district formed under sec. 122, or for a burgh, the expense will be payable out of the special sewer assessment authorised by sec. 133.

Special drainage districts.

122.[1]—(1.) Upon [2]requisition to that effect made in [3]writing by a [4]parish council or by not fewer than ten [5]ratepayers within the [6]district of a local authority [7]not being the local authority of a burgh, the local authority shall be bound to meet, after twenty-one days' notice, or, [8]if the local authority itself so resolve, it may meet after twenty-one days' notice, and shall, [9]whether sewers or drains have been already constructed or not, consider the propriety of—

(*a*) [10]forming part of their district into a special drainage district; or

(*b*) [11]enlarging or limiting the boundaries of a special drainage district; or

(*c*) [12]combining a special drainage district with another special drainage district; or

(*d*) enlarging or limiting the boundaries of both or either of such special drainage districts and combining the same or parts thereof; or

(*e*) [13]determining that any special drainage district shall cease to exist as a special drainage district, or that any such combination shall cease;

and the resolution of the local authority shall [14]determine all questions regarding the payment of any debt which may affect any district or special drainage district, and the right to impose and the obligation to pay any assessment affected by such determination, and shall fix the date at which such determination shall take effect; and such resolution shall be published in one or more newspapers circulating in the district, [15]or by the posting of handbills throughout the district, and [16]a copy of said resolution shall be forthwith transmitted to the Board, and, where the local authority is a district committee, to the county council; [17]and the production of such newspaper or handbill, or a certificate under the hand of the clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolu-

tion; and [18]within twenty-one days after the date of the first publication of such resolution it shall be competent for any person interested to appeal against the resolution, whatever its terms may be, to the sheriff, and the sheriff, not being a sheriff-substitute resident within the [19]district, may either approve or disapprove of such resolution, and if he disapproves thereof he may either find that no special drainage district should be formed, or [20]may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special drainage district should be formed and may define the limits thereof, or may find that such special drainage district or part thereof shall be combined [21]as prayed, or that such combination shall cease, or that such special drainage district or districts shall, as such, cease to exist; and the decision of the sheriff shall be binding, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff.

[1] This section is founded on sec. 76 of the 1867 Act, and on the Amendment Act of 1882, but differs in many points, the more important of which are referred to in the notes. The principle of sec. 76 of the 1867 Act remains intact, viz., that a rural local authority is empowered to cut out a part of their district and form it into a separate area for the purpose of drainage, the assessment for that purpose being limited to the special area so formed. The provisions as to assessments in special drainage districts are contained in sec. 133. Power to borrow is given by sec. 139. Drainage works being "capital works" in the sense of sec. 18 (6) and (7) of the Local Government Act of 1889, any operations under this section require the consent in writing of the standing joint committee.

The provisions of sec. 131 in regard to special water-supply districts being similar, the notes to that section should also be consulted, as many of them will also apply here.

[2] The Act does not prescribe the form of the requisition. A requisition for the purposes of sub-head (*a*) might be in the following terms:—

Unto the Local Authority of the District of the County of .

The Requisition of the undersigned, being not fewer than ten ratepayers [*or*, The Requisition of the Parish Council of the Parish of] within the district of the said Local Authority:

We, the undersigned ratepayers within the said district [*or*, We, the said Parish Council], hereby, in terms of sec. 122 of the Public Health (Scotland) Act, 1897, require you, the said Local Authority, to meet and consider the propriety of forming, and thereafter to form, the following part of your district into a special drainage district, viz. [*describe the district according to such boundaries as the*

requisitionists propose] or according to such other description or boundaries as may seem fit.

[*Signatures and addresses of ratepayers.*]

[*If the requisitionists are a parish council, add*—

Signed by order and in behalf of the Parish Council of , in terms of their Minute of date .

_____ Chairman.

_____ Clerk.]

[*Place and date.*]

[3] By sec. 20 of the Interpretation Act, 1889, "writing" includes "printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

[4] The power of a parish council to make a requisition is new.

[5] Under the 1867 Act any *inhabitants* could sign the requisition; under this Act only *ratepayers* are entitled to sign.

[6] For definition of "district" see sec. 3. It is not essential that the ratepayer should be a ratepayer within the area referred to in the requisition, any ratepayer within the whole district of the local authority is entitled to sign.

[7] The restriction of the provision to local authorities of landward areas is new. Under the 1867 Act the power was general, but the provisions of sec. 218 of the Burgh Police Act, 1892, put some limit on that power, and the effect of this section of the present Act is to confine burghs entirely to the provisions of the Burgh Police Act as regards drainage districts.

[8] Under the 1867 Act a special district could not be formed except on a requisition; under this Act the local authority may itself take the initiative. Apparently in such a case two meetings are necessary, one at which a resolution to meet will be passed, and another to consider and dispose of the proposal.

[9] Under the 1867 Act there was some doubt whether a special drainage district could be formed after the works had been carried out; the present section makes it clear that this will be a competent proceeding. In such cases the whole of the sewerage works, whether constructed prior or subsequent to the formation of the special district, will come under the management of the sub-committee (see note 26 *infra*), and the expenses of the whole, including the interest on and repayment of any loan that may have been contracted in respect of the old works, and on the security of the general assessment over the whole district, will form a charge against the special sewer assessment. See *Ayr County Council* v. *Dalmellington Special Water Supply District Sub-Committee*, June 1, 1895, P.L.M. 1895, p. 365.

[10] The only purpose provided for by sec. 76 of the 1867 Act was that of sub-head (*a*); the purposes of sub-heads (*b*), (*c*), and (*d*), were added under the Amendment Act of 1882; sub-head (*e*) is new.

The local authority must in their resolution fix the boundaries of the special district, and in doing so must exercise their discretion. A reference to *Smollett* v. *Cardross Local Authority*, P.L.M. 1870, p. 240, and other sheriff-court cases cited under this section, and sec. 131, will show certain errors that must be avoided.

[11] In enlarging a special district the local authority are not en-

titled to include an area which will derive no benefit merely for the purpose of increasing the assessable rental of the special district. See *Helmsdale Local Authority* v. *Duke of Sutherland*, Sept. 27, 1893, 1 S.L.T. 242; also *Mackenzie* v. *Local Authority of Urray*, Mar. 29, 1889, P.L.M. 1889, p. 321. Compare also *Fleming, &c.*, v. *Liddesdale District Committee*, Nov. 23, 1897, 5 S.L.T. 247, where Lord Stormonth Darling pronounced decree of reduction of a resolution of the district committee, forming the whole parish of Castleton into a special lighting district under sec. 44 of the Local Government Act, 1894. The ground of objection was that the real purpose was to light, not the special district, but only a small portion of it, viz., the village of Newcastleton, and that the whole parish was included in the special district for no other purpose than to obtain a valuable assessable area, which should have to bear the greater part of the cost without obtaining any part of the benefit.

[12] The question whether a special district comprising two or more non-contiguous parts may competently be formed was submitted to counsel (Lord Advocate Graham Murray, Sir John Cheyne, and Mr. Cullen), and the following opinion obtained: "Though the point is not free from doubt, we do not think that the formation of the proposed special district as defined by the decision of the county council is rendered incompetent by reason of the fact that the district as constituted consists of two detached parts. The Act of 1867 does not express, and does not seem to us to imply, any prohibition of such a course; while the Act of 1882, which provides that separate districts may be combined, does not limit this provision to the case of districts which are contiguous. In many cases there may be strong arguments in expediency against the union in one district of detached areas; but in others it may be highly convenient and suitable, and, in our opinion, the Acts do not forbid it." (1 *County Council Cases*, p. 139.)

Where a village is partly in the district of one local authority and partly in that of another, the proper procedure is for each local authority to form the portion within its jurisdiction into a special district, and thereafter to combine under sec. 121 to provide and maintain the works.

[13] The power of dissolving a special drainage district is new.

[14] The requirement that the resolution shall determine all questions as to payment of debt and as to assessment is new, and had no counterpart in the 1867 or 1882 Act.

A question came before the Board of Supervision as to the liability of a combined district for the arrears of one of the districts at the time of amalgamation. It being a legal question on which no decision had been given, the Board expressed no opinion. It might be argued on the one hand that, on the analogy of the liabilities of an incoming partner, each district would be held to be liable for its previous arrears; and that for the purpose of recovering these arrears, assessment on the district in which the arrears were incurred would still be competent. On the other hand, it might be argued that the districts having combined for all purposes, and there being no saving clause in the agreement to combine, the whole district would be legally liable for any expenses that were not discharged before the date of the agreement.—B.

[15] The alternative of publishing the resolution by handbill is new; under the 1867 Act it had to be published in a newspaper. It is necessary that it be published *in extenso*.

[16] The requirement that a copy of the resolution be sent to the Board and a copy to the county council is new.

[17] As to proof of resolutions of the local authority, see sec. 160.

[18] Under the 1867 Act the appeal had to be taken within ten days of the date of the resolution, whether it had been published or not. Under the present Act, publication is an indispensable preliminary to an appeal, which can only be taken within twenty-one days after the date of the first publication. There is now no appeal to the county council; see sub-sec. 3.

[19] See note 19 to sec. 131.

[20] Under the 1882 Act if the sheriff, on appeal, disapproved of the resolution of the local authority, he was not entitled to vary it, save with the consent of the local authority. There is no such restriction in this Act; the sheriff has full power.

[21] See note 21 to sec. 131.

(2.) [22] The order of the sheriff shall determine all questions regarding the payment of any debt which may affect any district or special drainage district, and the right to impose, and the obligation to pay, any assessment affected by his determination, and shall fix the date at which such determination shall take effect, and [23] a copy of any order pronounced by the sheriff shall be forthwith published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district, and transmitted to the Board and to the county council.

[22] This sub-section is new. See note 14 *supra*.

[23] The requirement that the decision of the sheriff shall be published is new. The sub-section does not say by whom the publication is to be made. Probably the duty will lie on the local authority; and possibly the interlocutor of the sheriff may direct the local authority to carry out this requirement.

(3.) [24] Where a district committee is the local authority, notwithstanding the provisions of section seventeen, sub-section two, sub-head (*c*) of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), it shall not be competent to appeal to the county council against any resolution of the district committee under this section.

[24] Sec. 17 (2) (*c*) of the Local Government Act, 1889, provides that "any five ratepayers in the district may appeal from any proceedings or order of a district committee to the county council, who shall have power to confirm or vary or rescind such proceedings or order." The result was that there might be concurrent appeals against the resolution of a local authority with regard to

a special district—one to the sheriff and one to the county council.

(4.) [25] Where a special drainage district has been formed, or may hereafter be formed under the provisions of this Act, the district committee of the district in which such special drainage district is or may be situated, or the county council where a county is not divided into districts, shall in their discretion have power to provide for the drainage of the highways and footpaths under their management and control within such special drainage district, or to pay or contribute out of the assessments raised under the Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), a proportion of the cost of providing and maintaining sewers sufficient for the drainage of such highways and footpaths.

[25] This provision is new. It appears to empower the district committee acting as road authority to take one or other of two courses in fulfilment of their duty to drain the highways and footpaths under their control within a special drainage district. They may either as road authority provide the necessary drains and pay the whole cost out of the roads rate, or they may arrange that sufficient sewers for the purpose should be provided as part of the drainage scheme of the local authority under this Act, and pay out of the roads rate a share of the cost of such scheme. Compare sec. 39, which makes a similar provision as regards scavenging.

(5.) [26] Nothing contained in this Act shall prejudice the provisions of sub-sections one and two of section eighty-one of the Local Government (Scotland) Act, 1889, as amended by section forty-four of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58).

[26] Sub-secs. (1) and (2) of sec. 81 of the Local Government (Scotland) Act, 1889, as amended by sec. 44 (9) of the Act of 1894, provide:—

"81. With respect to special drainage districts or special water-supply districts the following provisions shall have effect:—

"(1.) Where a special drainage district or special water-supply district has been formed in any parish under the Public Health Acts, the district committee may, subject to regulations to be from time to time made with the consent of the county council, appoint a sub-committee for the management and maintenance of the drainage or water-supply works, and such sub-committee shall in whole or in part consist of parish councillors of the parish or parishes in which the special district is situated, whether members of the district committee or not;

"(2.) Where a special drainage district or special water-supply district is partly within a county and partly within a burgh or

police burgh, the sub-committee appointed under the immediately preceding sub-section and such number of the town council or police commissioners (as the case may be) of such burgh or police burgh as failing agreement the Secretary for Scotland may determine having regard to all the circumstances of the case, shall be charged with the management and maintenance of the drainage or water-supply works within such special district, and the determination of the Secretary for Scotland may provide for the regulation of the proceedings and for the allocation and payment of the expenses incurred under this sub-section."

Sec. 44 (9) of the 1894 Act further provides that the number of a sub-committee appointed under the said section may, failing agreement between a district committee or county council, and a town council or the commissioners of a police burgh, be determined by the Secretary for Scotland.

The effect of these provisions is that, wherever a special drainage district exists, its management falls to be delegated to a sub-committee, which must consist either wholly of parish councillors or partly of parish councillors and partly of district councillors; and further that, when such special district is partly within and partly without a burgh or police burgh, the sub-committee appointed under sec. 81 (1) will be increased by representatives of the town council or burgh commissioners, the number of the sub-committee and the proportions between the representatives of the two bodies to be determined in cases of dispute by the Secretary for Scotland.

It has been held that, in cases coming under sub-sec. 2 of sec. 81, the district committee is the local authority *quoad* the purposes of the special district over the whole area of the special district, including any portion of it within burgh, and that, in these circumstances, the county council, on the requisition of the district committee, are the only body entitled to levy the special assessment within such area. See *County Council of Dumbarton* v. *Police Commissioners of Clydebank*, Nov. 16, 1894, 22 R. 64; 32 S.L.R. 56; P.L.M. 1895, p. 30. But see also *Kirkcaldy District Committee* v. *Police Commissioners of Buckhaven*, Nov. 8, 1895, 23 R. 107; 33 S.L.R. 70; P.L.M. 1896, p. 9.

When a special drainage district is wholly within a police burgh, formed after the passing of the Local Government Act, 1889, the commissioners of the burgh become in terms of sec. 81 (3) of that Act the local authority within the special district.

Works of distribution of sewage to be deemed a land improvement.

123.[1] The making of [2]works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an improvement of land authorised by the [3]Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), and the provisions of that Act shall apply accordingly.

[1] This section re-enacts sec. 115 of the 1867 Act.
[2] See secs. 103 and 108, under which such works may be made.
[3] That Act enables owners of limited interests in lands to execute certain improvements, and to charge the lands with the cost.

[1] Water-Supply.

Supply of water for burghs.

124. [2] With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), or having a local Act for police or other purposes, nothing contained in this Act shall prejudice the [3]provisions of any of the said Acts in regard to the provision of a supply of water for the domestic use of the inhabitants and for sanitary and other purposes. [4]Provided that in the Burgh Police (Scotland) Act, 1892, and in the Lands Clauses Acts, so far as incorporated therewith, or authorised thereby to be put in force the term "land" shall include water and any right or servitude to or over land or water.

[1] The provisions of this Act with regard to water-supply differ materially from those of the 1867 Act. That Act dealt with the water-supplies of both burghal and landward areas; this Act makes no provision for the supply of water to burghs. As regards water, burgh authorities will now depend on the provisions of the Burgh Police Act, or of their local Acts. Where burghs have already made use of the provisions of the Public Health Acts for the supply of water, they have power to assess for such purposes under the provisions of this Act (sec. 136); but for any new works which may be necessary this Act will not be available.

[2] This section is new. It saves the provisions of the Burgh Police Act and of all local Acts so far as water-supply is concerned. See also sec. 190, which enacts a general saving of the Burgh Police Act; and sec. 192, sub-sec. 1 of which saves generally all local Acts, while sub-sec. 2 expressly saves local Acts under which any authority is constituted for supplying water, including in local Acts any Provisional Order or Act confirming such Order.

[3] The provisions of the Burgh Police Act in regard to water-supply are contained in secs. 257 to 269. The powers given by these provisions appear to be ample. The principal defects appear to be—1. The only burghs which can acquire land compulsorily for purposes of water-supply are burghs with a population of less than five thousand. Other burghs apparently will have to proceed by way of a local Act, unless the provisions of sec. 45 of the Burgh Police Act with regard to Provisional Orders should be found to be sufficient. 2. The water-supply provisions of the Burgh Police Act are not available in the case of a burgh which, prior to December 31, 1894, was supplied with water under a local Act (sec. 269 of Burgh Police Act). This provision places such burghs in a further difficulty

if an additional supply is required, seeing that all local Acts as defined in sec. 4 (17) of the Burgh Police Act are repealed by sec. 5 of that Act, except such portions as are specifically saved in Schedule III. 3. Burghs desiring to combine for the purpose of water-supply appear to have no power to do so save by Provisional Order under sec. 45.

[4] See definition of "land" in sec. 3 of this Act, and note 19 thereto. Under sec. 262 of the Burgh Police Act, 1892, the commissioners of a burgh having a population under five thousand are empowered to apply to the sheriff to put in force the provisions of the Lands Clauses Acts with reference to the acquisition of lands otherwise than by agreement in accordance with the procedure set forth in sec. 60 of the Burgh Police Act.

Local authority to require water to be supplied to houses in certain cases.

125.[1] If any occupied [2]house within the district of any local authority other than the local authority of a burgh is without a proper supply of wholesome water at or [3]reasonably near the same, the local authority [4]shall require the owner to obtain such supply and to do all such works as may be necessary for that purpose, and failing his doing so, within twelve months after due [5]notice, the local authority may themselves obtain such supply and for that purpose may use their [6]powers of acquiring land by agreement or otherwise under this Act; and may, for the purpose of obtaining such supply, [7]enter upon the premises and execute all such works as may be necessary; and the local authority may [8]recover in a summary manner from the owner the whole or a [9]reasonable part of the expenses incurred by them under this section: [10]Provided that where the owners of two or more houses have failed to comply with the requirements of the [5]notice served on them under this section, and the local authority might under this Act execute the necessary works for providing a water-supply for each house, the local authority may, if it appears to them desirable and [11]no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and [12]apportion the expenses as shall be just, and further provided that if any question shall arise under this section it shall be determined summarily by the sheriff, who shall have regard to all the circumstances of the case, and whose decision shall be final. [13]Provided that nothing in this section shall relieve the local authority from the duty of providing their district

or any part thereof with a supply of water, where a general scheme for such supply is required, and can be carried out at a reasonable cost.

[1] This section takes the place of sec. 89 (2) of the 1867 Act, from which it differs so widely as to be virtually a new provision. It applies only to landward areas, in regard to which it supplies powers which in burghs are provided by secs. 246 and 263 of the Burgh Police Act, 1892.

[2] For definition of "house" see sec. 3. It includes "schools, also factories and other buildings in which persons are employed." The section applies to *occupied* houses only.

[3] What distance between a house and its water-supply will satisfy the terms of this section is a question of circumstances, which in cases of dispute will be decided by the sheriff.

In a case where the nearest supply was from a well 280 yards distant, the Board of Supervision held that there was not a supply of water at or near the house, and called upon the local authority to take steps in terms of the corresponding section of the 1867 Act.

[4] The section is imperative in its terms, and lays a duty on the local authority to see that every house within their district has a proper supply of water "at or reasonably near" the same. There is no power under this Act to compel owners to introduce water *into* their houses. In burghs the commissioners may compel the introduction of water into houses under sec. 246 of the Burgh Police Act.

[5] As to issue and service of notices, see secs. 14 and 159.

[6] See secs. 144 and 145 as to the acquisition of land.

[7] See sub-sec. 4 of sec. 126.

[8] As to procedure for recovery of sums due to the local authority, see sec. 154.

[9] The local authority are not bound to recover the whole of the expenses from the owner. If they are of opinion that it is reasonable that part of the expense should be charged against the rates they are entitled so to charge it.

[10] For the corresponding proviso as to drainage of two or more houses, see sec. 120.

[11] That is, if the expense of providing a joint supply for the houses will not exceed the sum of the expense of providing a separate supply for each house, the local authority will be entitled to provide a joint supply.

[12] In apportioning the expense, rental will probably be regarded as the main factor.

[13] The object of this proviso is to prevent local authorities making an unfair use of their powers under this section by laying on the owners of houses a duty which properly falls on the local authority in terms of sec. 126. In cases of dispute it would appear that the question whether the local authority ought to proceed under this or the succeeding section might be one which it would fall to the sheriff to determine.

Supply of water for districts other than burghs.

126.[1] With respect to districts other than burghs the following provisions shall have effect:—

(1.) The local authority, [2]if they think it expedient so to do, may [3]acquire and provide or arrange for a supply of water for the [4]domestic use of the inhabitants and [5]for sanitary and other purposes, and for that purpose may [6]acquire and conduct water from any lake, river, spring, or stream, may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such waterworks, pipes, and premises, and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose, and may themselves furnish a supply of water, or contract or arrange with any other person to furnish the same; and for the purposes aforesaid the local authority shall be held to have all the powers and rights given to [7]and be subject to all the obligations imposed on the promoters of undertakings by the [8]Lands Clauses Acts as amended by this Act: [9]Provided also, that it shall not be lawful for the local authority to provide or supply water within any area which [10]any local authority or any [11]company, established by Act of Parliament [12]or empowered by or authorised by Provisional Order, is authorised to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such [10]local authority or company.

[1] This section re-enacts, with certain modifications, sub-secs. (1), (3), and (4) of sec. 89 of the 1867 Act, but applies them to landward districts only. For the provisions as to special water-supply districts, see sec. 131. The Waterworks Clauses Acts, 1847 and 1863, being incorporated with this Act, the powers given by these Acts will be available to local authorities. See sec. 132 and notes.

[2] The provision of the Burgh Police Act, 1892, which corresponds to sub-sec. 1 of this section, and which alone is available in burghs, is sec. 261.

Although the words of the Act are permissive, failure to provide a water-supply where such is required renders a local authority liable to be proceeded against under sec. 147. See that section and cases there cited.

It is upon the local authority that the responsibility of selecting and introducing a supply of water is laid, and whilst it is quite reasonable and proper for them to consider any scheme that may be suggested by the inhabitants, it is for the local authority alone to decide.—B.

