

The handbook of public health : a complete edition of the public health and other sanitary Acts relating to Scotland / annotated, and with the rules, instructions and decisions of the Board of Supervision brought up to date, and relative forms ; by John Skelton.

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THE
HANDBOOK OF PUBLIC HEALTH
FOR SCOTLAND



PUBLIC HEALTH AND OTHER SANITARY ACTS
WITH NOTES, DECISIONS, AND INDEX

JOHN SKELTON, C.B., LL.D.

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THE HANDBOOK
OF
PUBLIC HEALTH

*Just Published. Second Edition. Enlarged, and with a new
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THE LOCAL GOVERNMENT (SCOTLAND) ACT

IN RELATION TO

PUBLIC HEALTH.

A HANDY GUIDE.

By JOHN SKELTON, C.B., LL.D., ADVOCATE.

"Eminently practical, and cannot fail to be of service."—*Scotsman*.

"A well-designed and most useful handbook."—*Glasgow Herald*.

WILLIAM BLACKWOOD & SONS, EDINBURGH AND LONDON.

THE HANDBOOK
OF
PUBLIC HEALTH

A COMPLETE EDITION
OF THE
PUBLIC HEALTH AND OTHER SANITARY ACTS
RELATING TO SCOTLAND

ANNOTATED, AND WITH THE RULES, INSTRUCTIONS, AND
DECISIONS OF THE BOARD OF SUPERVISION,
BROUGHT UP TO DATE,

AND RELATIVE FORMS

BY
JOHN SKELTON, C.B., LL.D.

ADVOCATE
SECRETARY OF THE BOARD OF SUPERVISION

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON

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PREFACE.

It appeared to me that with the passing of the Local Government Act the time had come when a complete edition of the Sanitary Acts affecting Scotland should be prepared. The Public Health Act of 1867 had been in operation for more than twenty years; it had been followed at intervals by amending and supplementary Acts; the Board of Supervision had by numerous decisions supplied an instructive commentary on its main provisions; the opinion of eminent counsel had been obtained; obscure and doubtful questions had been elucidated in the courts of law. It was to be kept in view, moreover, that the Local Government Act had transferred the administration of the Act in rural districts from the Parochial Boards to the District Committees; and that in many cases the members and officers of the new local authorities must necessarily be unfamiliar with the nature of their duties and the extent of their powers. To bring together in a handy form for the use of practical men in town and country

the results of twenty years' experience of the working of the Act, is the object I have aimed at in preparing this volume.

I have to thank Mr A. Murray for the material aid he has afforded me. He has taken immense pains in the revision of the text and the preparation of the notes. Much the more laborious share of the duty of collation has fallen to him ; and I think it will be found that it has been discharged with judgment, intelligence, and scrupulous accuracy.

J. S.

EDINBURGH, 5th June 1890.

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ABBREVIATIONS.

B.	Board of Supervision.
L.A.	Local Authority.
L.G.	Local Government.
M.O.	Medical Officer.
P.H.	Public Health.
S.I.	Sanitary Inspector.
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.
Jur.	Scottish Jurist.
Couper	Couper's Justiciary Cases.
Glen	The Law relating to Public Health, by W. C. and A. Glen ; tenth edition, 1888.
Lumley	The Public Health Act, 1875, by W. G. and E. Lumley ; third edition, 1887, by Patchett and Macmorran.
Knight's Bye-Laws	Knight's Annotated Model Bye-Laws of the Local Government Board ; second edition, 1885.

PART I.

THE PUBLIC HEALTH ACTS, WITH NOTES.

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PUBLIC HEALTH (SCOTLAND) ACT, 1867.

(The notes and annotations are in small type.)

30 & 31 VICT., CHAPTER 101.

An Act to consolidate and amend the Law relating to the Public Health in Scotland.—[15th August 1867.]

WHEREAS it is expedient to consolidate and amend the laws applicable to Scotland for removal of nuisances, for prevention of diseases, and for sanitary purposes generally: 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. This Act may be cited for all purposes as the "Public Health (Scotland) Act, 1867."

Objects of Act.—"It consolidates into one Act the whole Statute Law relating to the public health. It confers upon L.A.'s enlarged powers, and it affords them

increased facilities for the removal of nuisances, for the regulation of lodging-houses, for the construction of sewers, for the supply of wholesome water, for the providing of local hospitals, and for the adoption of other measures calculated to prevent or mitigate disease."—*B. Circ. of 5th Sept. 1867.*

Act does not require to be "adopted."—Some L.A.'s seem to be of opinion that the Act does not take effect in their respective districts until they resolve to "adopt" it. This is a mistake. The provisions of the Act are operative and binding in every parish and district in Scotland, irrespective of any resolution of the L.A.—*B. Circ. of 16th Dec. 1869.*

Amending Acts.—These do not affect the principles of the original Act; they merely modify or extend its provisions.—See these Acts *infra*.