[3] Waterworks, being "capital works" in the sense of sec. 18 (6)

and (7) of the Local Government Act, 1889, cannot be undertaken without the consent of the standing joint committee. Power to borrow for waterworks is given by sec. 140.

[4] For the meaning of water for "domestic use," see note 16 *infra*.

The local authority have power to allow householders to take the water into their houses. A question came before the Board of Supervision as to whether the local authority is entitled to turn off the water from private houses when it is found that there is not a sufficient supply for the public wells. The Board were of opinion that when once water-closets, &c., have been introduced into houses on the faith of a supply of water being furnished by the local authority, the discontinuance of such supply would be injurious to health. In such cases if the supply becomes so defective that it is only sufficient for the public wells, it must be supplemented so as to maintain the supply to private houses.—B.

[5] The words "and for sanitary and other purposes" are new, and make it clear that a local authority may competently introduce water for trade purposes. There was some doubt whether this was authorised by sec. 89 (1) of the 1867 Act.

The supply to be provided for domestic use should be not less than 10 gallons per head. Where there are water-closets 15 gallons per head will be necessary. Provision has also to be made for waste, watering streets, flushing drains, extinguishing fires, and other public purposes, so that 25 or 30 gallons per head is usually required.

There is nothing in the Act as to water for fires, but probably the local authority may supply water gratuitously for such purposes. The cost of providing fire-plugs may fairly be charged against the public health assessment. (See also secs. 38–43 of the Waterworks Clauses Act, 1847, which is incorporated with this Act by sec. 132.) But the cost of hose and the equipment of a fire-brigade should not be paid out of the public health assessment. In rural districts these expenses should be met by private subscription, in burghs they can be met out of the police assessment.—B.

[6] The words "acquire and" are new. For the provisions as to acquisition of land (including water) see secs. 144 and 145. The power of acquiring and holding land is vested in the county council, not in the district committee; see proviso in sec. 12.

In a case where the right to take water was vested in the tenants of certain mills, the Board of Supervision held that it was competent for the local authority to take on lease the mills, that being apparently the only way of getting the water.—B.

A local authority took water from springs which ultimately found their way into a stream. A lower proprietor sought to interdict the local authority, and claimed damages from them for abstracting the water. It was argued that the local authority ought to have acquired the water under the Lands Clauses Acts. The Second Division held that a lower riparian proprietor is not entitled in such a case to compel a local authority to purchase his interest in the stream, he is only entitled to compensation for damage done. He is not in such a case entitled to interdict, and as regards compensation an action for damages is incompetent, sec. 116 of the 1867 Act (sec. 164 of this Act) providing other procedure. (*Peterhead Granite*

Polishing Company v. *Parochial Board of Peterhead*, January 24, 1880, 7 R. 536; P.L.M. 1880, p. 200.) But this decision was overruled in *Peterhead Burgh Commissioners* v. *Forbes*, July 4, 1895, 22 R. 852; 32 S.L.R. 645, where it was held by the Second Division with three consulted judges that a local authority which had by agreement acquired right to take water from a stream on the land of an upper heritor was not entitled, in the exercise of its powers under sec. 89 of the 1867 Act, to divert water from the stream to the prejudice of a lower riparian proprietor without acquiring from him a right to water in the mode prescribed by sec. 90 of that Act.

In *M'Nab* v. *Robertson*, December 15, 1896, 24 R. (H.L.) 19; 34 S.L.R. 174, where a lease included two ponds, "together with the right to the water in the said ponds and in the streams leading thereto," it was held by the House of Lords (affirming judgment of Second Division, *diss.* the Lord Chancellor) that water percolating through marshy ground into the ponds was not included in the expression "streams leading thereto."

In *Lord Blantyre* v. *Waterworks Commissioners of Dumbarton*, May 11, 1888, 15 R. (H.L.) 56, it was held that water commissioners who, in the exercise of their statutory powers, had purchased a servitude right of taking water from a stream for the use of a mill, were bound to compensate the owner of the servient tenement, which included the loch out of which the stream flowed, in respect of his rights and interests in the water so far as injuriously affected, although no water was taken by the commissioners from the loch directly.

The Waterworks Clauses Acts, 1847 and 1863, are incorporated with this Act by sec. 132. Public water commissioners had authority under these Acts to lay a line of water-pipes in a road which at two places was carried on girder bridges belonging to a railway company. Upon a construction of secs. 28 and 29 of the Waterworks Clauses Act, 1847, it was held by the House of Lords (*aff.* judgment of Second Division) that it was *ultra vires* of the commissioners to carry the pipes through the stone abutments of the bridges and to sling them from the girders. (*Magistrates of Glasgow* v. *Glasgow and South-Western Railway*, May 13, 1895, 22 R. (H.L.) 29; 32 S.L.R. 733.)

[7] The words "and be subject to all the obligations imposed on" are new.

[8] See sec. 4.

[9] Although in districts which a water company is authorised to supply the local authority have no power themselves to provide water, it would appear that they may nevertheless enter into a contract or agreement with any such company.

The Local Authority of Barony entered into an agreement with the Glasgow Water Commissioners to supply water to part of the district of the local authority. A ratepayer raised an action of suspension and interdict against the local authority, on the ground that they had no right to supply water in the district, in respect that the Glasgow Water Commissioners were authorised to provide a supply, and the local authority had not acquired their undertaking. It was held by the Lord Ordinary (Adam) that the proviso in the latter part of sec. 89 (1) of the 1867 Act did not apply, the water commissioners having power under their own Act to make an

agreement with any local authority for a supply of water. (*Macfarlane, Strang, & Co.* v. *Motion*, July 11, 1884, P.L.M. 1884, p. 638.)

A local authority had a contract with a water company to supply their district with water. The contract expired, and the local authority did not renew it. Certain ratepayers applied to the Board of Supervision to compel the local authority to provide a supply. The Board held that they could not interfere, in view of the latter part of sec. 89 (1) of the 1867 Act.—B.

[10] The words "any local authority or" are new.

[11] The word "company" includes "commissioners." See definition in sec. 3.

[12] The words "or empowered by or authorised by provisional order" are new.

(2.)[13] The local authority, [14]if they have any surplus water after fully supplying what is required for domestic and sanitary purposes, may supply water from such surplus to any [15]public baths and wash-houses, or for trading or manufacturing [16]and all other than domestic purposes, [17]on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied. [18]Provided that when water is thus supplied from such surplus it shall not be lawful for the local authority to charge the persons so supplied both with the [19]portion of the [20]special water assessment applicable to the buildings or premises supplied, and also for the supply of water obtained; but the local authority may either charge the said assessment leviable on such [21]buildings or premises, or charge for the supply of water furnished to the same as they shall think fit, [22]and the local authority shall have the same remedies and powers of recovering payment of such water rents or payments as are hereinafter provided with regard to the special water assessment.

[13] This sub-section takes the place of sub-sec. 3 of sec. 89 of the 1867 Act, which it re-enacts with a few alterations.

[14] Although the local authority are empowered by sub-sec. 1 to introduce water for other than domestic and sanitary purposes, they are not entitled to supply water for such other purposes unless and until they have fully supplied what is required for domestic and sanitary purposes. The words "and sanitary" are new; they had no place in the 1867 Act.

[15] The water to public baths and wash-houses may be supplied gratuitously; see sub-sec. 3.

[16] The words "and all other than domestic purposes" are new. There is no definition of "domestic purposes" in this Act, but in the Waterworks Clauses Act, 1863, which is incorporated with this Act by sec. 132, the following definition is given: "Sec. 12.—A supply of water for domestic purposes shall not include a supply of water for

cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose." The definition in sec. 265 of the Burgh Police Act, 1892, differs somewhat from the above.

The Board of Supervision were of opinion that "domestic purposes" includes the supply required for baths and water-closets in private houses, also what is required for a single horse or a single cow.—B.

There have been several sheriff-court decisions under sec. 89 (3) of the 1867 Act, but with regard to all these it must be kept in view that the above section of the Waterworks Clauses Act, 1863, was not incorporated with the 1867 Act, and that no definition of "domestic purposes" was given in the latter Act. It was held in the Sheriff Court at Perth that a man who kept three horses for his business, although he did not lend them out on hire, was liable to be charged for a supply for "trading purposes"; similarly one who kept four cows and sold their milk. (*Collector of Blairgowrie*, August 1, 1879, P.L.M. 1879, p. 549.)

A dairyman was held liable to be charged specially for water supplied to his cows, and was not exempt on the ground that cows are domestic animals. (*Robertson* v. *Local Authority of Cults*, July 11, 1883, P.L.M. 1884, p. 97.)

Water used by a hotel-keeper for washing bottles is used for "trading purposes," and may be specially charged for. (*Local Authority of Beith* v. *Muir*, April 1887, P.L.M. 1887, p. 318; also July 20, 1887, P.L.M. 1887, p. 545.)

[17] The charge and the conditions on which the supply is to be given are matters for agreement between the local authority and those using the water. It does not appear to be open to the local authority to fix a general rate for surplus water; the statute contemplates a separate agreement with each person requiring the supply. In the case of the *Eastern District Committee of Dumbartonshire* v. *Scott*, August 9, 1895, P.L.M. 1895, p. 539; 13 S.L. Review, 165, the local authority took the course of charging the occupiers of spirit shops with double the water-rate on other shops. A suspension brought by the spirit-dealers was decided on the ground that, the charge in question being an assessment, it was illegally imposed by the district committee, who have no power of assessing, but the concluding sentences of the sheriff-substitute's note indicate that in his opinion the whole procedure was inept. See also the opinion of counsel—Messrs. Henry Johnston and Cullen—in 1 *County Council Cases*, p. 160, where suggestions were made for enabling a local authority to fix and apply a general rule in making charges for water supplied for dairy purposes.

[18] The proviso enacts that persons obtaining a supply for other than domestic purposes may either be charged the special water assessment or they may be charged according to the amount of water used; both charges cannot be made. There is a similar provision in sec. 264 of the Burgh Police Act, 1892: "Provided that, when water is thus supplied from such surplus, it shall not be lawful for the commissioners to charge the parties obtaining the

same both with the portion of the burgh' general assessment applicable to water-supply, and also for the supply of water obtained by them."

The following are some sheriff-court decisions arising out of this proviso.

A ratepayer who has paid the special water assessment cannot also be charged separately for water used for trade purposes; nor can he be interdicted from using the water for trade purposes during the year on account of which he has paid the assessment. (*Local Authority of Beith* v. *Muir*, April 1887, P.L.M. 1887, p. 318; also July 20, 1887, P.L.M. 1887, p. 545.)

Where a proprietor has been charged the special water assessment, he is not liable as occupier in a separate charge for water used for trade purposes. (*Local Authority of Kilbirnie* v. *Owner of Commercial Hotel*, March 7, 1889, P.L.M. 1889, p. 213.)

Under the 1867 Act some difficulty was found in making an equitable arrangement where a large income was derived from the sale of water, and a large rental was consequently exempted from the occupiers' share of the water assessment. In a district where this state of matters existed the practice of the local authority was to credit the special district account with the amount derived from the sale of water, and thereafter raise the balance required by levying an assessment one half on the owners and the other half on the occupiers, excepting those who paid for their supply. The effect was that, the rental on which the occupiers' half of the assessment was payable being much smaller than that on which the owners' half was payable, those occupiers who were liable in water assessment were assessed at a considerably higher rate than the owners. The occupiers objected to this arrangement and claimed that, as the payments for surplus water were made by occupiers, the occupiers' half of the assessment should be credited with the amount of the sales, or at least with so much thereof as would equal the assessment leviable on the premises exempted in respect of such sales. The Local Government Board, however, took the view that they could find no authority in the statute for crediting the whole or any part of the revenue derivable from the sale of water exclusively to the occupiers' half of the assessment. It is probable however that, owing to the change in the method of assessing introduced by this Act, the difficulty hitherto experienced will no longer be felt. The assessment in landward districts will now be levied at a uniform rate on owners and occupiers. See note 6 to sec. 135, and case there cited.

[19] The phraseology here differs from that of the 1867 Act, where the words were simply "both with the special water assessment and also for the supply of water obtained by them." The object evidently is to make it clear that, while a person who pays for water supplied to a stable or shop or works is not to be charged with the water assessment applicable to these premises, he may nevertheless be charged with the water assessment applicable to other premises possessed or occupied by him (*e.g.*, his dwelling-house) and not supplied out of the surplus water.

[20] It will be observed that it is only the "special water assessment" that is mentioned, from which it may be inferred that only special

water-supply districts were in view when the clause was framed. On this point the Board of Supervision expressed the following opinion in regard to the corresponding provision of the 1867 Act:—

"The special water assessment referred to in sec. 89 (3) [sec. 126 (2) of this Act] can only be the assessment leviable under sec. 94 (1) [sec. 134 of this Act], where a special water-supply district has been formed. There is no other special water assessment authorised by the Public Health Act. Except in a special district there is no provision for separating the assessment required for water from the general assessment leviable under sec. 94 (2) [sec. 135 of this Act]. The effect of sec. 89 (3) [sec. 126 (2) of this Act] therefore is—where a special water-supply district has been formed, persons using water for trading or manufacturing purposes are not liable both for the special water assessment and for a separate charge for the water used by them; but where no special district has been formed and the cost of the water is a charge against the general assessment, there is nothing in the Act to prevent the local authority making a separate charge for surplus water supplied under sec. 89 (3) [sec. 126 (2) of this Act], although the persons using such water have been assessed under sec. 94 (2) [sec. 135 of this Act]."—B.

[21] The words "buildings or" are new.

[22] The words "and the local authority," &c., to the end of the section are new. The powers of recovery of the special water assessment under sec. 134 are the same as those for the general assessment under sec. 135; see the latter section and notes. See also the provisions of the Waterworks Clauses Acts, which are incorporated by sec. 132.

(3.)[23] The local authority may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, [24]or may substitute, maintain, and plentifully supply with water other such works equally convenient; and [25]may, if they shall think fit, provide and gratuitously supply water for any public baths or wash-houses established otherwise than for private profit or supported out of any rates.

[23] This sub-section re-enacts sub-sec. 4 of sec. 89 of the 1867 Act. There is a corresponding provision in sec. 257 of the Burgh Police Act, 1892. The local authority are not bound to maintain wells, &c., which are injurious or dangerous to health. These may be dealt with as nuisances under sec. 16 (3), and under this sub-section the local authority may substitute other wells, &c.

Under sub-sec. 1 of this section the local authority may provide and maintain new pumps and wells; under sub-sec. 3 they may maintain pumps and wells previously existing; and, unless a special water-supply district has been formed, the expense will be spread over the whole district of the local authority.

It has been held that the local authority are entitled to cover up or otherwise protect from pollution any well from which the public has a right to take water, and neither the owner of the ground nor any other person is entitled to object. (*Smith* v. *Police Commissioners of Denny*, March 8, 1880, 7 R. (H.L.) 28.)

Under sec. 69 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), the local authority have power in their discretion to supply water to lodging-houses provided under Part III. of that Act "either without charge or on such other favourable terms as they think fit."

[24] The words "or may substitute," &c., to "equally convenient" are new.

[25] See sub-sec. 2, which provides that surplus water may be supplied to public baths and wash-houses. Under sec. 44 of the Local Government (Scotland) Act, 1894, special districts may be formed for baths and wash-houses, and in such cases secs. 309–314 of the Burgh Police Act, 1892, may be adopted.

(4.) [26]The local authority shall have the same powers and be subject to the same restrictions for carrying water-mains within their district as they have and are subject to for carrying sewers within their district by the law for the time being in force.

[26] This provision is new. For the powers as to sewers see secs. 103, 107, and 109. See also the provisions of the Waterworks Clauses Act, 1847.

Penalty for causing water to be corrupted by gas-washings, &c.

127.[1] Any person engaged in the manufacture of gas, naphtha, vitriol, paraffin, or dye stuffs, or any other deleterious substance, or in any trade in which the refuse produced in any such manufacture is used, who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, well, or pond, or place for water, constructed or used for the supply of water for domestic purposes, or into any pipe or drain communicating therewith, any product, washing, or other substance produced in any such manufacture, or shall wilfully do any act connected with any such manufacture, whereby the water in any such stream, reservoir, aqueduct, well, pond, or place for water shall be fouled, and any person who shall wilfully do or permit to be done any act whereby the water in any stream, reservoir, aqueduct, well, pond, or place constructed [2]or used for the supply of water for [2]drinking or other domestic purposes

shall be fouled, shall forfeit for every such offence a [3]sum not exceeding fifty pounds.

[1] This section re-enacts sec. 27 of the 1867 Act with slight alterations. Provisions with regard to the fouling of water by gas-washings are contained in secs. 62-67 of the Waterworks Clauses Act, 1847, which is incorporated with this Act (sec. 132). The penalty under these provisions is two hundred pounds. The same Act (sec. 61) provides a penalty of five pounds for other offences whereby water is fouled.

The commissioners, under a private Act for supplying a town with water for domestic use, obtained by purchase from the proprietors of a loch the right to take water therefrom. In a petition for interdict presented by the commissioners against one of the proprietors of the loch, *held* that he was not entitled to wash in the loch sheep which had been dipped some months previously in a fluid containing deleterious ingredients, although it was not proved that the pollution would be to such an extent as would have any perceptible effect upon the quality of the water of the loch. (*Dumfries Waterworks Commissioners* v. *M'Culloch*, June 4, 1874, 1 R. 975.)

This section deals with the pollution of potable water. For the provisions as to the pollution of other waters, see secs. 116 and 118 of this Act, also the Rivers Pollution Acts.

[2] The words "or used" and "drinking or other" are new.

[3] As to recovery of the penalty, see sec. 128; and as to daily penalty for a continuing offence, see sec. 129.

Penalties to be sued for within six months.

128.[1] Such penalty may be recovered, with expenses, by the person into whose water such product, washing, or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, or if there be no such person, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

[1] This section re-enacts sec. 28 of the 1867 Act without alteration.

Daily penalty during continuance of offence.

129.[1] In addition to the said penalty (and whether such penalty shall have been recovered or not), the person so offending shall forfeit a sum not exceeding five pounds (to be recovered in the like manner) for each day during which such product, washing, or other substance shall be brought

or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person by the local authority, or by the person into whose water such product, washing, or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the local authority or person from whom such notice shall proceed; and all moneys recovered by the local authority under this or the preceding section shall, [2]after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

[1] This section re-enacts sec. 29 of the 1867 Act without alteration.

[2] By sec. 153 penalties recovered by the local authority may be applied to the purposes of the Act, but the penalties here dealt with are to be applied in the first instance to payment of damages caused by the offence.

Local authorities may combine as to water-supply.

130.[1] Two or more local authorities may, [2]with the sanction of the Board, combine together for the purpose of executing [3]or acquiring an interest in or maintaining any works by this Act [4]or any other Act authorised in regard to water-supply that may be for the benefit of their respective districts; and all moneys which they may agree to contribute for the execution or acquisition or maintenance of such common works shall, in the case of each local authority, be deemed to be [5]expenses incurred by them in the execution, acquisition, or maintenance of works within their district.

[1] This section re-enacts sec. 92 of the 1867 Act with a few alterations. See last part of note 12 to sec. 122, which applies equally to special water-supply districts.

[2] Under the 1867 Act the sanction of the Board was not required to the combination of local authorities for executing water-works, though it was required in the case of drainage works. It is immaterial in what form the application for the Board's sanction is made. It may be either a joint application or an application at the instance of each of the local authorities.

[3] The words "or acquiring an interest in" are new.

[4] The words "or any other Act" are new. In burghs water-works can only be undertaken in terms of the Burgh Police Act, 1892, or local Acts, and combination for joint works under the Burgh Police Act can only be effected by means of Provisional

Orders in terms of sec. 45 of that Act. As the provisions of this section are not limited to landward districts, the effect may be that local authorities of burghs will be able to combine with other local authorities for water-supply purposes, although when acting alone they have no power under this Act to execute waterworks.

[5] If no special water-supply district has been formed, the expenses will be chargeable to the public health general assessment authorised by sec. 135; if the works are for a special water-supply district formed under sec. 131, the expenses will be chargeable to the special water assessment authorised by sec. 134.

Special water-supply districts.

131.[1]—(1.) Upon [2]requisition to that effect made in [3]writing by a [4]parish council or by not fewer than ten [5]ratepayers within the [6]district, the local authority, [7]not being the local authority of a burgh, shall be bound to meet, after twenty-one days' notice, or, [8]if the local authority itself so resolve, it may meet after twenty-one days' notice, and shall, [9]whether water-supply has been already provided or not, consider the propriety of—

(*a*) [10]forming part of their district into a special water-supply district; or

(*b*) [11]enlarging or limiting the boundaries of a special water-supply district; or

(*c*) [12]combining a special water-supply district with another special water-supply district; or

(*d*) enlarging or limiting the boundaries of both or either of such special water-supply districts, and combining the same or parts thereof; or

(*e*) [13]determining that any special water-supply district shall cease to exist as a special water-supply district, or that any such combination shall cease:

and the resolution of the local authority shall [14]determine all questions regarding the payment of any debt which may affect any district or special water-supply district, and the right to impose and the obligation to pay any assessment affected by such determination, and shall fix the date at which such determination shall take effect; and such resolution shall be published in one or more newspapers circulating in the district, or [15]by the posting of handbills throughout the district, and [16]a copy of said resolution shall be forthwith transmitted to the Board, and where the local authority is a district committee to the county council; [17]and the production of such newspaper or handbill, or a

certificate under the hand of the clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within [18]twenty-one days after the date of the first publication of such resolution it shall be competent for any person interested to appeal against the resolution (whatever its terms may be) to the sheriff; and the sheriff, not being a sheriff-substitute resident within the [19]district, may either approve or disapprove of such resolution; and if he disapproves thereof he may either find that no special water-supply district should be formed, or [20]may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special water-supply district should be formed, and may define the limits thereof, or may find that such special water-supply district or part thereof shall be combined [21]as prayed, or that such combination shall cease, or that such special water-supply district or districts shall, as such, cease to exist; and the decision of the sheriff shall be binding, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff.

[1] This section is founded on sec. 89 (5) of the 1867 Act and on the Amendment Act of 1882, but it differs in many points, the more important of which are referred to in the notes. The general principle, however, remains unchanged, viz., that a landward local authority may mark out a part of their district and form it into a separate area for the purpose of water-supply, the assessment for that purpose being limited to the special area so formed. The provisions as to assessment in special water-supply districts are contained in sec. 134. Power to borrow is given by sec. 140.

Water-supply works being "capital works" in the sense of sec. 18 (6) and (7) of the Local Government Act, 1889, any operations under this section require the consent of the standing joint committee.

The provisions of sec. 122 as to the formation of special drainage districts being similar, the notes to that section should also be consulted, as many of them will apply likewise to this section.

[2] See note 2 to sec. 122. The form of requisition there suggested may readily be adapted to the case of a special water-supply district.

[3] See note 3 to sec. 122.

[4] The power of the parish council to make a requisition is new. It does not appear that this is a power which in a partly burghal parish could be exercised by the landward committee.

[5] Not *inhabitants*, as in the 1867 Act.

[6] The word "district" here means district of the local authority, and in sec. 122 it is so expressed; see note 6 thereto.

[7] The provision restricting the power to landward areas is new. Under the 1867 Act it was exercisable also in burghs with a population under 10,000; but in accordance with the general policy of

this Act as regards water-supply, all burghs are excluded. Under the Burgh Police Act, 1892, there is no provision for special water-supply districts, such as is made by sec. 218 for drainage districts.

[8] See note 8 to sec. 122.

[9] See note 9 to sec. 122, and *Ayr County Council* v. *Dalmellington Special Water-Supply District Sub-Committee*, June 1, 1895, P.L.M. 1895, p. 365.

It seems to be immaterial whether the existing supply has been introduced by the local authority or not; in either case the formation of a special district is competent. It was held in the Sheriff Court that a village may be formed into a special water-supply district, although there exists a water committee supplying part of the village. *M'Culloch* v. *Local Authority of Alva*, September 10, 1868, P.L.M. 1868–69, p. 64.

When a special district had been formed and water introduced, a company, which had previously arranged to provide themselves with water, applied to have their grounds, which were within the special district, formed into a separate district with the object of obtaining relief from the special water assessment. The sheriff held that the application was incompetent. (*Crieff Hydropathic Company* v. *Police Commissioners of Crieff*, P.L.M. 1871–72, p. 580.)

[10] See note 10 to sec. 122. As to the circumstances to be taken into consideration in the formation of a special water-supply district, see observations of Sheriff Mackay in *Ratepayers of Leuchars* v. *St. Andrews District Committee*, February 7, 1894, 1 S.L.T. 516; 2 County Council Cases, 134; also Sheriff Murray in *Cadder Case*, Dec. 12, 1894, P.L.M. 1895, p. 93.

It is not a sufficient reason for excluding a mill, which is within the natural boundary of a special water-supply district, that it is well supplied with water, or that it is not at present in use. (*Local Authority of Houston* v. *Barbour*, January 6, 1888, P.L.M. 1888, p. 369.)

The area of a special water-supply district was enlarged by the sheriff so as to include ironworks, &c., lying either within or immediately contiguous to the proposed district. (*Eglinton Iron Company* v. *Local Authority of Kilwinning*, December 3, 1877, P.L.M. 1878, p. 81.)

Where a village is partly in the district of one local authority and partly in that of another, the proper course is for each local authority to form the portion within its jurisdiction into a special water-supply district, after which they may combine under sec. 130 to execute and maintain the works.

[11] See note 11 to sec. 122. It was held that a local authority had no power under the 1867 Act to make an agreement with a proprietor to include within a special district lands lying outside it. See *Maconochie Welwood* v. *County Council of Midlothian*, November 14, 1894, 22 R. 56; 32 S.L.R. 74; P.L.M. 1895, p. 21.

[12] See note 12 to sec. 122, and opinion of counsel there referred to.

[13] The power of dissolving a special water-supply district in this way is new. Where the Public Health (Scotland) Act, 1891, is in force there is a limited power to abolish a special water-supply district in certain circumstances. See sec. 6 of that Act.

[14] See note 14 to sec. 122.

[15] See note 15 to sec. 122.
[16] See note 16 to sec. 122.
[17] See note 17 to sec. 122.
[18] See note 18 to sec. 122.
[19] The word "district" here appears to refer to the whole district of the local authority (see definition in sec. 3), and not to the special district which it is proposed to form or alter.
[20] See note 20 to sec. 122.
[21] The words "as prayed" seem to refer either to the requisition or to the prayer of the petition to the sheriff.

(2.)[22] The order of the sheriff shall determine all questions regarding the payment of any debt which may affect any district or special water-supply district, and the right to impose and the obligation to pay any assessments affected by his determination, and shall fix the date at which such determination shall take effect; and [23]a copy of said order shall be forthwith published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district and transmitted to the Board and to the county council.

[22] This sub-section is new. See note 14 to sec. 122.
[23] See note 23 to sec. 122.

(3.) [24]Notwithstanding the provisions of section seventeen, sub-section two, sub-head (*c*) of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), it shall not be competent to appeal to the county council against any resolution of a district committee under this section.

[24] See note 24 to sec. 122.

(4.) [25]Nothing contained in this Act shall prejudice the provisions of sub-sections one and two of section eighty-one of the last-mentioned Act as amended by section forty-four of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58).

[25] See note 26 to sec. 122.

Incorporation of Waterworks Clauses Acts.

132.[1] The following Acts and parts of Acts, so far as the same respectively are applicable for the purposes, and are not inconsistent with the provisions of this Act, are hereby incorporated with this Act:—

[2]The Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), except the provisions with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, and [3]except the words in section forty-four thereof, "with the consent in writing of the "owner or reputed owner of any such house or of the agent "of such owner":

[4]The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93):

[5]The provisions of the Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), with respect to the temporary occupation of lands near the railway during the construction thereof, but such last-mentioned provisions shall apply only in the case of any reservoir, filter, or distributing tank, which the local authority may be authorised to construct, and the works immediately connected therewith, and for the purposes of this Act those provisions shall be read as if such reservoir, filter, or tank, and works, were therein mentioned instead of "the railway," and the boundaries of such reservoir, filter, or tank, and works, instead of "the centre of the railway," and the prescribed limits shall be two hundred yards from such boundaries:

Provided always that—

[6](*a*) the local authority shall not be obliged to furnish a supply of water to any person for any less sum than five shillings in any one year;

[7](*b*) no person shall be entitled to demand such supply of water, or to require the local authority to lay down communication pipes, unless some pipe of the local authority shall have been laid within one hundred feet of the house or other premises in respect of which such supply or communication pipes are demanded, or unless the local authority shall become bound by virtue of a requisition and agreement made and executed in the manner and to the extent required by the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), to cause pipes to be laid down within the said distance of one hundred feet of such house or other premises;

[8](*c*) The water to be supplied by the local authority need not be constantly laid on under pressure.

[1] This section is new. No part of the Waterworks Clauses Acts was incorporated with the 1867 Act, and the provisions of these Acts were not available to local authorities introducing water under

that Act. The provisions of this section are all, with the exception of proviso (*c*), to be found in the Public Health (Scotland) Amendment Act, 1891, secs. 3 and 4 (3) (*b*) and (*c*).

[2] The Waterworks Clauses Act, 1847, consists of ninety-four sections. Of these, secs. 1 to 5 are preliminary, sec. 2 providing that the words "the special Act" shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks, and with which the Waterworks Clauses Act shall be incorporated; and that the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks. Secs. 6–15 deal with the construction of the works; secs. 16 and 17 with accommodation works; secs. 18–27 with mines; secs. 28–34 with the laying of pipes; secs. 35–37 with the supply of water; secs. 38–43 with fire-plugs; secs. 44–47 with the pipes to be laid by the undertakers (*i.e.*, the local authority); secs. 48–53 with the pipes to be laid by the inhabitants; secs. 54–60 with the protection of the water; secs. 61–67 with the fouling of the water; secs. 68–74 with the water rates; secs. 75–82 with the profits to be received by the undertakers, these being the sections which are not incorporated with this Act; and secs. 83 to the end deal with accounts, recovery of penalties, access to the special Act, and other miscellaneous matters. The Act is only incorporated so far as applicable and so far as not inconsistent with this Act; there are accordingly many provisions which may not be made use of. Some of the provisions of the incorporated Acts may be found to be of great service. Local authorities are sometimes annoyed by persons outwith a special water-supply district taking water from the pipes or fountains belonging to the special district. (See *Culross Special Water-Supply District Committee* v. *Smith Sligo's Trustees*, November 6, 1891, 19 R. 58.) A penalty is provided for such an offence by sec. 20 of the Waterworks Clauses Act, 1863. In cases of that kind the proper course appears to be for the local authority, if there is any surplus water, either to sell it under sec. 131 (2) to the person desiring the supply or to agree to supply such person on condition of payment by him of the water assessment.

Another source of trouble to local authorities is the waste of water by defective fittings and otherwise. With the object of checking this, some local authorities have framed regulations (see, for example, those made by the Lower District Committee of Renfrewshire, 1 *County Council Cases*, p. 214). There is no reason to believe that such regulations, though not expressly authorised by statute, are incompetent, but a difficulty lies in enforcing them. Many of the objects of these regulations are met by the provisions of the Incorporated Acts.

[3] Sec. 44 of the Waterworks Clauses Act, 1847, provides *inter alia* that in certain circumstances the undertakers shall lay down pipes for the supply of a house upon the request of the occupier, subject to the consent of the owner, as set forth in the words which are quoted in the section, and which are not incorporated with this Act.

[4] The Waterworks Clauses Act, 1863, amends the 1847 Act, and makes provision for the security of reservoirs, the supply of water for other than domestic purposes, and the protection of water from waste and misuse.

[5] The provisions here incorporated are secs. 25 to 37 of the Railway Clauses Act, 1845. See also sec. 4 (2) of this Act.

[6] Proviso (*a*) is not free from ambiguity. It is taken from sec. 4 (3) (*b*) of the Public Health Amendment Act, 1891, but it is not clear whether it refers to the amount of the special water assessment or to the sum payable for surplus water for other than domestic purposes in terms of sec. 126 (2). If the former, it is difficult to construe the proviso consistently with the obligation resting on the local authority to supply with water the whole of the inhabitants of the district, or of the special water-supply district (as the case may be),—whatever be the amount of water assessment payable in individual cases.

[7] Proviso (*b*) is also puzzling. It apparently refers to the power given by sec. 44 of the Waterworks Clauses Act, 1847, to owners and occupiers to require the undertakers to provide a house with a supply of water. This provision is operative if the house is in a street in which pipes have been laid down by the undertakers. Proviso (*b*) imports a further condition, viz., either there shall be a pipe within 100 feet of the house or premises to be supplied, or the local authority as undertakers shall, on a requisition by owners or occupiers under sec. 35 of the same Act, have become bound to bring the pipes within 100 feet of the house or premises to be supplied. The agreement referred to seems to be that mentioned in the proviso to the same section, which runs: "Provided that no such requisition shall be binding on the undertakers unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least." Had it not been for proviso (*b*) of this section it might have been assumed that the above-quoted proviso was not to be held to be incorporated herewith, in respect that it is inapplicable for the purposes and inconsistent with the provisions of this Act.

[8] The difficulty of construction which attends heads (*a*) and (*b*) of the proviso does not extend to head (*c*), which obviously refers to the provision in sec. 35 of the Waterworks Clauses Act, 1847, that the "supply shall be constantly laid on at such a pressure as will make the water reach the top storey of the highest houses within the said limits, unless it be provided by the special Act that the water to be supplied by the undertakers need not be constantly laid on under pressure.

PART VII.

RATING AND BORROWING POWERS.

[1]ASSESSMENTS.

Special sewer assessment.

133. [2]In any burgh, or where any [3]special drainage district has been formed under this Act or any of the Acts hereby repealed, the expense incurred by the local authority for sewerage or drainage within the same, or [4]for the pur-

poses thereof, and the sums necessary for payment of any [5]money borrowed therefor either before or after the passing of this Act, [6]together with the interest thereof, shall be paid out of a special sewer assessment which the local authority shall raise and levy on and within such burgh or [7]special district, in the same manner and with the same remedies and modes of recovery as are [8]hereinafter provided for the public health general assessment.

[9]Provided that where a special drainage district has been formed under the provisions of this Act or any of the Acts hereby repealed or of [10]any Act, and the drainage works therein have been executed and are maintained under the authority of such Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority.

[1] The assessment provisions of this Act make several alterations on the existing law, the most important being that as to the limit of assessment (sec. 137) and that which requires the assessment in burghs to be levied in the same manner as the general improvement rate (sec. 136).

[2] This section re-enacts sec. 93 of the 1867 Act with certain modifications, and with the addition of a proviso taken from secs. 94 (2) and 95 (1) of the earlier Act. Sec. 93 of the 1867 Act provided that the special assessment should be leviable within special districts only; this section provides that it shall be leviable also within burghs. Under the 1867 Act a special drainage district might be formed within a burgh, but sec. 218 of the Burgh Police Act, 1892, which discourages special districts within burghs, had the effect of preventing the formation of such districts to any great extent. Under the present Act there is no provision for the creation of special districts within burghs. Local authorities of burghs have power, however, to carry out drainage works under the general powers given by this Act (sec. 103). When drainage works have to be made in any burgh, it will be for the consideration of the burgh authority whether they will make use of the provisions of this Act or those of the Burgh Police Act. There are several points of difference, the most important probably being that of assessment. Sewage works must be paid for out of the assessment authorised by the Act under which the works are carried out. In the case of the *Commissioners of Police of Kirkintilloch* v. *M'Donald* (Oct. 31, 1890, 18 R. 67; 28 S.L.R. 57; P.L.M. 1891, p. 92) certain sewerage works were carried out under the General Police Act, and other sewerage works under the Public Health Act, 1867. It was held that the assessment for the former was to be imposed in the manner authorised by the General Police Act, and that the cost of the works carried out under the Public Health Act should be assessed, as authorised by that Act, in the same manner as the police assess-

ment. The cost of sewerage works in a burgh will, if carried out under the Burgh Police Act, be met by an assessment on owners; if carried out under this Act, by an assessment levied in the same manner as the general improvement rate, *i.e.*, half on owners and half on occupiers, but limited in the manner provided by sec. 137 of this Act. The sewer rate under the Burgh Police Act is unlimited.

A special drainage district was formed in a parish under the 1867 Act, but no works were executed by the parochial board as local authority. Subsequently a burgh was formed, which included the whole of the special drainage district. The police commissioners, without regard to the special drainage district, carried out drainage works for the whole burgh, and assessed the whole ratepayers therefor. A suspension and interdict against this assessment was raised by an owner of mines and minerals partly within and partly beyond the special drainage district, but wholly within the burgh, on the ground (1) that the lands and heritages in the special drainage district fell to be assessed separately, and (2) that the assessment within the special drainage district fell to be laid on in terms of sec. 94 of the Public Health Act of 1867, and not in terms of the General Police Act. The court repelled the reasons of suspension, and held that the assessment had been properly imposed. (*Sir W. Edmonstone* v. *Police Commissioners of Kilsyth*, June 9, 1882, 9 R. 917; P.L.M. 1882, p. 414.)

The enactment of sec. 81 (3) of the Local Government Act of 1889 that where a special district is wholly within a police burgh formed after the passing of that Act, the assessments shall be levied in the same manner as they were before such district was formed into a police burgh, is repealed by this Act (Schedule I.). Accordingly, in such cases the assessment, if the special district is for drainage, will be in terms of this section; if for water, in terms of sec. 134.

[3] For the provisions as to the formation of special drainage districts, see sec. 122. Whether a special drainage district has been formed under this Act, or, before the passing of this Act, under sec. 76 of the 1867 Act, or under the Amendment Act of 1882, the expenses will be met by an assessment under this section.

[4] The preliminary expenses in connection with the formation of a special district, including cost of surveys, provisional orders, &c., are chargeable to the special assessment, the words "or for the purposes thereof" covering any such expenditure. If the special district is not formed, the expenses incurred in connection with the attempt to form it fall to be defrayed out of the general assessment.—B.

The expenses of management of a special district may be charged against the special assessment. If an officer is employed to superintend the drainage or waterworks in a special district, his salary in respect of such employment is a charge against the special assessment—B.

[5] For the power of borrowing for sewers under this Act, see sec. 139. The special sewer assessment will also bear the charges for money borrowed under sec. 86 of the 1867 Act, where such borrowing was for the purposes of a special drainage district or for drainage works for a burgh.

[6] The words "together with the interest thereof" are new.

[7] The valuation roll, as required by sec. 45 of the Local Government Act of 1894, distinguishes the subjects situated within every special district, and the assessor of railways is also required to specify and assign separately that portion of the subjects assessed by him which is included within the special district.

When a farm is partly within and partly without a special district, the proper course is to value the farm with the buildings thereon as an *unum quid* and distribute the amount proportionately to acreage. (*Forbes Irvine* v. *Assessor for Aberdeenshire*, March 17, 1897, 24 R. 741.)

[8] For the provisions as to the public health general assessment in burghs, see sec. 136; in landward districts, sec. 135. The local authority are not entitled to assess in any other manner. See *Wordie, &c.*, v. *County Council of Lanarkshire*, November 22, 1895, 23 R. 168.

[9] This proviso is repeated in sec. 136. The special drainage district is liable along with the rest of the district of the local authority for the public health general assessment, so far as it does not apply to drainage. If the local authority carry out drainage works in a portion of their district which has not been formed into a special drainage district, it will be necessary to take measures to prevent any part of the expenses of such works being assessed for within any special drainage district.

[10] See secs. 218 and 363 of the Burgh Police Act, 1892.

Special water assessment.

134.[1] In any burgh, or where any [2]special water-supply district has been formed under this Act or any of the Acts hereby repealed, the expense incurred by the local authority for water-supply within the same or [3]for the purposes thereof, and the sums necessary for payment of any money [4]borrowed therefor either before or after the passing of this Act, [5]together with the interest thereof, shall be paid out of a special water assessment which the local authority shall raise and levy on and within such burgh or [6]special district, in the same manner and with the same remedies and modes of recovery as are [7]hereinafter provided for the public health general assessment.

[8]Provided that where a special water-supply district has been formed under the provisions of this Act or any of the Acts hereby repealed or of any Act, and a sufficient supply of water has been obtained and is maintained under the authority of such Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of supplying water to other parts of the district of the local authority.

[1] This section re-enacts sec. 94 (1) of the 1867 Act with certain modifications, and with the addition of a proviso taken from sec. 94 (2) of that Act, which appears also in sec. 4 (3) (*a*) of the Amendment Act of 1891. The provision of the 1867 Act applied only to special water-supply districts; this section applies also to burghs. But there is no power under this Act to provide water for burghs, and no power to form a special water-supply district within a burgh, accordingly the special water assessment will only be leviable in burghs for the purpose of meeting the expense of waterworks constructed under the provisions of the 1867 Act. No part of the expense of waterworks carried out under the Burgh Police Act, 1892, can be charged to the special water assessment. Where the local authority of a burgh has introduced water under the Public Health Act, without forming a special water-supply district, the cost, which has hitherto been a charge against the public health general assessment, will now fall on the special water assessment, and the provisions of sec. 137 of this Act as regards the limit of assessment will apply.

For the mode of assessment for water under the Amendment Act of 1891, see sec. 4 of that Act.

As to the provisions and partial repeal of sec. 81 (3) of the Local Government Act of 1889, see last paragraph of note 2 to sec. 133.

As to exemption from special water assessment where surplus water is supplied for other than domestic purposes and separately paid for, see sec. 126 (2) and notes.

[2] For the provisions as to the formation of a special water-supply district, see sec. 131. Whether a special district has been formed under this Act, or, prior to the passing of this Act, under sec. 89 (5) of the 1867 Act, or under the Amendment Act of 1882, the expenses will be met by an assessment under this section.

[3] See note 4 to sec. 133.

The special water assessment must be applied to the expenses of the waterworks alone, and of any works necessarily connected therewith. Thus, if drainage operations are required to carry off an overflow, or to divert impure water from passing into the waterworks, the expense falls to be paid out of the special water assessment.—B.

[4] For the power of borrowing for waterworks under this Act, see sec. 140. The special water assessment will also bear the charges for money borrowed under sec. 89 (6) of the 1867 Act where such borrowing was for the purposes of a special water-supply district or for water-supply works for a burgh.

[5] The words "together with the interest thereof" are new.

[6] As to valuation of special districts, see note 7 to sec. 133.

A local authority entered into an agreement with a proprietor by which they, in return for way-leave for water-pipes, undertook to allow him to include certain lands to be connected with the special water-supply district and to be assessed therefor at the same rate as the property already included in that district. He paid the rate for one year; thereafter, he disconnected the pipes at his own expense, and intimated that he would pay no further assessment. The court held, on a construction of the agreement that the proprietor, having ceased to use the water-supply, was not

liable for the assessment; and observed that construed literally the agreement was *ultra vires* of the local authority, as they had no power to include within the special water-supply district lands lying outside it. (*Maconochie Welwood* v. *County Council of Midlothian*, November 14, 1894, 22 R. 56; 32 S.L.R. 74; P.L.M. 1895, p. 21.)

[7] For the provisions as to the public health general assessment in burghs, see sec. 136; in landward districts, sec. 135.

A local authority of a parish had entered into an agreement with a burgh for a supply of water to a special water-supply district, and undertook under the agreement to levy an assessment within the special district in a manner different from that prescribed by the Public Health Act, 1867. It was held that the agreement was *ultra vires* of the local authority. (*Wordie, &c.*, v. *County Council of Lanarkshire*, November 22, 1895, 23 R. 168; 33 S.L.R. 91; P.L.M. 1896, p. 182.)

[8] A special water-supply district is liable along with the rest of the district of the local authority for the public health general assessment so far as it does not apply to water-supply. If the local authority carry out waterworks in a portion of their district which has not been formed into a special water-supply district, it will be necessary to take measures to prevent any part of the expenses of such works being assessed for within any special water-supply district.

General assessments in districts other than burghs.

135.[1] With respect to districts other than burghs, [2]all charges and expenses incurred by or devolving on the local authority in executing this Act or any of the Acts hereby repealed, and not recovered [3]as hereinbefore provided, may be defrayed out of an assessment (in this Act referred to as the public health general assessment) to be levied by the [4]local authority upon all lands and heritages within the [5]district or in the case of counties not divided into districts within the [5]county, in the like manner as, but as a separate assessment from, the assessment hereinafter mentioned in this section; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under like powers as —

[6]The assessment for the maintenance of roads under the provisions of the Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), or, where there is no such assessment, by an assessment levied in like manner as an assessment might have been levied for the maintenance of roads under that Act.

Nothing contained in this Act shall affect or prejudice the provisions of the [7]Agricultural Rates, Congested Dis-

tricts, and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37).

[1] This section comes in place of sec. 94 (2) of the 1867 Act. It introduces a decided change in the mode of assessing the public health general assessment in landward districts. Under the 1867 Act the assessment in landward districts was levied in the same manner as the poor-rate, and was subject to the provisions as to deductions, classification of occupiers, &c., set forth in the Poor Law Act. The Local Government Act of 1889 introduced a change in the area of administration and in the administrative body, but it effected no change in the mode of assessing. The Agricultural Rates Act of 1896 provided that the public health rate should be assessed on the gross rental as appearing in the valuation roll; this Act goes further, and provides that it shall be assessed in the same manner as the roads assessment. The result is that the two principal district rates—the assessments for the two matters which are administered by the district committee—viz., public health and roads, will be levied in the same manner.

[2] Although the only objects to which the public health general assessment may, in terms of this section, be applied are the expenses incurred in executing this Act or any of the Acts hereby repealed, the assessment will also be applicable to any other objects for which there is statutory authority for applying the public health general assessment, as, for instance, the execution of the Infectious Disease (Notification) Act, the Rivers Pollution Act, the provisions of the Contagious Diseases (Animals) Acts respecting dairies, and the sanitary provisions of the Factory and Workshops Acts. See sec. 193.

The public health rate is to be applied only to the authorised purposes. See *Leith Dock Commrs.* v. *Magistrates of Leith*, Nov. 30, 1897, 5 S.L.T. 274, where interdict was granted against charging the expense of opposing a Bill in Parliament to the public health rate.

[3] See the provisions as to special sewer assessment and special water assessment in secs. 133 and 134.

[4] The district committee having no power to levy rates, all assessments under this section will be imposed and levied by the county council. See sec. 17 (2) (*a*) and (4), and sec. 27 (1) of the Local Government Act, 1889, and the proviso to sec. 12 of this Act.

[5] See the definitions of "district" and "county" in sec. 3.

[6] Sec. 52 of the Roads and Bridges Act, 1878, provides:—

"The amount required for the management, maintenance, and repair of highways within each district respectively, or, in the option of the trustees, within the several parishes constituting such district, along with a proportion of the general expenses of executing this Act, as allocated by the trustees in manner hereinbefore mentioned, shall be levied by the trustees by an assessment to be imposed at a uniform rate on all lands and heritages within such district, or, in the option of the trustees, within each of the parishes constituting such district as aforesaid; and such assessment shall be paid, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which the same is imposed, except in the case of lands and heritages entered in the valuation roll as of the annual value of four pounds or under,

in which case the whole of the assessment imposed on such lands and heritages may, in the option of the trustees, be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier; provided, that outgoing tenants or occupiers, removing from lands and heritages during the currency of the year for which such assessments have been imposed, shall have a right of relief against the incoming tenants or occupiers for the proportion of the assessment applicable to the period of the year remaining unexpired at their removal.

"Where a county is not divided into districts the assessments by this section authorised shall be imposed upon the whole lands and heritages within the county in the same manner and subject to the same conditions, in and under which they are hereby authorised to be imposed upon the lands and heritages within a district."

It will be observed that the assessment is to be imposed "at a uniform rate on all lands and heritages" within either the district or parish. It has been held that, under sec. 54 of the Roads and Bridges Act, being the section providing for the assessment in burghs, the commissioners are to levy from the individual owners and occupiers such equal rate per pound as will produce the aggregate sum required, and that the principle of *Galloway* v. *Nicolson*, March 19, 1875, 2 R. 650, does not apply. That was a case under the Poor Law Act, 1845, in which it was held that in assessing under that Act the aggregate sum required is to be divided into two equal parts, and the one part levied from the owners as a class, and the other from the occupiers as a class. (*Govan Police Commissioners* v. *Armour*, February 3, 1887, 14 R. 461.)

The local authority are not entitled to assess in any other manner than that prescribed by the statute. See *Wordie, &c.*, v. *County Council of Lanarkshire*, November 22, 1895, 23 R. 168.

The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), sec. 1 (1) (*a*), provides that "all parochial or other local rates" becoming due within twelve months prior to the bankruptcy "shall be paid in priority to all other debts." The Local Government Act, 1889, sec. 62 (5), contains a similar provision.

[7] That Act provides that, for the rates leviable by county councils, the occupiers of agricultural lands shall be assessed on three-eighths of the rental appearing in the valuation roll.

General assessments in burghs.

136.[1] With respect to burghs [2]subject to the provisions of the Burgh Police (Scotland) Act, 1892, or having a local Act for police purposes—

[3]All charges and expenses incurred by or devolving on the local authority in executing this Act or any of the Acts hereby repealed, and not recovered [4]as hereinbefore provided, may be defrayed out of an assessment (in this Act referred to as the public health general assessment) to be levied by the local authority along

with but as a separate assessment from the assessment hereinafter mentioned; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers, but [5]without any limit, except as in the immediately succeeding section provided as—

[6]The general improvement rate under the Burgh Police (Scotland) Act, 1892, or, when there is no such rate, by a rate levied in like manner as the general improvement rate under the last-mentioned Act.

[7]Provided also, that where a special drainage district has been formed, under the provisions of any Act, and the drainage works therein have been executed and are maintained under the authority of such Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority.

[1] This section comes in place of sec. 94 (2) of the 1867 Act, in so far as that section applied to burghs, and also in place of sec. 95 (1). Under these provisions the public health assessment was leviable in the same manner as either (1) the prison assessment or (2) the police assessment. In most cases the police assessment was the rate which ruled the incidence of the general assessment under the 1867 Act. Under this Act the general improvement rate is the assessment to be followed.

[2] It is not clear why the words "subject to the provisions," &c., were introduced here. All burghs in Scotland are either under the Burgh Police Act or have a local Act for police purposes, accordingly it does not appear that the word burgh stood in need of any such qualification. See definition of "burgh" in sec. 3.

[3] See note 2 to sec. 135; also *Kirkintilloch Commissioners* v. *M'Donald*, October 31, 1890, 18 R. 67; 28 S.L.R. 57; P.L.M. 1891, p. 92.

[4] See secs. 133 and 134. The cost of drainage works in burghs will not be met out of the assessment under this section, but out of that authorised by sec. 133; and the cost of water introduced into a burgh under the provisions of the 1867 Act will be met out of the assessment under sec. 134. No part of the cost of drainage or waterworks in burghs will fall on the public health general assessment.

[5] The general improvement rate must not exceed threepence in the pound. See sec. 359 of the Burgh Police Act quoted in succeeding note. The assessment under this section may amount to one shilling in the pound (sec. 137).

[6] Sec. 359 of the Burgh Police Act, 1892, provides:—

"Whenever the commissioners in any burgh shall resolve, in

manner hereinbefore provided for, to make provision for the general improvement of the burgh, it shall be lawful for them to charge, in equal proportions, all owners and occupiers of lands or premises within such burgh, with reference to the said valuation roll and to all the provisions of this Act applicable to the burgh general assessment, which shall apply to the improvement assessment as if they were here repeated, with a special assessment not exceeding threepence in the pound of the gross rent or yearly value of such lands or premises, over and above any other assessment or rate to which such persons may be liable under this Act; and such special assessment shall, for the purposes of this Act, be called "the general improvement rate," and shall be leviable either from the owner or occupier of such lands or premises in equal proportions, or in whole from the occupiers thereof, but in the latter case the occupier shall be entitled on payment thereof to deduct from his rent the proportion payable by the owner; and such assessment, so far as the occupier is concerned, shall be recoverable in the same manner as the burgh general assessment is authorised to be recovered."

The local authority are not entitled to assess in any other manner than that prescribed by the statute. See *Wordie, &c.* v. *County Council of Lanarkshire*, Nov. 22, 1895, 23 R. 168.

[7] This proviso is almost identical with that in sec. 133; see note 9 thereto. The object of repeating it here is not apparent.

Limit of assessment.

137.[1] The public health general assessment by this Act authorised, which shall be imposed upon all lands and heritages within the [2]district, including any special drainage or special water-supply district, shall not exceed the rate of one shilling in the pound.

The special sewer assessment, and the special water assessment, exclusive of the public health general assessment, shall not in any burgh or special drainage or special water-supply district exceed the rate of three shillings in the pound. Provided that if the produce of a rate of three shillings in the pound in any burgh or special drainage or special water-supply district shall not be sufficient to meet the expenditure *bonâ fide* incurred or contemplated within such burgh or special district, it shall be lawful to increase such rate to such extent as may have been approved by the Board; [3]provided also, that it shall not be lawful to impose any rate in respect of the expenditure within any special district upon any premises without such special district.

[1] This section effects a complete change in the provisions as to the limit of the public health assessments. Under the 1867 Act as amended by the 1871 Act the maximum assessment in any

district—whether landward or burghal—where the provisions of these Acts as to drainage, water-supply, or hospitals had been put in force, was two shillings and sixpence in the pound; where these provisions had not been put in force, the maximum rate in burghs having a population of 50,000 or upwards was threepence; in other burghs and in landward districts, sixpence. The arrangements under this Act are entirely different. The public health general assessment, which is leviable over the whole district of every local authority, including any special drainage or water-supply districts situated therein (subject to the provisos in secs. 133, 134, and 136) is not to exceed one shilling in the pound. The amount of this rate within any special district is not affected by the amount of the special sewer assessment and special water assessment. Under the 1867 Act the limit fixed was the limit of the general and special assessments combined; in this Act the general assessment is treated separately, and has a limit applicable to itself alone. The special sewer assessment and the special water assessment are treated together. The limit of assessment prescribed for them may possibly be reached by one of them alone; if so, the other cannot be levied at all. There is a provision, however, for raising the limit of the special assessment in exceptional cases to such extent as may be approved by the Board; but that assessment cannot in any circumstances be imposed on any area outwith the special district.

[2] The word "district" here means the whole district of the local authority; see definition in sec. 3.

[3] The effect of this proviso is to prevent the adoption of the mode of meeting a deficiency in a special district which was held to be competent in *Tolmie* v. *Parochial Board of Urray*, June 21, 1890, 17 R. 1027; 27 S.L.R. 922; P.L.M. 1890, p. 531.

Burghs not to be assessed for public health rate in counties.

138. [1]Notwithstanding anything contained in the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), or in this Act, the ratepayers of a burgh shall not be assessed for any charges or expenses incurred by a county council for the salaries or expenses of the medical officer or sanitary inspector appointed for the county, and [2]no representative of a burgh shall in a district committee or on the county council act or vote in any matter relating to this Act or to public health for which the ratepayers in such burgh are not liable to be assessed.

[1] The salaries paid by county councils to the county medical officer and county sanitary inspector appointed under sec. 52 of the Local Government Act, 1889, were payable out of the general purposes rate, to which the police burghs in the county contribute. These burghs are no longer to be subjected to this charge, and the county council will now be under the necessity of assessing for this

purpose on the landward districts of the county alone. The assessment for the salaries of the county medical officer and county sanitary inspector will thus fall on the same ratepayers as are liable for the public health general assessment of the district or county, as the case may be.

[2] See sec. 73 (8) of the Local Government Act, 1889.

[1] Borrowing Powers.

Power of borrowing for sewers.

139.[2] It shall be lawful for the local authority to borrow for the purpose of [3]acquiring, [4]making, enlarging, or [5]reconstructing sewers [6]or for the purpose of utilising sewage; and [7]on the security of the [8]special sewer assessments, where such exist, or the [9]public health general assessments, as the case may be, such sums of money, and at such times, as the local authority shall deem necessary for that purpose, and to assign the said special sewer assessments and public health general assessments, [10]as the case may be, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the Second Schedule hereto annexed, and such bonds shall be signed by two members and the clerk of the local authority, and shall constitute a lien over the special sewer assessments and general assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said special and general assessments; but no [11]such member or officer shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments assigned; and the money so borrowed shall be repayable either in one sum or by instalments, as may be arranged between the [12]borrower and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within [13]thirty years from the date of the loan, but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment[14]; and the money so borrowed as aforesaid shall be applied for the purposes specified in this section, and for no other purpose whatsoever.

[1] There is no great change directly made in the borrowing powers of local authorities, although the purposes for which loans are authorised are somewhat extended ; indirectly, however, the change in the limit of assessment affords extended facilities for borrowing. The most important change is the reduction of the period of repayment in burghs to thirty years. See note 13.

[2] This section re-enacts sec. 86 of the 1867 Act with certain modifications, the more important of which are indicated in the notes.

As the district committee is not empowered to borrow, the powers of this section can only be exercised in landward districts by the county council, with the consent of the standing joint committee. See sec. 67 of the Local Government Act, 1889.

As to loans from the Public Works Loan Commissioners, see sec. 142.

[3] The word "acquiring" is new. Local authorities will now be able to borrow for the purposes of sec. 102.

[4] See sec. 103.

[5] The word "reconstructing" is here used, instead of "constructing," the word used in the 1867 Act.

[6] The words "or for the purpose of utilising sewage" are new. Their effect is to enable local authorities to borrow for the purposes of sec. 108.

[7] There is an important difference in the words of the new Act with regard to the security. Under the 1867 Act the loan might be on the security of both the special sewer assessment and the general assessment, or on the security of only one of them ; under this Act there appears to be no power to borrow on the security of both. It was the practice in borrowing for the purposes of a special district under the 1867 Act to assign both the special and the general assessments in security, and if the special assessment proved insufficient to meet the charges the deficiency was met out of the general assessment over the whole district of the local authority. See *Tolmie* v. *Parochial Board of Urray*, June 21, 1890, 17 R. 1027 ; 27 S.L.R. 922 ; P.L.M. 1890, p. 531. The words of this section are —"the special sewer assessments, where such exist, *or* the public health general assessments, *as the case may be*," and although the section goes on to empower the local authority "to assign the said special sewer assessments *and* public health general assessments," these words are qualified by the succeeding phrase "as the case may be." The terms of this section, taken along with the concluding proviso of sec. 137, appear to make it clear that, in a special drainage district or in a burgh, there is no power to borrow for sewers on any security save that of the special sewer assessment, and that, in the event of that assessment being exhausted, there is no power to make up the deficiency out of the general assessment.

[8] See sec. 133.

[9] See sec. 135. In burghs all expenses for sewers under this Act are to be met out of the special sewer assessment, consequently it would appear that the general assessment under sec. 136 will in no case be assigned in security for a loan to a burgh under this section.

[10] The words "as the case may be" are new. As to their effect, see note 7 *supra*.

[11] The word "such" is new. It refers back to the two members and the clerk by whom the bonds are signed. See also sec. 166.

[12] The word "borrower" is used here in place of "local authority," the words used in the 1867 Act.

[13] The period of repayment of loans under the 1867 Act was limited to thirty years. By the Amendment Act of 1875 loans obtained from the Public Works Loan Commissioners might be extended over fifty years. Under sec. 67 of the Local Government Act, 1889, the period of repayment of loans by county councils was fixed at thirty years, but the longer period allowed by the Public Health Amendment Act of 1875 was still available in burghs. Under this Act all loans, whether for burghs or for landward districts, and whether obtained from the Public Works Loan Commissioners or from private lenders, must be repaid within thirty years.

[14] The words "in equal proportions," which appeared in the 1867 Act after the word repayment, and which occasioned some difficulty of construction, are omitted in this section.

Power of borrowing for water-supply.

140.[1] It shall be lawful for the local authority to borrow for the purpose of [2]constructing, purchasing, enlarging, or reconstructing such works as are herein authorised for providing a supply of water for the use of the inhabitants of the district, or for the purpose of entering into and implementing any contract or arrangement with any person for such supply, and [3]on the security of the [4]special water assessments, where such exist, or of [5]public health general assessments, as the case may be, such sums of money and at such times as the local authority shall deem necessary for that purpose, and to assign the said special water assessments and public health general assessments, [6]as the case may be, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the Second Schedule hereto annexed; and such bonds [7]shall be signed by two members and the clerk of the local authority, and shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due out of the first and readiest of the said assessments; but no [8]such member or clerk shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be repayable either in one sum or by instal-

ments, as may be arranged between the [9]borrower and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within [10]thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment[11]; and the money so borrowed as aforesaid shall be applied for the purposes specified in this section and for no other purpose whatsoever.

[1] This section re-enacts sec. 89 (6) of the 1867 Act, with certain modifications, the more important of which are indicated in the notes.

As the district committee is not empowered to borrow, the powers of this section can only be exercised by the county council with consent of the standing joint committee, in terms of sec. 67 of the Local Government Act, 1889.

Local authorities of burghs having no powers or duties as to water-supply under this Act, the provisions of this section do not appear to apply to burghs.

As to loans from the Public Works Loan Commissioners, see sec. 142.

[2] See sec. 126.

[3] See note 7 to sec. 139, which applies equally to this section, the phraseology being the same.

[4] See sec. 134.

[5] See sec. 135. The water-supply provisions of this Act do not apply to burghs, accordingly it would appear that the general assessment under sec. 136 will in no case be assigned in security for a loan under this section.

[6] The words "or either of them," which occurred in the 1867 Act, are not used in this section; the words "as the case may be" are substituted.

[7] The words "shall be signed," &c., did not appear in the corresponding section of the 1867 Act.

[8] See note 11 to sec. 139.

[9] See note 12 to sec. 139.

[10] See note 13 to sec. 139.

[11] See note 14 to sec. 139.

Power of borrowing for hospitals, &c.

141.[1] It shall be lawful for the local authority to borrow for the purpose of [2]providing offices for the use of the local authority, and for providing and [3]furnishing such [4]permanent hospitals, [5]disinfecting premises and apparatus, [6]houses of reception, or [7]mortuaries as are hereinbefore authorised, and on the security of the [8]public health general assessments, such sums of money and at such times as they

shall deem necessary for that purpose, and to assign the said public health general assessments in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the Second Schedule hereto annexed; and such bonds shall be signed by two members and the clerk of the local authority, and shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due out of the first and readiest of the said assessments; but no [9]such member or officer shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be repayable either in one sum or by instalments, as may be arranged between the [10]borrower and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within [11]thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment, and the money so borrowed as aforesaid shall be applied for the purposes specified in this section and for no other purpose whatsoever.

[1] This section re-enacts sec. 2 of the Public Health Amendment Act of 1871 with certain modifications, the more important of which are indicated in the notes.

In the 1867 Act there was no power to borrow save for water and drainage; the 1871 Act provided power to borrow for permanent hospitals. Prior to the present Act there was no power to borrow for any of the other purposes specified in this section.

Sec. 34 of this Act empowers county councils to borrow for slaughter-houses in terms of this section.

As the district committee is not authorised to borrow, the powers of this section can only be exercised in landward districts by the county council, with the consent of the standing joint committee, in terms of sec. 67 of the Local Government Act, 1889.

As to loans from the Public Works Loan Commissioners, see sec. 142.

[2] The only offices which the local authority are expressly authorised to provide are those for the medical officer and sanitary inspector (sec. 15); but they have a general power to provide accommodation necessary for the transaction of their business, and this provision will enable them to borrow for providing offices.

[3] The power to borrow for furnishing hospitals is new. See sec. 66 (1).

[4] There may be a question whether there is power to borrow for portable hospitals which may be provided under sec. 66 (4). See note 19 to that section.

[5] See sec. 46.

[6] See sec. 66.

[7] See secs. 68 and 71.

[8] See secs. 135 and 136.

[9] See note 11 to sec. 139.

[10] See note 12 to sec. 139.

[11] See note 13 to sec. 139. There was no authority under the 1867 Act to borrow for hospitals. Power to borrow for that purpose was first given by sec. 2 of the Amendment Act of 1871, and the period of repayment was fixed by that section at thirty-five years. It is now reduced to thirty years.

Power to Public Works Loan Commissioners to lend to local authority for sanitary purposes.

142.[1] The Public Works Loan Commissioners may, [2]on the recommendation of the Board, make any loan to any [3]local authority in pursuance of any powers of borrowing conferred by [4]this Act or by the Acts hereby repealed, or [5]by the Burgh Police (Scotland) Act, 1892, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of these Acts, and without requiring any further or other security, such loan to be repaid within a [6]period not exceeding thirty years, and to bear [7]interest at such rate as may, in the judgment of the Treasury, be necessary in order to enable the loan to be made without loss to the Local Loans Fund.

Provided as follows :—

(1.) That in determining the time when a loan as aforesaid shall be repayable, the Public Works Loan Commissioners shall have regard to the probable duration and continuing utility of the works in respect of which the same is required ;

(2.) That this [8]Act shall not extend to any loan required for the purpose of defraying expenses incurred in [9]enforcing the performance of or in performing the duty of a defaulting local authority.

[1] This section takes the place of the Public Health (Scotland) Amendment Act, 1875, which is repealed by this Act.

Loans may be obtained from the Public Works Loan Board for

a variety of purposes without any recommendation of the Board. (See the Public Works Loans Act, 1875—38 & 39 Vict. c. 89.) But the loans at the low rate of interest authorised by this section require the recommendation of the Board, and can only be obtained for the purposes for which borrowing powers are given by this Act, or by any of the Acts hereby repealed, or by the Burgh Police Act.

The following regulation has been made by the Public Works Loan Board, and approved by the Treasury :—

"The fees or sums to be paid by the applicants pursuant to section 41 of the Public Works Loans Act, 1875, in respect of loans on rates, shall not exceed the following sums, viz. :—

"On loans not exceeding £2000, £1, 1s. for every £100 of such loan.

"On loans exceeding £2000 and not exceeding £25,000, £21 plus 2s. 6d. for every £100 by which such loan exceeds the sum of £2000.

"On loans exceeding £25,000, £50.

"Where a loan is advanced by instalments, secured by one deed, there shall be paid, in respect of each advance after the first, an additional fee of £1, 1s. for every £100 of such advance, but not exceeding £3, 3s.

"For the purpose of this regulation, the total amount to be advanced under one security deed shall be considered as a loan ; and fractional parts of £100 shall be considered as £100.

"In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

"In respect of all business not being a loan on rates, the fees or sums payable shall be fixed by the Commissioners, regard being had to each particular case."

See *Board's Report*, 1882, App., p. 25 ; and *London Gazette* of Jan. 27, 1882.

[2] All applications for the recommendation of the Board under this section must be made on the forms supplied by the Board, and must be accompanied by the plans and other information specified in these forms. The Board, after receiving the application, make inquiry as to the character and durability of the works, the mode of their execution, and other circumstances.

When works for which a loan is required have been executed jointly by two or more local authorities, each local authority must make a separate application for the amount which it requires, and for which it is prepared to grant security.

Applications for the Board's recommendation should be made before the works are commenced, as the Public Works Loan Board do not grant loans for works already completed and paid for out of borrowed money. "The rule that loans shall not be granted to pay off borrowed money will hereafter be strictly enforced. . . . The application for the Board's recommendation should be lodged before the works are begun, or at least before any payments which the local authority are not prepared to pay out of the current assessment have been made." See Circular of June 9, 1887 ; *Board's Report*, 1887, App., p. 24.

[3] The district committee having no power to borrow, the expression "local authority" here, when applied to landward districts, means the county council. See proviso to sec. 12.

[4] The borrowing powers conferred by this Act will be found in secs. 34, 139, 140, and 141. See also secs. 86 and 89 (5) of the 1867 Act, and sec. 2 of the Amendment Act of 1871, both of which are repealed by this Act.

[5] Under the Public Health Amendment Act of 1875 the Public Works Loan Commissioners were empowered to lend at a low rate of interest to commissioners of burghs for drainage and water-works carried out under the General Police Act of 1862. This section continues the power, but does not expressly confine it to water and drainage. The borrowing powers of the Burgh Police Act, 1892, are contained in secs. 236, 278, 315, and 374–379 of that Act.

[6] Under the Public Health Amendment Act of 1875 the period of repayment was fifty years, but the Local Government Act, 1889, sec. 67, reduced that period, as regards landward districts, to thirty years. The effect of sec. 374 of the Burgh Police Act, 1892, was apparently to reduce the period in burghs to thirty-four years. This section fixes thirty years for all districts, whether burghal or landward.

The usual method of repayment of loans obtained from the Public Works Loan Commissioners is by equal annual instalments of the principal together with interest on the balance remaining unpaid, the amount of interest diminishing year by year. They may also be repaid by way of annuity in equal sums of principal and interest combined during the whole period of the loan.

[7] The following is a copy of a notice issued by the Treasury in September 1897 with regard to interest on loans :—

"The Lords Commissioners of Her Majesty's Treasury hereby give notice that, in pursuance of the power conferred upon them by the Public Works Loans Act, 1897 (60 & 61 Vict. c. 51, sec. 1), they are pleased that the rates of interest chargeable on public loans granted subsequently to the passing of that Act, and secured on local rates, shall be fixed according to the following scale, viz. :—

Period of Repayment.	*Rates of Interest.*
Not exceeding 30 years,	$2\frac{3}{4}$ per cent. per annum.
,, 40 ,,	3 ,, ,,
,, 50 ,,	$3\frac{1}{4}$,, ,,

"It is to be observed that the Act contemplates the adoption of higher rates of interest if at any time the Treasury are of opinion that such action is necessary in the interests of the solvency of the Local Loans Fund."

[8] Although the word "Act" is used, the sub-section seems to be confined to the provisions of this section.

[9] For the powers of compelling local authorities to perform their duties under this Act, see secs. 146–149.

Audit.

143.[1] The accounts of every local authority under this Act shall be made up and audited as part of and in the

same manner and subject to the same provisions as the other accounts of such local authority.

[1] This section is new. The provisions as to the audit of the accounts of county councils and district committees are contained in secs. 68–70 of the Local Government Act, 1889. Secs. 68 to 70 of the Burgh Police Act, 1892, provide for the audit of the accounts of the commissioners of burghs.

PART VIII.

[1]Acquisition of Lands.

Power to acquire lands.

144. A local authority may for [2]any of the purposes of Part II., Part III., and Part VI. of this Act in terms of the [3]Lands Clauses Acts, and whether by agreement or [4]otherwise, purchase any lands within or without their district, and may [5]by agreement take on lease, sell or exchange any lands within or without their district; they may also buy up any water-mill, dam, or weir, which interferes with the proper drainage of or supply of water to their district. They may also, with the sanction of the Board, [6]sell or let any surplus land, and shall apply the proceeds in such manner, whether to the reduction of debt or otherwise, as the Board shall direct.

[1] The powers of local authorities to acquire lands are considerably extended by this Act. Some alterations are also made in the procedure for obtaining Provisional Orders, the most important being that confirmation by Parliament is not required unless a memorial is presented.

As the district committee is not empowered to acquire or hold lands, the provisions of this part of the Act will be exercised, as regards landward districts, by the county council. See proviso to sec. 12.

For the meaning of "land" in this Act, see definition in sec. 3.

[2] See particularly secs. 29, 34, 46, 66, 68, 70, 71, 102, 103, 108, 121, 125, 126, and 130.

[3] See sec 4.

[4] As to provisions for taking land otherwise than by agreement see following section.

[5] The compulsory powers apply only in the case of the purchase of land; the taking on lease of lands can only be carried out by agreement.

[6] As to the sale of surplus lands, see secs. 120–127 of the Lands Clauses Act, 1845.

Regulations as to compulsory purchase of land, &c.

145.[1] The following regulations shall be observed with respect to the purchase and taking of land otherwise than by agreement by local authorities for the purposes hereinbefore mentioned:—

(1.) The local authority before [2]applying to the Board for an order empowering them to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement shall—

publish once at least in each of two consecutive weeks in some newspaper circulated in the district or some part of the district where the land is proposed to be taken, an advertisement describing shortly the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and of the lands which may be taken and a [3]book of reference to such plan may be seen at all reasonable hours, and stating the quantity of land they require; and shall further

serve a notice in manner hereinafter mentioned on every [4]owner or reputed owner, lessee or reputed lessee, and [4]occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

by delivery of the same personally to the person on whom it is required to be served, or, if such person is absent abroad, to his agent; or

by leaving the same at the usual or last known place of abode of such person as aforesaid; or

by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person.

[5]Every such plan shall be drawn on a scale of not less than four inches to a mile, and the book of reference shall contain the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands which may be taken:

[1] This section comes in place of sec. 90 of the 1867 Act, which it re-enacts, with a considerable number of alterations and additions.

[2] The application to the Board must be in the form of a petition, for the terms of which see sub-sec. 2. Under this Act the application is made to the Board; under the earlier Act it was made to the Secretary for Scotland.

[3] As to what the book of reference is to contain, see the closing words of this sub-section.

[4] See definitions of "owner" and "occupier" in sec. 3.

[5] This provision is new.

(2.) Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the local authority may, [6]if they shall think fit, present a petition to the Board; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the Board requires:

[6] The words "if they shall think fit" give the local authority the opportunity of abandoning the matter at this stage, if they so desire. They are not, however, empowered to proceed except by petition to the Board.

(3.) Upon receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the Board shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district after such notice as may be directed by the Board, no Order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof.

[7]Any such inquiry may be held by a person appointed by the Board in the manner and with the powers hereinbefore provided, or if the Secretary for Scotland by any writing under his hand shall so direct, such inquiry shall be held by the sheriff, not being a sheriff-substitute resident within the district:

[7] The provision as to the person by whom the inquiry is to be made is new. See sec. 8 of this Act as to the appointment of commissioners.

See sub-sec. 12 as to mode of conducting inquiry.

(4.) [8]After the completion of the inquiry as last aforesaid, the Board may, by Provisional Order, empower the local authority to put in force, with reference to the land or any part of the land referred to in such Order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and may make such determination as they may think fit in regard to the payment of costs by the local authority either to the Board or any person affected by the Order; provision shall be made by such Order for the incorporation therein of the [9]Lands Clauses Acts and (with the necessary modifications) of sections six and seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845. It shall be the duty of the local authority to serve a copy of any Order so made [10]in the manner and upon the persons in which and upon whom notices in respect of such land are hereinbefore required to be served, together with a statement that the Order will become final and have the effect of an Act of Parliament, unless [11]within two months a memorial shall be presented to the Secretary for Scotland praying that the Order shall not become law without confirmation by Parliament:

[8] The procedure up to this stage is the same as was provided for under the 1867 Act. The remainder of the section is almost entirely new.

[9] See sec. 4.

[10] See sub-sec. 1 of this section.

[11] The date from which the two months are to be reckoned is not specified. Probably it will be the date of service of the copy of the Order.

(5.) [12]If no memorial shall be presented as aforesaid the Order shall become final and have the effect of an Act of Parliament:

[12] Under the 1867 Act no Provisional Order was of any validity until confirmed by Act of Parliament. Under this Act, confirmation by Parliament is not necessary unless a memorial is presented to the Secretary for Scotland.

(6.) If a memorial has been presented to the Secretary

for Scotland, it shall be lawful for him, as soon as conveniently may be, to submit such Order to Parliament for confirmation, and any Act passed to confirm such Order shall be deemed to be a Public General Act of Parliament:

(7.) Every Bill for confirming any such Order shall, after the Second Reading in the House in which it originates, be referred to a Select Committee, or, if the two Houses of Parliament think fit so to order, to a Joint Committee:

(8.) If, before the expiration of seven days after the Second Reading of any such Confirmation Bill in the House in which it originates, a petition is presented against any Order comprised therein, the petitioner shall be allowed to appear and oppose by himself, his agents, and witnesses:

(9.) The Committee by a majority may award costs, which shall, unless the Committee otherwise direct, include all costs from the date of the memorial:

(10.) All costs, charges, and expenses incurred in relation to any application for, or the grant of, such Order or Provisional Order shall, to such amount as the Board think proper to direct, become a charge upon the [13]public health general assessment, or [14]special sewer assessment, or [15]special water assessment, levied in the [16]district, or [17]special drainage district or [18]special water-supply district, as the case may be, to which such Order or Provisional Order relates:

[13] See secs. 135 and 136.
[14] See sec. 133.
[15] See sec. 134.
[16] That is, the whole district of the local authority. See definition in sec. 3.
[17] See sec. 122.
[18] See sec. 131.

(11.)—(*a.*) Any question of disputed compensation under an Order or Provisional Order made under this section shall be referred to the arbitration of a sole arbiter appointed by the parties, or if the parties do not concur in the appointment of a sole arbiter then, on the application of either of them, by the Board, and the remuneration to be paid to the arbiter shall be fixed by the Board. An arbiter appointed under this sub-section shall be deemed to be a [19]sole arbiter within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and the arbiter shall, notwithstanding anything in the said Acts, determine the amount of the

expenses in the arbitration, and such determination shall be final; and

(*b.*) In construing for the purposes of this section any Acts incorporated with, or put in force under, this section, this Act, together with any Order or Provisional Order under this section, shall be deemed to be the special Act:

[19] See secs. 24 *et seq.* of the Lands Clauses (Scotland) Act, 1845.

(12.) At any [20]inquiry or arbitration held under this section, the person or persons holding the inquiry or arbitration shall hear any authorities or parties whose interests would be affected, by themselves or their counsel or agents, and may hear witnesses:

[20] As to inquiries under this section, see sub-sec. 3; as to arbitrations, see sub-sec. 11.

(13.) The Board shall not make any Order for purchasing the whole or any part of any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway company or canal company which is or may be required for the purposes of their undertaking, or any land which, in the opinion of the Board, is being held or may be required for the extension of a factory or public work:

(14.) The Board shall, in making an Order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, as far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner:

(15.) The expression "Act of Parliament" in the [21]Telegraph Act, 1878 (41 & 42 Vict. c. 76), shall include an Order under this section, although such Order may not have been confirmed by Parliament:

[21] The Telegraph Act, 1878, requires notice to be given to the Postmaster-General of any work which involves alteration in any telegraph line, and provides for the carrying out of such alteration.

(16.) The Board shall in their annual report include a statement of any proceedings under this section.

PART IX.

LEGAL PROCEEDINGS.

[1] ENFORCEMENT OF AND PROCEDURE UNDER ACT.

Procedure if local authority neglect its duty under Act.

146.[2]—(1.) If any [3]nuisance shall exist upon or in [4]premises possessed or managed by the [5]local authority, or in which the local authority have any interest, or if the local authority shall fail or neglect to perform any duty imposed upon them by this Act, or to take all due proceedings in this Act authorised for the removal of nuisances or preservation of health, or due regulation of lodging-houses, or for any other of the purposes of this Act, it shall be competent for any [6]ten ratepayers residing within the district, [7]or for a parish council, or for the procurator-fiscal of the [8]sheriff court of the county, or for the [9]Board, to give written notice to such local authority of the matters in which such neglect exists; and if the local authority do not within fourteen days after such notice, or, in the case of neglect to enforce any [10]regulation or direction of the Board under Part IV. of this Act, within two days after such notice, remove or remedy the nuisance referred to, or in any other case neglect to take the steps authorised or required by or under this Act, it shall be competent for the parties aforesaid, or any one of them, to [11]apply to the sheriff by summary petition, and the sheriff shall thereupon inquire into the same, and may make such decree as shall in his judgment be required to enforce the removal or remedy of the nuisance, or otherwise to compel execution of or carry out the provisions and purposes of this Act, and may appoint the same to be carried into effect by and at the sight of such persons as he may think fit, and at the expense of the local authority, or of other parties on whom the expense ought in his opinion to be laid, and for payment of the expenses of such application by the petitioners or by the local authority or other party, as justice may require: Provided always, that in regard to any nuisance for the removal of which drainage works are necessary, the sheriff may suspend consideration of the complaint for such time as may seem proper, in order to enable a general system of

drainage under any general or local Act or otherwise to be carried out, the better to remove such nuisances.

[1] No material change has been made in the provisions as to legal proceedings, which remain substantially what they were under the 1867 Act.

[2] This section re-enacts sec. 96 of the 1867 Act with a few alterations.

In addition to the powers given by this section, the Local Government Act, 1889, provides means of compelling the local authority of a district of a county to carry out the provisions of this Act. If it appears to the county council that the Public Health Acts are not being properly carried out, they are empowered by sec. 53 (2) to cause a representation to be made to the Board. Under sec. 17 (2) (*c*) the medical officer or sanitary inspector of a county or district may appeal to the county council, and the county council may thereupon make an order under the Public Health Acts. The power of appeal given to five ratepayers by sec. 17 (2) (*c*) may also be made use of when a district committee resolves not to carry out its duty under the Public Health Act. See also note 7 *infra* as to the powers of the parish council.

When the removal of refuse by the local authority constitutes a nuisance, sec. 37 provides a means of dealing with it.

[3] As to what constitutes a nuisance under this Act, see sec. 16.

[4] See definition of "premises" in sec. 3.

[5] Although the county council is for certain purposes the local authority, it does not appear that proceedings can be taken against them with the view of enforcing this Act. In landward districts the district committee is the body against whom proceedings may be taken. See sec. 17 (2) (*c*) of the Local Government Act, 1889.

[6] The words "ten ratepayers" are substituted in this Act for the words "two householders" appearing in the 1867 Act.

[7] Under the corresponding section of the 1867 Act, the inspector of poor had power to institute proceedings; in this Act the power is given to the parish council. Sec. 24 (3) of the Local Government Act, 1894, provides: "With a view to the due enforcement of the provisions of the Public Health Acts, a parish council shall have and may exercise within or in respect to the parish the same powers as are conferred upon any two householders by section 96 of the Public Health (Scotland) Act, 1867, and upon any five ratepayers by sec. 17 of the principal Act [*i.e.*, the Local Government Act, 1889] and upon a county council by sub-sec. (2) of sec. 53 of the principal Act." As the expression "parish council" in the section quoted means landward committee in parishes where such a committee exists, the landward committee will be entitled to exercise the powers given by this section.

[8] Under sec. 96 of the 1867 Act the procurator-fiscal of the justice of the peace court of the county, or of the burgh court, had power to institute proceedings; under this Act the power is given to the procurator-fiscal of the sheriff court only.

[9] The Board have no power to deal directly with nuisances, or to carry out sanitary works in default of a local authority. Their power is limited to taking action in a court of law against the local

authority to compel them to perform their duty. The Board frequently receive complaints of the neglect of local authorities. Their practice is to inquire into each complaint, and if it appears to be well founded, they call upon the local authority to perform their duty under the Act. In most cases the local authority comply; but if not, the Board consider whether it is their duty to exercise their powers under the statute. If they are satisfied that the neglect of the local authority is attended with danger to the public health, action is taken against the local authority,—generally in the Court of Session. But if they are satisfied that the public health is not injuriously affected by the matter complained of—though it may not be in accordance with the technical requirements of the Act—they hold that they are not required to proceed against the local authority in a court of law, and they leave the complainers themselves to take active steps if so advised. Their view is that it is obviously the intention of the statute to throw the duty of prosecuting in trifling or narrow cases, or where no injury to the community at large is alleged, on those directly interested, and not on the Board. The Board take proceedings only in cases of considerable public importance, and where the evidence is fairly conclusive.—B.

[10] As to the power of the Board to make regulations under Part IV., see secs. 78 and 79; and as to the duty of the local authority to enforce such regulations, see sec. 81.

[11] As to procedure, see sec. 154.

Procedure under 18 *&* 19 *Vict. c.* 68.

(2.) [12] It shall be competent for the Board, or for any local authority, or for any parish council, to present a petition to the sheriff, under the fourth section of the Burial Grounds (Scotland) Act, 1855, to the same effect, and to be followed out in like manner as if presented by any of the persons or parties therein mentioned.

[12] Under sec. 4 of the Burial Grounds Act, 1855, any two members of the parish council, or ten ratepayers, or two householders residing within a hundred yards of any burial-ground or proposed burial-ground, may apply to the sheriff, who shall make inquiry, and if he finds that the burial-ground or proposed burial-ground is or would be dangerous to health, or offensive, or contrary to decency, he shall pronounce an interlocutor to that effect, and transmit a copy thereof to the Secretary for Scotland; thereafter an Order in Council may be issued closing the burial-ground complained of, or prohibiting the opening of a new burial-ground within certain limits. Sec. 96 of the 1867 Act, to which this section corresponds, enabled the Board to take proceedings under sec. 4 of the Burial Grounds Act, and in one case they did so. (See case of Dunnet churchyard, Board's Report, 1885, p. xxi., and Appendix, p. 30.) This subsection extends the power of taking proceedings to the local authority and the parish council. The local authority have thus alternative methods of dealing with a burial-ground which constitutes

a nuisance. They may either proceed under sec. 16 (11) of this Act, or they may proceed under sec. 4 of the Burial Grounds Act. If, as a result of the latter mode of procedure, a burial-ground is closed, it becomes the duty of the parish council to provide a new one (sec. 10 of the Burial Grounds Act). If, on the other hand, a burial-ground is closed by virtue of proceedings under sec. 16 (11) of this Act, no duty lies on the parish council; they will be entitled, however, if they think fit, to provide a new burial-ground under sec. 9 of the Burial Grounds Act.

For a report of a case in which householders made use of the powers of sec. 96 of the 1867 Act to compel a local authority to take action under sec. 16 (*j*) of that Act with respect to a burial-ground, see Dunfermline case, P.L.M. 1896, p. 476.

Provision for refusal or neglect of local authority.

147.[1] In case any local authority shall refuse or neglect to do what is herein[2] or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the Board, with the approval of the Lord Advocate, to apply by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall appear to be just.

[1] This section re-enacts sec. 97 of the 1867 Act without change. The Board of Supervision in several instances made application to the Court under the corresponding section of the 1867 Act to compel a local authority to perform their duty under that Act. See *Board of Supervision* v. *Local Authority of Montrose*, December 3, 1872, 11 M. 170; 45 Jur. 108, where the Court sisted procedure to allow the local authority time to discover the most suitable system of drainage and to have it executed; *Local Authority of Pittenweem*, July 8, 1874, 1 R. 1124, where, the local authority having proceeded to execute the waterworks after the petition was presented, it was held that the Board were entitled to the expenses of the application; *Local Authority of Galashiels*, December 5, 1874, 12 S.L.R. 111, where the Court pronounced an order appointing the local authority to report what steps they intended to take to introduce a sufficient water-supply; and *Local Authority of Lochmaben*, February 28, 1893, 20 R. 434, where no answers were lodged, and the Court remitted to an engineer to prepare a scheme for procuring a sufficient and suitable supply of water, and for effecting the adequate drainage of the burgh. In *Local Government Board* v. *County of Elgin Local Authority*, February 5, 1897, 24 R. 512; 34 S.L.R. 383; 4 S.L.T. 425, the respondents having alleged that a gravitation water-supply would cost more than their assessing powers warranted, the Court refused

the petition on the ground that the statutory limit of assessment could not be exceeded. Looking to the provisions of sec. 137 of this Act, it would appear that a plea of this nature could not now be sustained.

[2] It will be observed that this section empowers the Board to take steps to compel the local authority to perform duties other than those under this Act. The words, "or otherwise by law required of them," are so comprehensive that the section might be held to apply to any duty of the local authority whether at common law, under this Act, or under any other Act relating to the public health.

Procurator-fiscal may sue by directions of Board.

148.[1] In any place within the jurisdiction of a local authority the procurator-fiscal of the sheriff court, on the Board being satisfied that the local authority have made default in doing their duty, may, with the approval of the Lord Advocate, institute and follow out proceedings against the local authority for compelling them to do their duty, and may institute and follow out in all respects any proceeding which the local authority of such place might institute with respect to the removal of nuisances or otherwise; and the expense as between agent and client of all such proceedings shall be paid by the local authority, but with such relief to them against the author of any nuisance or any other party as may be competent.

[1] This section re-enacts sec. 98 of the 1867 Act without change. It will be observed that it empowers the procurator-fiscal not only to take proceedings against the local authority, but to take any proceedings which the local authority might take with respect to the removal of nuisances or otherwise.

Procedure where nuisance beyond district.

149.[1] Where a nuisance is situated in a district the local authority of which does not cause the same to be removed, which nuisance is offensive, or injurious, or dangerous to another district, the local authority of the latter district may call on the first-mentioned local authority to take all competent steps for removal of such nuisance, and the said first-mentioned local authority shall be bound to do so accordingly; and any expense thereby occasioned to the said second-mentioned local authority shall be reimbursed by the first-mentioned local authority, the amount of such reimbursement in the case of dispute to be finally determined by the Board.

[1] This section re-enacts part of sec. 99 of the 1867 Act. As to proceedings by a local authority with respect to offensive trades outwith their district, see sec. 36 (4). See also sec. 41 as to water-courses or ditches forming or lying near to the boundaries of a district; and sec. 60 (2) as to infectious disease attributable to milk from a dairy without the district.

Local authority may require payment of costs, &c., from owner or occupier, and occupier paying to deduct from rent.

150.[1] It shall be lawful for the local authority, at their discretion, to require the payment of any costs or expenses which the [2]owner of any premises may be liable to pay under this Act either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or [3]occupier shall be liable to pay the same, and the same shall be [4]recovered in manner authorised by this Act, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier who shall not be the author of a nuisance shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after [5]notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier unless he refuse, on application being made to him for that purpose by or on behalf of the local 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 rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect as between the contracting parties any contract made or to be made between any owner, tenant, or occupier of any house, building, or other property, whereby it is or may be agreed that the tenant or occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect as between the contracting parties any contract whatsoever between landlord and tenant.

[1] This section re-enacts sec. 100 of the 1867 Act. The Burgh Police Act, 1892 (secs. 330, 331), contains a similar provision.

[2] See definition of "owner" in sec. 3.

[3] See definition of "occupier" in sec. 3.

[4] As to proceedings for recovery of expenses, see secs. 153 and 154.

[5] As to service of notices, see secs. 14 and 159.

Penalty for wilful damage of works.

151.[1] If any person wilfully damages any works or property belonging to any local authority, he shall be liable to a penalty not exceeding five pounds, in addition to the cost of repairing such works or property.

[1] This section re-enacts sec. 101 of the 1867 Act without change. See also secs. 30, 117, and 127.

Appearance of local authorities in legal proceedings.

152.[1] Any local authority may appear and plead before any sheriff, magistrate, or justice, or in any legal proceeding, by any officer or member, or other person authorised generally, or in respect of any special proceeding, by resolution of such authority, [2]certified under the hand of the clerk thereof, and such person being so authorised shall be at liberty to institute and carry on any proceeding which the authority is authorised to institute and carry on under this Act; and it shall not be necessary for the local authority to appear in any other manner in any prosecution or proceeding at their instance.

[1] This section re-enacts sec. 102 of the 1867 Act, with a slight alteration.

See sec. 14, and note 7 thereto.

The local authority of the burgh of Maryhill brought a case before the police court. The sanitary inspector, who was also procurator-fiscal of the burgh and superintendent of police, conducted the case on behalf of the local authority. The respondent was found liable in expenses, and the local authority's account was sent to the auditor of court to be taxed. The account contained charges by the sanitary inspector for drawing the complaint, attending court, conducting the prosecution, &c. These charges were objected to by the respondent as not chargeable by the sanitary inspector he not being a procurator or licensed law agent. The auditor, while decidedly of opinion that the sanitary inspector was not entitled to charge anything in the shape of fees as a law agent or procurator, thought that some allowance should be made for his trouble and attendance. "It seems unreasonable to entail the trouble connected with such complaints on the sanitary inspector without any re-

muneration; and it is even for the interest of the parties complained of that a moderate sum should be allowed, seeing that if that were not done and a law agent employed to conduct the prosecution, the expenses would be much more considerable." *Anderson* (*Sanitary Inspector of Maryhill*) v. *Carrick*, August 26, 1871, P.L.M., 1871–72, p. 81.

[2] The words "certified under the hand of the clerk thereof" are new.

Recovery of penalties.

153.[1] All penalties under this Act, and also all sums of money and expenses herein directed to be recovered in a summary manner, may, [2]unless otherwise provided in this Act, be recovered at the [3]suit of the local authority, and [4]may be applied for the purposes of this Act: Provided always, that nothing contained in this section shall impair or affect any other mode of recovery allowed by this Act: Provided also, that all contraventions of the provisions contained in this Act relating to [5]overcrowding of houses, and all contraventions of the [6]provisions in this Act, or of the byelaws, rules, and regulations made under the authority of this Act relating to common lodging-houses, may be prosecuted as police offences before any judge or magistrate having police jurisdiction, and [7]in the same way and manner as police offences are prosecuted before him under any general or local police Act; and in the event of the offender being convicted, and failing to make immediate payment of the penalty which may have been imposed, he shall be liable to imprisonment in accordance with the provisions of the [8]Summary Jurisdiction (Scotland) Acts, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

[1] This section re-enacts sec. 103 of the 1867 Act with slight alterations.

[2] See secs. 87 and 88.

[3] By sec. 14 local authorities are bodies corporate, designated by such names as they usually bear or adopt, and with power to sue and be sued in such names. The same section gives power to local authorities to delegate to committees their power to take proceedings under the Act. The local authority or their committee may also empower any officer or person to make complaints and take proceedings on their behalf. See also preceding section.

[4] See sec. 129 and note 2 thereto.

[5] See secs. 16 (7) as to nuisance from overcrowded house; sec. 16 (8) (iii.) as to overcrowding of schoolhouses and factories; sec. 72 as to byelaws to prevent overcrowding in houses let in lodgings; sec. 73 as to overcrowding of tents, vans, &c.; sec. 92 as

to byelaws to prevent overcrowding in common lodging-houses; sec. 84 as to overcrowding when any regulation under Part IV. is in force; and sec. 76 as to cases where there have been two convictions for overcrowding within three months.

[6] As to provisions relating to common lodging-houses, see Part V. secs. 89–100; as to byelaws, sec. 92. See also sec. 84.

In prosecutions for contraventions of byelaws it is necessary to set forth the section of the Act under which the byelaw is made, also that the byelaw libelled has been confirmed by the Board. *Hastie* v. *Macdonald*, November 23, 1894, 22 R. (J.) 18.

[7] See sec. 192, which saves local burgh Acts and the forms of prosecutions and procedure in use in burghs, and provides that such forms and procedure may be used therein in all prosecutions under this Act.

Sec. 3 of the Summary Jurisdiction (Scotland) Act, 1881, provides that "where there is a general or local police Act in force, it shall be optional in police prosecutions either to use the forms prescribed by such Act or the forms provided by the Summary Jurisdiction Acts."

As to procedure in police court in burghs under the Burgh Police Act, 1892, see sec. 477 of that Act. See also sec. 510 and Schedule VII. of the same Act for forms of procedure; also sec. 516, which provides that, "if it should be found convenient in any prosecution under this Act or any special statute, any of the provisions or forms of the Summary Jurisdiction Acts, or of the provisions or forms of the Criminal Procedure (Scotland) Act, 1887, may be used."

[8] The Summary Jurisdiction (Scotland) Acts, 1864 and 1881 (27 & 28 Vict. c. 53 and 44 & 45 Vict. c. 33). See particularly sec. 6 of the 1881 Act.

Form of applications to the sheriff, &c.

154.[1] All applications to enforce any provision of this Act, or for the recovery of penalties herein imposed, or other sums of money becoming due to the local authority in virtue of this Act, in so far as not herein otherwise provided for, may be by summary petition, and such petition may refer to the sections of this Act on which it is founded, without setting forth the same; and the sheriff, magistrate, or justice shall thereupon, if he see fit, appoint the petition to be answered within three days after service, or may order the parties to attend him in person, and on advising such answer, or hearing the parties, or on the respondent failing to appear, he may at once decern, or may appoint any competent person to examine the premises and report to him, and may decern on such report, or he may, if either party desire it, order proof to be led before himself on any specified points, and shall in that case [2]appoint a day, not more than five days thereafter, for hearing such proof, and if the proof

be not on that day completed, may adjourn the same from time to time until completed, and within three days after such completion he shall give decree, and he may find either party liable in expenses, or in any modified sum of expenses, and may, without prejudice to diligence by poinding or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such [3]imprisonment to be in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts.

[1] This section re-enacts sec. 105 of the 1867 Act, with an alteration of the concluding words.

It is provided by sec. 3 of the Summary Jurisdiction (Scotland) Act, 1881, that the provisions of the Summary Jurisdiction Acts shall apply to all summary proceedings for the recovery of penalties, &c. Accordingly the forms prescribed in these Acts will be used for proceedings under this section. By sec. 71 of the Criminal Procedure Act, 1887, it is competent to adopt for summary complaints the short forms appended to that Act.

[2] In *Gibson* v. *Town Council of Ayr*, December 23, 1892, 20 R. (J.) 47, it was held that it was not incompetent for the magistrate in an application under the Public Health Act, at the first diet, and in the absence of the accused, to appoint evidence to be led upon the same day.

[3] See note 8 to sec. 153.

No written pleadings, &c., allowed.

155.[1] No written pleadings, other than the petition and answers (when ordered), shall be allowed, and the sheriff, magistrate, or justice shall have power to grant diligence in common form to cite witnesses and havers, and in cases under sub-sections (9), (10), and (11) of section sixteen of this Act [2]the sheriff shall take the evidence in like manner as in civil proofs: Provided always that no decree under this Act against any party shall bar his right to relief against any other party legally liable therein.

[1] This section re-enacts sec. 106 of the 1867 Act.

[2] It is provided by sec. 3 of the Summary Jurisdiction Act, 1881, that "it shall not be necessary in any case to keep a record of the evidence, except so far as may be required by the Act conferring jurisdiction in the matter of the prosecution, or by sec. 6 of the Summary Prosecutions Appeals (Scotland) Act, 1875." The last-mentioned section provides that in order to an appeal it shall be competent for any party to a cause to require the sheriff

or clerk of court to take a note of any objections to the admissibility of evidence sustained or repelled by the sheriff or other inferior judge.

Appeal in certain cases.

156.[1] Where in cases under sub-sections (9), (10), and (11) in section sixteen it shall appear to the sheriff that the true value of the subject complained of as a nuisance, or the cost of the operations necessary to remove or amend it as ordered, or the value of the trade or business interfered with, exceeds the sum of twenty-five pounds but does not exceed the sum of fifty pounds, he shall certify his opinion to that effect in his decree, and the parties shall thereupon be entitled to appeal from the sheriff-substitute, where the judgment has been pronounced by him to the sheriff, on lodging, within three days after the decree, a note of appeal with the sheriff-clerk, and serving the same on the opposite party or the agent acting in such proceedings for such party, and such note shall operate as a sist of execution until the appeal be determined; and on such note being lodged the sheriff-clerk shall transmit the process, together with the evidence, to the sheriff, whose decision thereon shall be final where the value certified is not above fifty pounds; and in the event of such value or cost being so certified to exceed the sum of fifty pounds, the parties shall be entitled to present a note of [2]appeal to the Lord Ordinary on the bills against the judgment either of the sheriff-substitute or of the sheriff, whether this last be an original judgment or on appeal: Provided that, along with such note, the appellant shall lodge a sufficient bond of caution by one or more obligants, to the amount of fifty pounds sterling, for payment or performance of any judgment that may be pronounced under his appeal; and also provided that such note be lodged in the Bill Chamber, and a copy thereof served on the opposite party or his said agent within eight days after the date of the sentence or judgment complained of, which note shall in like manner operate as a sist of execution until a judgment be pronounced by the Lord Ordinary, which judgment shall be final unless the Lord Ordinary shall allow a reclaiming note to the Inner House, and the judgment of the Inner House shall be final.

[1] This section re-enacts sec. 107 of the 1867 Act.
[2] See also sec. 32 (4).

No appeal otherwise.

157.[1] Save in so far as otherwise provided, no appeal shall be competent from any decree or order of any magistrate or justice, or from the decree or order of any sheriff, except in cases certified in terms of the preceding section; and no decree or order, or any other proceeding, matter, or thing done in the execution of this Act, shall, excepting as herein provided, be subject to review in any way whatever.

[1] This section re-enacts sec. 108 of the 1867 Act, with the addition of the opening words, "save in so far as otherwise provided."

The Summary Prosecutions Appeals Act, 1875, sec. 3, provides that "on an inferior judge hearing and determining any cause, either party to the cause may, if dissatisfied with the judge's determination as erroneous in point of law, appeal thereagainst, notwithstanding any provision contained in the Act under which such cause shall have been brought excluding appeals against or review in any manner of way of any determination, judgment, or conviction, or complaint under such Act." And the word "cause" is by sec. 2 defined as including every "summary proceeding for the prosecution of an offence or recovery of a penalty competent to be taken before an inferior judge."

In a prosecution for a nuisance under sec. 16 of the 1867 Act, the sheriff ordained the defender to execute certain operations for its removal within a certain time, "under certification that if the said decree be not complied with within the time appointed, the defender shall be liable in the penalties enumerated" in sec. 20 of the 1867 Act, and found the defender liable in expenses. *Held* that an appeal to the High Court of Justiciary was incompetent under sec. 3 of the Summary Prosecutions Appeals Act, 1875, because (1) the petition to the sheriff was not a "prosecution for an offence or for recovery of a penalty," and (2) assuming that it might become such a prosecution by the penalties under sec. 20 of the 1867 Act being thereafter moved for, the cause had not yet been "determined" by the sheriff. (*Lee* v. *Local Authority of Lasswade*, November 2, 1883, 11 R. (Just.) 1; P.L.M. 1884, p. 300.)

The opinion of Lord Justice General Inglis in the above case was approved of in *Torrance* v. *Miller*, May 23, 1892, 19 R. (J.) 85, where the circumstances were similar and the judgment of the Court was to the same effect. See also *Suburban District Committee of Midlothian* v. *Maitland*, January 19, 1894, 21 R. (Just.) 11.

It will be observed, however, that under sec. 22 of this Act it is competent in an action for removal of a nuisance to impose a fine on the owner or occupier of the premises; if this fine were sued for, the proceedings might be held to come within the definition of the word "cause" in sec. 2 of the Summary Prosecutions Appeals Act, 1875. In *Couper* v. *Lang*, December 12, 1889, 17 R. (Just.) 15, it was held that an application by a local authority under sec. 26 of the Public Health Act, 1867, for warrant to destroy a carcase, and which did not conclude for any fine or expenses, was not a "cause"

within the meaning of the definition contained in sec. 2 of the Summary Prosecutions Appeals Act, 1875, and, therefore, that the inferior judge was right in refusing to state a case for appeal against his decision.

Justices, &c., being members of local authority may act.

158.[1] The sheriff, justices of the peace, or magistrates may in all cases, notwithstanding their being members of the local authority, exercise the jurisdiction vested in them under this Act.

[1] This section re-enacts sec. 109 of the 1867 Act, with the omission of the words "or the Board" after "local authority."

Service of notices, petitions, and orders.

159.[1] Notices, intimations, petitions, and orders under this Act may be served [2]by any person by delivering the same to or at the residence of the parties to whom they are respectively addressed, or [3]by being put into the post-office duly addressed to the parties; and where addressed to the [4]owner or occupier of premises, they may be served by any person delivering the same or a true copy thereof to some person upon the [5]premises, or, if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises; and service of such notices,[1] petitions, or orders may be proved by a certificate under the hand of the person who posted or delivered or affixed the same, attested by one witness who was also present.

[1] This section re-enacts sec. 110 of the 1867 Act, the only alteration being the introduction of the word "intimations" after the first word of the section. It will be observed that it is not repeated between the words "notices" and "petitions" occurring at a later part of the section.

[2] As to the authorising of persons to serve notices, see sec. 14; as to the intimation and the notice of a nuisance, see secs. 19 and 20.

[3] With regard to service by post, sec. 26 of the Interpretation Act, 1889, provides: "Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send,' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

[4] As to the manner of designating the owner or occupier of premises in proceedings relating to nuisances, see concluding provision of sec. 161.

[5] See definition of "premises" in sec. 3.

Proof of regulations of local authority and Board.

160.[1] Copies of any orders, resolutions, or [2]regulations (other than byelaws) of the local authority or their committee purporting to be signed by the [3]clerk of such body or committee, shall, unless the contrary be shown, be received as evidence thereof without proof of their meeting, or of the official character or signature of the person signing the same.

[1] This section re-enacts sec. 111 of the 1867 Act with certain alterations. The provision as to proof of orders, &c., of the Board is omitted, that being already provided for by sec. 5 (2) of the Local Government Act, 1894. See also sec. 80 of this Act as to proof of orders and regulations under Part IV.

[2] The words "or regulations (other than byelaws)" are new. As to proof of byelaws, see sec. 187. As to proof of register of common lodging-houses, see sec. 91.

A person was charged with a contravention of the Foot and Mouth Disease Order of 1892 and the regulations of the local authority made thereunder. It was held that, the Order and Regulations having the force of an Act of Parliament, and there being no dispute as to their terms, they need not be proved as matter of evidence. (*Sharp* v. *Leith*, October 24, 1892, 20 R (J.C.) 12.)

[3] The word "clerk" is here substituted for the word "chairman" in the corresponding section of the 1867 Act.

One or more joint owners may be proceeded against alone.

161.[1] In case of any demand or complaint under this Act to which two or more parties, whether as [2]owners or occupiers of premises, may be jointly answerable, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them, [3]and any one or more of such persons may be proceeded against notwithstanding that the acts or defaults of any one or more of them would not separately be an offence against this Act; but nothing herein contained shall prevent the parties so proceeded against from recovering relief in any case in which they would now be entitled to relief by law. [4]Proceedings against several persons included in one demand or complaint shall not lapse by reason of the death of any one or more of

such persons, but all such proceedings may be carried on as if the deceased person had not been originally so included. Whenever in any proceeding under the [5]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.

[1] This section re-enacts sec. 112 of the 1867 Act, and includes also some new provisions.

[2] See definitions of "owner" and "occupier" in sec. 3.

[3] The words "and any one or more," &c., to "offence against this Act" are new.

[4] The remainder of the section is new. It is found in sec. 255 of the English Public Health Act, 1875, and in sec. 120 (2) and (4) of the Public Health (London) Act, 1891.

[5] The general provisions of this Act relating to nuisances are contained in secs. 16–26.

Penalty on occupier obstructing owner.

162.[1] If the [2]occupier of any premises prevent the [2]owner thereof from obeying or carrying into effect the provisions of this Act, the sheriff or any magistrate or justice to whom application is made shall, by order in writing, require such occupier to permit the execution of the works required to be executed, provided that such works appear to such sheriff, magistrate, or justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal.

[1] This section re-enacts sec. 113 of the 1867 Act; a similar provision is contained in sec. 333 of the Burgh Police Act, 1892. As to penalty for obstruction of the Act generally, see following section.

[2] See definitions of "owner" and "occupier" in sec. 3.

[3] It will be observed that the liability to the penalty does not arise until there is refusal to comply with the order of the sheriff or magistrate or justice within a "reasonable" time. What a reasonable time may be is a question of circumstances; the Burgh Police Act (sec. 333) permits of ten days. There is no penalty under this section for obstructing the owner prior to the order.

Penalty for violating Act or obstructing its execution.

163.[1] Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, [2]obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any direction or [3]regulation issued by the Board under this Act, shall be liable for every such offence to a penalty not exceeding five pounds.

[1] This section re-enacts sec. 114 of the 1867 Act, but omits the proviso at the end of that section: "Provided that nothing in this Act shall exempt any person from any penalty or liability to which he may otherwise be subject." See note 2 to sec. 171.

[2] See preceding section as to case of an occupier obstructing an owner.

[3] For the provisions as to issue of regulations by the Board, see secs. 78 and 79. Sec. 87 imposes a penalty not exceeding £100, and a further daily penalty not exceeding £50, for wilful neglect or refusal to obey any such regulation.

Compensation to be made.

164.[1] Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage[2] by reason of the exercise of any of the powers of this Act, except when otherwise specially provided; and in case of dispute, if the sum claimed do not exceed the sum of fifty pounds sterling, the same may be ascertained on a summary application by either party to the sheriff, whose decision shall be final and not subject to review, unless when pronounced by the sheriff substitute, in which case it may be reviewed by the sheriff on appeal; and when the sum claimed exceeds fifty pounds sterling, [3]such compensation shall be ascertained and disposed of by a sole arbiter appointed in manner set forth in sub-section eleven of section one hundred and forty-five of this Act.

[1] This section re-enacts sec. 116 of the 1867 Act, with an alteration in the concluding words. For specific provisions as to compensation, see secs. 47 (5), 48 (2), 96, 102, and 145 (11).

[2] Compensation is only authorised in cases where the damage has been sustained "by reason of the exercise of any of the powers of this Act." See the decision of the sheriff (Campion) in *Thomson* v. *Annan District Committee*, May 9, 1894, 2 S.L.T. 14; 2 County Council Cases, 142.

[3] The concluding words of sec. 116 of the 1867 Act were—"such

compensation shall be ascertained and disposed of in terms of the Lands Clauses Acts." See *Middle Ward of Lanark District Committee* v. *Marshall*, Nov. 10, 1896, 24 R. 139; 34 S.L.R. 130; 4 S.L.T. 214.

Convictions not void for want of form.

165.[1] No conviction or other legal proceeding under this Act shall be void for want of form, or for want of any previous notice, provided in this latter case the party proceeded against or convicted has appeared or the charge had come to his knowledge; and the charge may be amended at any time, and the proceedings may be adjourned on the ground of want of sufficient notice, or for other good cause.

[1] This section re-enacts sec. 117 of the 1867 Act without change. See sec. 5 of Summary Procedure Act, 1864.

Local authority or Board not liable for irregularity of their officers.

166.[1] The local authority and the Board shall not be liable in damages for any irregularity committed by their officers[2] in the execution of this Act, or for anything done by themselves in the *bonâ fide* execution of this Act; and every officer acting in the *bonâ fide* execution of this Act shall be indemnified by the local authority under which he acts in respect of all costs, liabilities, and charges to which he may be subjected; and every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act [3]shall be commenced within two months after the cause of action shall have arisen; [4] provided that nothing in this section shall exempt any member of any local authority from being surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

[1] This section re-enacts sec. 118 of the 1867 Act, with the addition of the proviso.

[2] This section will not protect the local authority and their officers if their proceedings are outwith the statute. Where the officer of a local authority had removed a child to the hospital without the parent's consent and against his remonstrances, and without a warrant, in an action for damages for the death of the child, it was held that, if the pursuer's averments were true, the defenders had acted outwith the authority of the statute, and were not pro-

tected by the 118th section, and that the action therefore was relevant. *Mitchell* v. *Magistrates of Aberdeen*, Jan. 17, 1893, 20 R. 253.

In another case a father raised an action of damages against a local authority for the death of his child, who had been removed to hospital with the consent of the father, but without a warrant. It was held that the local authority were not protected by sec. 118 of the 1867 Act in respect that, no warrant having been obtained, their officer was not executing the Act when he removed the child. *Sutherland* v. *Magistrates of Aberdeen*, Nov. 27, 1894, 22 R. 95. But it will be noticed that under sec. 54 of this Act a warrant is not necessary when the removal is carried out with consent of the patient or his parent or guardian.

[3] The two months' limitation will have no effect in protecting the local authority or their officers, if the act done is not within the scope of the statute. A local authority had demolished a house within their district, on the ground that its ruinous condition was dangerous. In an action by the owner raised more than two months after the proceedings, it was held that the actings of the local authority were outwith the statute, that accordingly the two months' limitation did not apply, and that they were liable in damages. (*Edwards* v. *Parochial Board of Kinloss*, June 2, 1891, 18 R. 867; 28 S.L.R. 669; P.L.M. 1891, p. 439.)

[4] The proviso is new. Under sec. 70 of the Local Government Act, 1889, a member or officer of a district committee may be surcharged with the amount of any illegal payment made by him. The proviso enacts that this section shall not have the effect of exempting any *member* of the local authority from a surcharge; it makes no provision as to an *officer* who may be surcharged.

Forms.

167.[1] The forms contained in the [2]second schedule to this Act annexed, or any forms to the like effect, may be used for the purposes of this Act, and shall be sufficient therefor, and [3]all proceedings or documents under this Act may be wholly or partly written or printed.

[1] This section re-enacts sec. 119 of the 1867 Act, with slight alterations.

[2] The forms in the second schedule are exclusively forms of bond and of the transfer and discharge thereof. No forms of procedure are given in the Act.

[3] There is an alteration in the phraseology of the last provision of the section. The corresponding section of the 1867 Act concluded thus: "and all written proceedings or documents under this Act may be wholly or partly printed." As to the meaning of "writing" in statutes, see sec. 20 of the Interpretation Act, 1889, which provides that "expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

Exemption from stamp duties.

168.[1] All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties.

[1] This section re-enacts sec. 120 of the 1867 Act without change. The provision will apply to bonds, &c., by or in favour of the County Council when acting as local authority under this Act. See proviso of sec. 12; also *County Council of Lanark* v. *Inland Revenue*, May 31, 1895, 22 R. 615; 32 S.L.R. 480.

Police constables to aid in executing Act.

169.[1] The constabulary and police force in their respective jurisdictions shall aid the authorities and officers acting in execution of this Act, or any directions or regulations issued as aforesaid.

[1] This section re-enacts sec. 121 of the 1867 Act without change. As to the specific duties of the police under this Act, see secs. 19, 43 (1) and (5), 54, and 55.

See also sec. 86 of the Burgh Police Act, 1892, which lays on constables in burghs the duty of assisting in all matters relating to the suppression of nuisances, and of enforcing the observance of all byelaws, orders, rules, and regulations made by the Commissioners.

Act not to impair right of action, &c.

170.[1] Nothing in this Act shall be construed to impair any right of action in respect of [2]nuisances at common law.

[1] This section re-enacts sec. 122 of the 1867 Act without change. See also the following section.

[2] As to nuisances under this Act, see sec. 16. See *Tay District Fishery Board* v. *Robertson*, November 16, 1887, 15 R. 40, as to the right of a statutory body with statutory remedies to bring an action at common law.

Powers of Act cumulative.

171.[1] All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any power conferred by Act of Parliament not hereby specifically repealed, or any [2]law or custom; and such last-mentioned powers may be exercised in the same manner as if this Act

had not passed, but without prejudice to the powers conferred by this Act.

[1] This section re-enacts sec. 104 of the 1867 Act with slight alteration. As to savings for other Acts, see secs. 190–192.

[2] See preceding section. Sec. 33 of the Interpretation Act, 1889, provides: "Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence."

PART X.

[1] PORT SANITARY AUTHORITY.

Constitution of port local authorities.

172.[2] The Board may by order constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in Scotland or the waters of such port, or any persons having authority in or over such port or any part thereof, the local authority of the whole of such port or of any part thereof (in this Act referred to as the "port local authority").

The Board may also by order constitute a joint port local authority for the whole or any part of a port by combining any two or more local authorities having jurisdiction within the proposed area or part thereof to act together for the purposes of this Part of the Act, and may prescribe the mode of such joint action; or by forming a joint port local authority consisting of representative members of any two or more of such local authorities in the same manner. Further the Board may by order constitute a joint port local authority for any two or more ports consisting of representative members of all or any of the local authorities having jurisdiction within such port or any part thereof.

The Board may from time to time alter, vary, renew, or rescind said order, and a copy of said orders when made shall be forthwith laid before both Houses of Parliament.

Any order constituting a port local authority or joint port local authority may assign to such authority any [3] powers,

rights, duties, capacities, liabilities, and obligations under this Act, and direct the [4]mode in which the expenses of such authority are to be paid, and where such order constitutes a joint port local authority, it may contain all the regulations with respect to the carrying out of the provisions of this Act by such authority.

[5]A port shall mean a port as established for the purposes of the laws relating to the Customs of the United Kingdom.

[1] This part of the Act dealing with port local authorities is new, the provisions being taken in great measure from the English Public Health Act, 1875, secs. 287–292. The object is to afford facilities for executing the Act and the regulations made by the Board under Part IV. as regards ships. See also sec. 83.

[2] The power of constituting port local authorities lies with the Board, subject to the requirement that a copy of every order must be laid before Parliament. The Board have power to constitute (I.) Port Local Authorities and (II.) Joint Port Local Authorities.

I. A port local authority may be either (*a*) a local authority whose district, or part thereof, forms part of or abuts on any part of a port or the waters of a port; or

(*b*) Any persons having authority in or over such port, or any part thereof.

II. (*a*) A joint port local authority may be confined to one port, in which case it may consist of—

(i.) Two or more local authorities having jurisdiction within the proposed area, or part thereof; or

(ii.) Representative members of any two or more such local authorities; or

(*b*) The joint port local authority may embrace two or more ports, in which case it will consist of representative members of all or any of the local authorities having jurisdiction within the port, or within any part thereof.

[3] As to the power of a port local authority or joint port local authority to delegate the powers assigned to it, see sec. 174.

[4] As to the mode of defraying the expenses of port local authorities and joint port local authorities, see sec. 175.

[5] The power to appoint ports for Customs purposes is vested in the Treasury by the Customs Consolidation Act, 1876, sec. 11, which provides:—

"The Commissioners of the Treasury may, by their warrant, appoint any port, sub-port, haven, or creek in the United Kingdom or in the Channel Islands, and declare the limits thereof, and appoint proper places within the same to be legal quays for the lading and unlading of goods, and declare the bounds and extent of any such quays, and annul the limits of any port, sub-port, haven, creek, or legal quay already appointed or to be hereafter set out and appointed, and declare the same to be no longer a port, sub-port, haven, creek, or legal quay, or alter or vary the names, bounds, and

limits thereof: Provided always, that when by any such warrant the pre-existing limits of any port, sub-port, haven, creek, or legal quay shall be altered or varied, the same shall not affect or abridge any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her Majesty's Customs) granted to any person or body of persons by any Act of Parliament, grant, or other legal instrument, but they shall be deemed to be and remain the same for the purposes of such Act, grant, or other legal instrument as if no such alteration or variation had been made: Provided that any port so appointed by warrant as aforesaid shall, to the whole extent of the limits thereof, be deemed to be a port within the meaning and for the purposes of the Act of fifty-four George the Third, chapter one hundred and fifty-nine, and of any other public Act for the protection of the ports, harbours, shores, and navigable rivers of the United Kingdom or any part thereof."

Jurisdiction of port local authority.

173. The order of the Board constituting a port local authority or joint port local authority shall be deemed to give such authority jurisdiction over all [1]waters within the limits specified in the order, and also over the whole or such portion of the district within the jurisdiction of any local authority as may be so specified.

[1] As to the jurisdiction of local authorities over ships, see secs. 177 and 178.

Delegation of powers by port local authority.

174. [1]A port local authority or joint port local authority may, with the sanction of the Board, delegate to any local authority within or bordering on their district the exercise of any powers conferred on such authority by the order of the Board, but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port local authority or joint port local authority by the order of the Board within the district of such authority.

[1] After the Board have assigned certain powers to a port local authority or joint port local authority, such authority is empowered, with the sanction of the Board, to delegate any of these powers to any local authority within or bordering on their district. It is not clear whether the local authority are entitled to exercise these delegated powers over the whole district of the port local authority or merely within their own jurisdiction.

Expenses of port local authority.

175. Any expenses incurred by a joint port local authority shall be defrayed out of a common fund to be contributed by the local authorities [1]in such proportions as the Board thinks just.

[2]A port local authority, if itself a local authority under this Act, independently of its character of a port local authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act.

For the purposes of obtaining payment from the contributory local authorities of the sums to be contributed by them, a port local authority or joint port local authority shall issue their requisition to each such authority, requiring such authority, within a time limited by the requisition, to pay the amount therein mentioned to such authority, or to such person as such authority may direct.

Any contribution payable by a local authority to such port local authority or joint port local authority shall be a debt due from them, and may be recovered accordingly, such contribution being deemed general expenses of that authority. If any local authority makes default in complying with the requisition addressed to it by such port local authority or joint port local authority, such authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings as to any part of the debt which may for the time being be unpaid, proceed in the summary manner [3]in this part of this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several local authorities are combined in the district of one port local authority or joint port local authority, the Board may by order declare that one or more of [4]such authorities shall be exempt from contributing to the expenses incurred by such authorities.

[1] The proportions will be fixed by the Board in their order, which may direct the mode in which the expenses are to be paid (sec. 172).

[2] If a local authority is constituted a port local authority, it will itself assess its own district to meet the proportion of expenses due in respect thereof, and will requisition any other contributing local authorities for their respective shares. A joint port local authority will not itself assess (save in case of default—see suc-

ceeding section), but will issue a requisition to each contributory authority for the amount of its share.

[3] See next section.

[4] The double use of the expression "such authorities" tends to ambiguity. In the first instance it appears to refer to the local authorities; in the second, to the port local authority or joint port local authority.

Proceedings for raising a sum for payment of debt within district of a defaulting authority.

176. Where any port local authority, joint port local authority, or [1]other authority, are authorised in pursuance of this Act to proceed in a summary manner to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority; and the port local authority, joint port local authority, or [1]other authority, may raise the amount by assessment, [2]in like manner and with all the powers of imposition, levy, and recovery of the defaulting local authority.

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs, charges, and expenses (including the remuneration to any person they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs, charges, and expenses as aforesaid, and shall pay to the defaulting authority the balance, if any, remaining in their hands after such application.

[1] It is not clear what "other authority" is referred to here, as it is only port local authorities or joint port local authorities that are empowered by the preceding section to take summary proceedings to raise the sum due.

[2] As to the power to impose, levy, and recover assessments under this Act, see secs. 135 and 136.

PART XI.

MISCELLANEOUS.

[1]PROVISIONS AS TO SHIPS.

Provision as to ships within the jurisdiction of local authority.

177.[2] Any [3]ship lying in any river, harbour, or other water shall be subject to the local authority of the district within or *ex adverso* of which such river, harbour, or other water is situate, and to the sheriff, magistrates, and justices of the peace having jurisdiction in such district, and shall be within the provisions of this Act in the same manner as if such ship were a house within such district,[4] but this section shall not apply to [5]any ship belonging to Her Majesty or to any foreign Government.

[1] See also Part IV. of this Act, particularly secs. 78, 79, 85, and 88, all of which are specially applicable to ships. See also sec. 13 of the Infectious Disease (Notification) Act, 1889.

The provisions of this Act applicable to ships will not prejudice or affect the health provisions of the Merchant Shipping Act, 1894. See for instance sec. 210 and schedule 6 with regard to the accommodation for seamen, also sec. 293 and schedule 11 as to accommodation for steerage passengers in emigrant ships. Under sec. 324 of the same Act, Her Majesty may by Order in Council make regulations as to certain sanitary matters relating to shipping. See note 1 to sec. 79 *supra*. With regard to jurisdiction over shipping, sec. 685 (1) of the Merchant Shipping Act, 1894, provides: "Where any district within which any court, justice of the peace, or other magistrate, has jurisdiction either under this Act, or under any other Act, or at common law for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice, or magistrate shall have jurisdiction over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, lake, river, or navigable water, and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court, justice, or magistrate."

[2] This section re-enacts sec. 52 of the 1867 Act with an alteration due to the definition of the word "occupier" in sec. 3.

[3] See definition of "ship" in sec. 3; also of "premises," which includes "any ship lying in any sea, river, harbour, or other water, or *ex adverso* of any place within the limits of the local authority."

[4] In the 1867 Act the following words occurred at this part of the section: "And the master or other officer in charge of such ship shall be deemed for the purposes of this Act to be the

occupier of such ship." These words are rendered unnecessary by the definition of the word "occupier" in sec. 3, which provides that that word "in the case of a ship means the master or other person in charge thereof."

[5] The concluding provision of this section appears to be unnecessary, looking to the definition of "ship" in sec. 3.

Provision as to district of local authority extending to places where ships are lying.

178.[1] For the purposes of this Act, any ship that is in a place within three miles of the coast of Scotland, and not within the district of a local authority, shall be deemed to be within the district of such local authority as may be prescribed by the Board, and until a local authority has been prescribed, then of the local authority [2]whose district nearest adjoins the place where such ship is lying.

[1] This section re-enacts sec. 53 of the 1867 Act, under which the Board of Supervision took action in several instances and prescribed the limits of jurisdiction of certain local authorities. There is a similar provision in sec. 13 (2) of the Infectious Disease (Notification) Act, 1889.

[2] In the 1867 Act the corresponding section (53) concluded with the words—"the distance being measured in a straight line." These words are now unnecessary in view of sec. 34 of the Interpretation Act, 1889, which provides: "In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane."

Charge for medical officer attending sick on board any ship, and to be paid by captain.

179.[1] Whenever, in compliance with any [2]regulation of the Board which they are hereby empowered to make under this Act, any medical officer employed by a local authority performs any [3]medical service on board any ship, the [4]local authority shall be entitled to charge for such service, and such charge shall be payable by the captain of such ship on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick, [5]and in the event of dispute the amount shall be determined by the sheriff in a summary manner; and if such services shall be rendered by any medical practitioner who is not a medical officer of the local authority, he shall be entitled to charge for any service rendered on board, with extra remuneration on account of

distance, at the same rates as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case such charges be not paid, the [6]medical officer or practitioner may bring an action against the person in charge of such ship for the same, and the ship, cargo, and tackle thereof shall be subject to a lien for the amount of such charges.

[1] This section re-enacts sec. 54 of the 1867 Act with a number of alterations.

[2] As to the regulations of the Board, see secs. 78 and 79.

[3] There is some difference of opinion as to whether the examination or inspection of a ship which the medical officer may be required to make by any regulation of the Board under Part IV. of this Act is a "medical service" in the sense of this section, for which a charge may be made. In 1871 the Sheriff of Edinburgh decided that such examination was a "medical service" in the sense of the corresponding section of the 1867 Act. The Board of Supervision took a different view. They were of opinion that the expression "medical service" might include, besides medical attendance on the sick, services rendered by the medical officer in connection with the examination and disinfection of an infected ship, but that no liability for any expenses connected with the visit of a medical officer to a ship which is not infected, and where neither disinfection nor attendance on the sick is required, attaches to the owner or master of a ship. It is possible, however, that the foregoing opinion, which was given on a construction of the 1867 Act, would fall to be modified in so far at least as disinfection is concerned, in view of the provisions of sec. 47 of this Act, which apply to ships, and under which disinfection is, in some respects at any rate, to be carried out "free of charge" and subject to compensation.

[4] Under the 1867 Act the medical officer himself was entitled to make the charge; under this section it is the local authority. But see note 6 *infra*.

[5] The provision as to the determination by the sheriff in cases of dispute is new.

[6] Although the section provides that, when the service is performed by the medical officer, the local authority, and not the medical officer himself, is entitled to make a charge, it will be observed that if the charge is not paid, it is the medical officer, and not the local authority, who has power to enforce payment.

Power to remove to hospital sick persons brought by ship.

180.[1] Any local authority may make byelaws for the removal to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary any persons brought within their

district by any ship who are infected with an infectious disease.

[1] This section re-enacts sec. 55 of the 1867 Act, with the modifications rendered necessary by the word "byelaws" being substituted for "rules."

See sec. 54 as to the power to remove persons suffering from infectious disease who are on board ships, and sec. 55 as to the power to detain in hospital patients who would not on leaving be lodged where precautions could be taken to prevent the spread of disease.

For the provisions as to byelaws, see secs. 183–187.

[1] Provisions as to Buildings.

Byelaws as to regulation of buildings.

181.—(1.) The local authority of any [2] district other than a burgh may, subject to the [3] approval of the county council, make [4] byelaws for the [5] whole or any part of their district for regulating the building or [6] rebuilding of [7] houses or [8] buildings, or the use for human habitation of any building not previously so used, or any alteration in the mode of occupancy of any existing house in such a manner as will increase the number of separate houses in respect to the following matters:

(*a*) [9] The drainage of the subsoil of sites for and the prevention of dampness in houses intended for human habitation;

(*b*) The structure of walls, foundations, roofs, and chimneys of new buildings in so far as likely to affect human health;

(*c*) The ventilation of houses and buildings intended for human habitation;

(*d*) The sufficiency of the space about buildings to secure a free circulation of air;

(*e*) The construction and arrangement of the drainage of houses and buildings and of soil-pipes and waste-pipes, and the construction and position of water-closets, earth-closets, privies, ash-pits, cesspools, dungsteads, slop-sinks, and rainwater pipes and rhones;

(*f*) The production of suitable building plans in respect of the matters in this section mentioned, and their inspection;

(*g*) The intimation previous to the commencement by the owner or person laying out the work to the local autho-

rity of the date of the commencement, and for the due inspection in respect of the matters in this section mentioned of houses or buildings in process of erection or alteration, and the examination of the drains thereof, and for the pulling down, alteration, or amendment of any work which has been carried out in contravention of the byelaws.

[1] The provisions as to buildings are new and are of great importance. They enable local authorities of landward districts to insist on requirements with regard to buildings which formerly could only be enforced in burghs.

[2] The powers of this section do not apply to burghs.

[3] The approval of the county council is required in addition to the confirmation by the Board under sec. 185. See concluding provision to that section, and note 7 thereto.

[4] For the provisions as to byelaws, see secs. 183–187.

[5] The byelaws may be made applicable either to the whole or any part of the district of the local authority, and it will be competent to make different byelaws for different parts of the district. Thus a local authority will be entitled to make one series of byelaws applicable to villages and another and less stringent series applicable to the purely rural portions. The parts of the district to which any byelaws apply should be clearly specified in the byelaws and in the notices required by sec. 185.

[6] There is no definition of "re-building" in this Act. Sec. 240 of the Burgh Police Act, 1892, provides: "Whenever any house is taken down to or below the ceiling of the floor commonly called the ground or street floor for the purpose of being built up again, such building shall be deemed a rebuilding within the meaning of this Act." And sec. 159 of the English Public Health Act, 1875, provides: "For the purposes of this Act, the re-erecting of any building pulled down to or below the ground floor . . . shall be considered the erection of a new building."

[7] See definition of "house" in sec. 3. It includes "schools, also factories and other buildings in which persons are employed."

[8] There is no definition of "buildings" in this Act. For decisions bearing on the question see *Police Commissioners of Fort William* v. *Kennedy*, July 8, 1878, 5 R. (H.L.) 215; *Police Commissioners of Partick* v. *Great Western Steam Laundry*, January 27, 1886, 13 R. 500; *Magistrates of Edinburgh* v. *Paton & Ritchie*, March 3, 1858, 20 D. 731.

[9] See also sec. 182 as to building on ground filled up with offensive matter.

(2.) [10]In making such byelaws the local authority shall have regard to the special circumstances of their district, or the part thereof to which such byelaws relate.

[10] See note 5 *supra*.

Penalty for erecting buildings on ground filled up with offensive matter.

182.[1]—(1.) It shall not be lawful to erect a new building on any ground which has been filled up with any matter impregnated with fæcal, animal, or vegetable matter, or upon which any such matter has been deposited, unless and until such matter shall have been properly removed by excavation or otherwise, or shall have been rendered or have become innocuous.

[1] This section is taken from the English Public Health Amendment Act, 1890, sec. 25. Unlike the previous section, its provisions are not limited to districts other than burghs, but it was not required in burghs, as sec. 179 of the Burgh Police Act, 1892, makes a similar provision.

(2.) Every person who does, or causes, or wilfully permits to be done, any act in contravention of this section, shall for every such offence be liable to a [2]penalty not exceeding five pounds, and a daily penalty not exceeding forty shillings.

[2] As to recovery of penalties see secs. 153, 154.

[1]PROVISIONS AS TO BYELAWS.

Authentication of byelaws.

183.[2] All byelaws made by a local authority under and for the purposes of this Act shall be under their [3]common seal, or, if they have no common seal, shall be signed by two members and the clerk of such authority, and [4]any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: [5]Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the law of Scotland or to the provisions of this Act.

[1] The provisions as to byelaws are new. Under the 1867 Act there was no uniformity of procedure in regard to byelaws. They were known by different names—byelaws, rules, regulations, or rules and regulations. In some cases the approval or consent or confirmation of the Board was required, in others it was not necessary. In some the byelaws had to be advertised *in extenso*, in others only the intention to apply for confirmation was published; in others there was no advertisement of any kind. Under the present Act uniformity of procedure is laid down, and the use of the word "byelaws" is assimilated to that in the Burgh Police Act and in the English Public Health Acts.

Lumley in his work on byelaws gives the following definition of a byelaw: "A byelaw is a law made with due legal obligation by some authority less than the Sovereign and Parliament in respect of a matter specially or impliedly referred to that authority and not provided for by the general law of the land." The same writer makes the following remarks on the *properties* of byelaws :—

"As a byelaw is a law made by an inferior authority, it must not only contain all the properties of a public law, but is subject to certain qualifications arising out of the subordination of the authority that makes it.

"Hence, in the *first* place, it will be seen that these propositions are established :—

"1. A byelaw must be *consistent with*, and not repugnant to, the *general law.*

"2. It must provide something in *addition* to the *general law*, and therefore must not simply re-enact it.

"3. It must not make a provision in respect of a matter already provided for *other than* what *the general law* has prescribed.

"But, in the *second* place, it is necessary to advert to the general requisites of a public law, and thus it is found that :—

"4. A byelaw must be *certain* in its enactment, *i.e.*, free from ambiguity, and must afford complete direction to those who are to obey it.

"5. It must be *general* in its application.

"6. It must be as it is expressed in the usual authorities, and by the Courts in their numerous decisions, *reasonable.* This term, as it will be seen hereafter, involves a great deal of consideration.

"7. It must be *positive* in its terms, and directed to prohibit or enjoin an act by the persons upon whom it is to operate.

"8. It must contain a proper sanction by prescribing a *definite penalty* for the breach of it.

"9. Lastly, the law must not be made in respect of a matter not within the authority of the body enacting it, nor to operate upon persons or in a district not subject to their control. In technical terms, it must not be *ultra vires.*

"It is, however, to be carefully noticed that all that is here discussed relates only to the legal aspect of the byelaw. The policy or expediency, the usefulness or futility, the applicability, the urgency or necessity for the byelaw, are subjects for the consideration of the confirming authority, where there is one, but do not raise questions of law; though they may sometimes assist in the consideration of the question of the reasonableness of the byelaw or its excess of authority."

Expressions used in byelaws made under this Act will have the same meanings as they have in the Act itself. See sec. 31 of the Interpretation Act, 1889.

Byelaws may be made under this Act for the regulation or otherwise of the following matters, viz. : offensive trades, sec. 32 (3); slaughter-houses and knackers' yards, secs. 32 (3) and 33 (6); removal of refuse, secs. 32 (3) and 37; pigstyes, sec. 35; public conveyances, sec. 65; mortuaries, sec. 68; houses let in lodgings, sec. 72; tents, vans, &c., sec. 73 (2); common lodging-houses, sec.

92 ; removal to hospital of persons brought into district by ships, sec. 180 ; and buildings, sec. 181.

[2] This section follows sec. 182 of the English Public Health Act, 1875, with the necessary modifications.

[3] The commissioners of burghs have a common seal (sec. 55 (1) of the Burgh Police Act, 1892), but there is no provision empowering a district committee to have a common seal. The county council have a common seal (sec. 72 of the Local Government Act, 1889).

[4] The provision as to alteration or repeal of a byelaw does not appear to be necessary in view of sec. 32 (3) of the Interpretation Act, 1889, which 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." If a local authority desire to rescind or alter a byelaw, they will have to carry out all the procedure required in connection with the making of a byelaw.

[5] Care must be taken that the byelaws are not *ultra vires*. On this point see the observations of Lord Young in *Eastburn* v. *Wood*, July 14, 1892, 19 R. (Just.) 100 ; 29 S.L.R. 844.

The English Local Government Board, in a circular as to byelaws dated July 25, 1877, and printed in their Report for 1877–78, App., pp. 63, 64, gave the following exposition of the law : —

"It is provided by sec. 182 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.' From this enactment several important rules may be deduced. A byelaw to be in harmony with the laws of England must be certain and determinate, and likewise reasonable, and hence arises the necessity for the use of certain and definite language in prescribing rules which are destined to have, locally, the binding effect of a statute.

"The Board have, from time to time, had occasion to point out to sanitary authorities that the assumption in their byelaws of the power of suspending the operation of particular provisions in individual cases is open to much objection. Frequently the conditions under which this power may be exercised have been left undetermined in the byelaws ; and the result is to impart a general uncertainty to provisions of which the precise scope should be clearly defined. Again, the Board have been called upon to criticise byelaws which, while purporting to lay down rules enforceable by penalties, ignore the necessary details and substitute vague conditions which render compliance with the byelaws dependent upon the approval, by the sanitary authority or their officers, of the mode of proceeding in each case. Such byelaws also are open to objection on the ground of uncertainty, and they do not fulfil the purpose for which the power of making byelaws was conferred upon sanitary authorities. The Board think that every person who, by neglect of the rules which a byelaw is intended to prescribe, may be rendered liable to a penalty is entitled to demand from those who impose such rules a clear statement of the course of action which must be followed or avoided.

"Further, a byelaw must be reasonable. The exercise of the power which the Legislature has confided to sanitary authorities must frequently bring them into contact with important interests. Within certain limits, they may regulate the conduct of persons employed in certain specified callings. They may impose restrictions upon the enjoyment of individual rights and privileges. Trade and property may, under certain conditions, be affected by their action. These considerations point to the necessity for prudence and deliberation in the choice of byelaws, so that the duties and restraints which they create may not interfere oppressively with individual freedom of action.

"A byelaw under the Public Health Act, 1875, will also be invalid if it be repugnant to the provisions of that Act. Parliament has specified a variety of purposes for which byelaws may be made. For those purposes alone are byelaws authorised; and, as the Court of Queen's Bench decided in the case of *Reg.* v. *Wood* (5 E. & B. 49; *S. C.* nom. *Reg.* v. *Rose*, 24 L.J., n.s., M.C. 130; 1 Jur., n.s., 802), sanitary authorities cannot legally assume the power of making byelaws for carrying out the general objects of the Act. It follows, therefore, that every byelaw must be strictly limited with reference to the terms of the specific enactment from which its force is derived. Any attempt, by the strained construction of any such enactment, to extend the range of a byelaw should especially be avoided. But, while it is of primary importance in framing a byelaw to consider closely the language of the statutory provision which declares its purpose, the exact meaning of that language can never be safely determined without careful comparison of other enactments relating to the same or to kindred topics.

"It must always be remembered that byelaws are designed to supplement, and not to vary or supersede, the express provisions of the statute law. In the Public Health Act, 1875, and in the incorporated clauses, the subjects of byelaws may sometimes appear identical with those of specific enactments. But in all such cases, a closer examination will show that the subjects are not really identical.

"And however difficult it may be to detect the points of difference in a few exceptional instances, a safe rule may be deduced from the obvious considerations that a byelaw which merely repeats a statutory enactment is, to that extent, surplusage, and that a byelaw which aims at altering or amending such an enactment is rendered invalid by the proviso in sec. 182 of the Public Health Act, 1875."

Power to impose penalties on breach of byelaws.

184.[1] 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.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

[1] This section is taken from the English Public Health Act, 1875, sec. 183.

In an action for a contravention of the Rules and Regulations for Common Lodging Houses under sec. 62 of the 1867 Act, the complaint did not set forth the section of the Act which authorised the making of the rules and regulations, nor state that the rule libelled had been confirmed by the Board. *Held* that the complaint was irrelevant. (*Hastie* v. *Macdonald*, November 23, 1894, 22 R. (J.) 18.)

See also sec. 32 (4) of this Act.

Confirmation of byelaws.

185.[1] 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 Board, who are hereby empowered to allow, [2]modify, or disallow the same, as they may think proper; nor shall any such byelaws be confirmed—

Unless [3]notice of intention to apply for confirmation of the same has been given in one or more of the [4]local newspapers circulated within, or by handbills posted throughout, the district to which such byelaws relate, one [5]month at least before the making of such application; and

Unless for one [5]month at least before any such application is considered a copy of the proposed byelaws has been kept at the office of the local authority, and in the case of districts other than burghs at [6]the office of the parish council of every parish, to which such byelaws relate, 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.

Any persons aggrieved by any proposed byelaw, or by any proposed alteration of a byelaw, may within such last-mentioned month forward notice of his objection to the Board, who shall consider the same before granting confirmation.

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.

[7]A byelaw when confirmed by the Board shall not require confirmation, allowance, or approval by any other authority.

[1] This section follows sec. 184 of the English Public Health Act, 1875, but with a number of divergences therefrom.

[2] The power to modify is new. A difficulty might arise if the modification made by the Board should not be accepted by the local authority.

[3] The byelaws themselves need not be published in the manner prescribed, the requirement applies only to the intention to apply for confirmation.

[4] The word "local" here, if strictly construed, would necessitate all such advertisements being made in a newspaper published in the locality. Such a requirement cannot be carried out in remote districts, and no doubt the provision will be fulfilled in such cases by publication in any newspaper circulating in the locality.

[5] The word "month" means calendar month; see sec. 3 of the Interpretation Act, 1889. See also *Farquharson* v. *Whyte*, February 3, 1886; 13 R. (J.) 29.

It will be observed that in one case the month is to be reckoned as from the making of the application, and in the other as from the time when the application is considered.

[6] The requirement that the byelaws shall be deposited for the purpose of inspection in the office of the Parish Council is new. It applies to all byelaws for landward districts, although the office of the Parish Council may be within a burgh.

[7] This provision enacts that byelaws confirmed by the Board need no further confirmation or approval. It does not affect the requirement of sec. 181 that the byelaws under that section must receive the approval of the county council.

Byelaws to be printed, &c.

186. All byelaws made by a local authority under this Act shall be printed and hung up in the office of such authority, and be open to the inspection of any ratepayer of the district at all reasonable hours; and a copy thereof shall be [1]delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a district committee shall also be transmitted to the parish council of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours, and a

copy thereof shall be delivered to any ratepayer of the parish on his application for the same.

[1] It does not appear that the local authority are entitled to make any charge for the copies applied for by ratepayers.

Evidence of byelaws.

187.[1] 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 bye-laws without further or other proof.

[1] See sec. 160 and notes.

As to regulations of local authority.

188. The provision of this Act relating to byelaws shall not apply to any [1]regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

[1] As to the regulations which the local authority are authorised to make, and which are not byelaws in the sense of this Act, see secs. 15, 19, 70 (1), and 110.

PART XII.

Saving Clauses and Repeals.

Saving Clauses.

Act not to affect navigation of rivers or canals, or irrigation of lands.

189.[1] Nothing in this Act contained shall prejudice or affect, or shall enable any local authority or other person to injuriously affect—

(1.) The irrigation of lands in a rural district, or the supply of water used for such irrigation;

(2.) [2]Any supply of water which has been conducted to and is being used for any [3]house or building used in connection with such house or occupied for agricultural purposes;

(3.) The supply of water required for the purposes of any waterworks established by or under the provisions of any Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners;

(4.) The navigation on or use of any river, canal, dock, harbour, lock, reservoir, or basin, in respect of which any persons are by virtue of any Act of Parliament entitled to take tolls or dues, or the supply of water to the same, or any bridges crossing the same, or any towing-path thereon;

(5.) [4]The purification of any river or stream in respect of which any persons are by virtue of any Act of Parliament authorised to exercise jurisdiction, or the rights, powers, jurisdictions, and authorities conferred by such Act.

Provided always, that it shall not be lawful for the local authority to execute any works in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the local authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

[1] This section re-enacts sec. 25 of the 1867 Act with certain additions.
[2] Sub-sec. 2 is new.
[3] See definition of "house" in sec. 3.
[4] Sub-sec. 5 is new.

Saving of certain Acts.

190.[1] Except in so far as expressly provided, nothing in this Act shall prejudice or affect the provisions of the [2]Local Government (Scotland) Acts, or of the Local Authorities

Loans (Scotland) Act, 1891, as amended, or [3]of the Burgh Police (Scotland) Act, 1892, as amended, or of the Public Health (Scotland) Amendment Act, 1891, or of the [4]Anatomy Acts, 1832 and 1871.

[1] See also the concluding provision of sec. 135, which saves the Agricultural Rates Act, 1896, also sec. 60 (10) as to saving of Contagious Diseases (Animals) Acts.

[2] There are several express provisions affecting the Local Government Acts, *e.g.*, secs. 122 (3) and 131 (3), sec. 38, and sec. 138. See also the repeals specified in the first schedule.

[3] For instances of express provisions affecting the Burgh Police Act, see sec. 15, and the proviso in sec. 124.

[4] The Anatomy Acts provide that in certain cases and subject to certain restrictions dead bodies may be handed over for anatomical examination. See sec. 69.

Saving for county councils and standing joint-committees.

191. Except in so far as expressly provided, nothing in this Act shall prejudice or affect the powers, rights, and liabilities of [1]county councils and standing joint-committees with respect to capital works, rating, borrowing, or acquiring and holding land.

[1] See proviso to sec. 12.

Saving of local Acts.

192.—(1.)[1] Nothing in this Act shall supersede, prejudice, or affect the provisions of any [2]local Act applicable to any burgh or the forms of prosecutions and procedure in use therein, but the provisions of this Act shall operate to confer additional powers on the local authorities of such burghs, and the before-mentioned forms and procedure may be used therein in all prosecutions under this Act.

[1] See also sec. 171.

[2] See concluding provision in sub-sec. 2.

In the 1867 Act there was no provision saving local Acts. The provisions of the Glasgow Police Acts, 1862 and 1866, dealing with underground dwellings, contained certain requirements, from which such dwellings as were registered under these Acts were exempted. In a prosecution for contravention of the provisions of the Public Health Act of 1867 in regard to underground dwellings, it was held that it was not a good defence that the dwelling was registered under the Glasgow Police Acts (*Lang* v. *Munro*, March 9, 1892, 19 R. (J.) 53). It was also held that the provisions of the 1867 Act with respect to common lodging-houses were imperative throughout Scotland, and were in force in Glasgow notwithstanding the pro-

visions of sec. 104 of the 1867 Act, and of the Glasgow Police Act, 1866 (*M'Phee* v. *M'Inally* (*High Court*), March 19, 1881, 4 Couper, 424). In the same case it was held that a lodging-house keeper whose house was entered in the register kept under the local Act was not liable to be convicted of a charge of keeping a common lodging-house which was not registered under the 1867 Act.

(2.) [3] Nothing contained in this Act shall prejudice or affect the provisions of any local Act under which any authority is constituted for supplying water within any district or limits created by such Act.

For the purposes of this and the immediately succeeding section the expression "local Act" includes a Provisional Order and the Act confirming such Order.

[3] See also the proviso at the end of sec. 126 (1).

Reference to Public Health Acts.

193. [1] Where, in any public general, or local Act the Public Health Acts, or any sections thereof, are referred to, such reference shall be deemed to mean and include a reference to this Act or the corresponding sections of this Act and any amendments thereof; and the expression "public health rate" in any such Act shall mean, and a reference to [2] any of the assessments mentioned in section ninety-five of the Public Health (Scotland) Act, 1867, shall be deemed to be a reference to, the public health general assessment under this Act.

[1] Sec. 38 (1) of the Interpretation Act, 1889, provides: "Where this Act, or any Act passed after the commencement of this Act, repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

[2] See, for instance, the Public Parks (Scotland) Act, 1878, 41 & 42 Vict. c. 8, sec. 13, where the "local rate" out of which the expenses of the Act are to be defrayed is defined to be "any one of the assessments mentioned in section 95 of the Public Health (Scotland) Act, 1867."

Exemption of Government property from building regulations.

194. [1] Without prejudice to any existing right of the Crown, there shall be exempted from so much of the provisions of this Act as relates to buildings and structures,

every building, structure, or work vested in, or in the occupation of, Her Majesty, her heirs and successors, either beneficially or as part of the hereditary revenues of the Crown, or in trust for the public service or for public services; also any building, structure, or work vested in, or in the occupation of, any department of Her Majesty's Government for public purposes or for the public service.

[1] In addition to the exemptions specified in this section, see the definition of "ship" in sec. 3, and the concluding words of sec. 177. See also sec. 73 (4).

For observations as to the extent to which the rule, that the Crown is not bound by any statute if not expressly named therein, is recognised, see *Somerville* v. *Lord Advocate*, July 20, 1893, 20 R. 1050.

Application of Act to city of Aberdeen.

195. With respect to the city and royal burgh of Aberdeen, all charges and expenses incurred by the local authority in executing this Act, or any of the Acts hereby repealed, shall, notwithstanding anything contained in section thirty-nine of the Aberdeen Corporation Act, 1891, be included under the sixth head of the estimate directed by that section to be made up, and the rate or assessment to be imposed in respect of such charges and expenses shall be payable, one-half by the owners and one-half by the occupiers of all lands and heritages within the district of the local authority.

[1] REPEAL OF ACTS.

Repeal of Acts.

196.—(1.) The Acts specified in the First Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule, and so much of any public general Act as is inconsistent with this Act is also hereby repealed.

(2.) The repeal of the said Acts shall not annul, or in any wise prejudice or affect any purchase, sale, conveyance, grant, lease, bond, security, act, matter, or thing, heretofore made, done, executed, commenced, or instituted, under or by virtue or in pursuance of the said Acts; but all such purchases, sales, conveyances, grants, leases, bonds, securities, acts, matters, and things shall have priority, and be as

good, valid, and effectual to all intents and purposes as if the said Acts had not been repealed.

[1] Sec. 38 (2) of the Interpretation Act, 1889, provides :—

"Where this Act, or any Act passed after the commencement of this Act, repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

"(*a*) revive anything not in force or existing at the time at which the repeal takes effect ; or,

"(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed ; or

"(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed ; or

"(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed ; or

"(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

SCHEDULES.

FIRST SCHEDULE

(*Section* 196).

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
30 & 31 Vict. c. 101.	Public Health (Scotland) Act, 1867.	The whole Act.
34 & 35 Vict. c. 38.	Public Health (Scotland) Amendment Act, 1871.	The whole Act.
38 & 39 Vict. c. 74.	Public Health (Scotland) Act, 1867, Amendment Act, 1875.	The whole Act.
45 & 46 Vict. c. 11.	Public Health (Scotland) Act, 1867, Amendment Act, 1882.	The whole Act.
52 & 53 Vict. c. 50.	Local Government (Scotland) Act, 1889.	In sub-section three of section eighty-one, the words "and the assessments in respect of the drainage and water supply shall be levied in the same manner as they were before such district was formed into a police burgh."
53 & 54 Vict. c. 20.	Public Health Amendment (Scotland) Act, 1890.	The whole Act.
57 & 58 Vict. c. 58.	Local Government (Scotland) Act, 1894.	In sub-section six of section forty-four, the words [1] "as ascertained for the purposes of the Poor Law (Scotland) Act, 1845."
59 & 60 Vict. c. 19.	Public Health Act, 1896.	The whole Act [2] (except the repeals therein contained) in so far as it relates to Scotland.

[1] The repeal of these words is necessary to enable the special district rate for scavenging or other authorised purpose to be levied in the same manner as the public health rates under this Act.

[2] The words in brackets are hardly necessary in view of sec. 38 (2) (*a*) of the Interpretation Act, 1889, quoted under sec. 196.

[1]SECOND SCHEDULE

(*Sections* 139–141, 167).

Bond for Borrowed Money.

We, the local authority of the burgh [*or as the case may be*] of considering that, by resolution of the said local authority [*or as the case may be*] passed on the day of , it was resolved to borrow the sum of pounds, under the powers contained in the Public Health (Scotland) Act, 1897, section , for the purpose of [*specify purpose*], and on security of the aftermentioned assessments, and further considering that we have accordingly borrowed and received the sum of from [*name and designation of the lender*], therefore we bind the said local authority [*or as the case may be*] to repay the said sum of pounds [*here insert obligation to repay in accordance with the arrangement made between the local authority* [*or as the case may be*] *and the lender*], and in security of the said loan we hereby assign to the said and his foresaids the [*specify the assessments on the security of which the money is borrowed*], and we consent to the registration hereof for preservation and execution. In witness whereof, *&c.*

Transfer.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby assign and transfer to the said *C.D.* and his heirs, executors, and successors, a certain bond, number , granted by the local authority of the burgh [*or as the case may be*] of , in favour of , bearing date the day of for securing the sum of and interest thereon, and all my right and interest in and to the money thereby secured, and in and to the [*here specify the assessments on the security of which the money was borrowed*] thereby assigned; and I consent to registration hereof for preservation. In witness whereof, *&c.*

Discharge.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby discharge a certain bond, number , granted by the local authority of the burgh [*or as the case may be*], of , in favour of , bearing date the day of , and all interest due thereon, and I declare the assessments thereby assigned to be freed and discharged thereof; and I consent to registration hereof for preservation. In witness whereof, *&c.*

[1] The forms in this Schedule are virtually the same as those contained in the Schedule appended to the 1867 Act.

INDEX.

ABBREVIATIONS IN INDEX.

Bd.	Board.
C.L.H.	Common Lodging-House.
Co. Co.	County Council.
Dist. Com.	District Committee.
L.A.	Local Authority.
M.O.H.	Medical Officer of Health.
P.H.	Public Health.
S.I.	Sanitary Inspector.
S. for S.	Secretary for Scotland.

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