Local Government Act.—The chief effect of the L.G. Act is to change the body which administers the P.H. Act in parishes. The general provisions of the P.H. Act are not materially affected, the last paragraph of § 11 of the L.G. Act expressly declaring that the Acts transferred "shall remain in full force and effect, except in so far as they are repealed by or are inconsistent with the provisions" of the L.G. Act.

2. From and after the first day of November one thousand eight hundred and sixty-seven, the Nuisances Removal (Scotland) Act, 1856, except Part V. thereof, sections 441 to 447, both inclusive, of the General Police and Improvement (Scotland) Act, 1862, and also the Sewage Utilization Act, 1865, and the Sanitary Act, 1866, so far as these two last-mentioned Acts apply to Scotland, are repealed: Provided always, that all proceedings commenced or taken under the said Acts or any of them, in so far as hereby repealed, and not yet completed, may be proceeded with under the said Acts or any of them, or under this Act; and all Orders in Council, and all directions and regulations issued by the Board of Supervision under the said Acts or any of them, and all appointments made, and all contracts or works undertaken, and generally all claims, rights, and liabilities, civil or criminal, constituted or existing under the said Acts, before the passing of this Act, with the remedies and proceedings applicable thereto under the said Acts or this Act, shall continue and be as effectual as if the said Acts had not been repealed; and where in any enactments of any Act, general or local, which shall continue in force after the commencement of this Act, any of the Acts or parts of Acts hereby repealed is cited or referred to, such enactments shall be interpreted as if this Act were cited or referred to therein, and as if the provisions of this Act were substituted for the provisions hereby repealed.

Nuisances Removal Act.—Part V. of this Act, comprising §§ 60-70, referred to the sanitary condition of towns, and was repealed by § 1 of the General Police Act, 1862.

General Police Act.—§§ 441-447 contained amendments of the Nuisances Removal Act, which are superseded by the provisions of the P.H. Act.

Sewage Utilization Act, &c.—The Sewage Utilization Act, 1865, and the Sanitary Act, 1866, so far as they apply to Scotland, are repealed; Glen's statement

(p. 2) that these Acts "remain in force so far as they relate to Scotland," is therefore not accurate.

Interpretation of certain Terms.

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

The word "board" shall signify the Board of Supervision for the Relief of the Poor in Scotland:

The word "secretary" shall include assistant secretary:

The expression "medical officer" shall signify a duly qualified medical practitioner appointed under the Act eighth and ninth Victoria, chapter eighty-three, or under this Act:

The word "sheriff" shall include sheriff-substitute:

The word "burgh" shall include not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, burgh of barony, and burgh of regality, but also any populous place having a town council, police commissioners or trustees exercising the functions of police commissioners under any general or local Act:

The word "magistrate" shall include a magistrate or judge having police jurisdiction under the General Police and Improvement (Scotland) Act, 1862, or under any general or local police Act which may be in force:

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

The word "owner" shall signify 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 shall include a trustee, factor, tutor, or curator, and in case of public or municipal property shall apply to the persons to whom the management thereof is intrusted:

The word "ship" shall include any sailing or steam ship, vessel, or boat:

The word "premises" shall include lands, buildings, structures of any kind, streams, lakes, drains, ditches, or places open, covered, or inclosed, and any ship, lying in any sea, river, harbour, or other water, or *ex adverso* of any place within the limits of the local authority:

The word "person," and words applied in this Act to any person or individual, shall apply to and include women, corporations, clubs, societies, statutory boards or commissioners, joint stock companies, partnerships, joint owners, and joint occupants, and trustees:

The word "company" shall apply to and include commissioners:

The expression "author of a nuisance" shall signify the person through whose act or default the nuisance is caused, exists, or is continued, whether he be the owner or occupier, or both:

The expression "common lodging-house" shall signify a house or part thereof where lodgers are housed at an amount not exceeding fourpence per night for each person, whether the same be payable nightly or weekly, or at any period not longer than a fortnight, or where the house is licensed to lodge more than twelve persons:

The expression "keeper of a common lodging-house" shall include any person having or acting in the care and management of a common lodging-house.

Distinction between "signifies" and "includes."—"In *Reg. v. Kershaw*, . . . ERLE, J., points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an extending and the latter an excluding signification. Generally, however, an interpretation clause does not restrain the meaning of the words interpreted." *Lumley, v. "Union,"* p. 5; Glen, p. 7.

Board.—The constitution of the Board is fixed by the Poor Law Act, 1845, § 2, *et seq.*

Medical Officer.—See § 8 and notes. The definition here given must be extended so as to include the medical officers appointed under the L.G. Act, §§ 52-54. See *infra*.

The Act 8 & 9 Vict. c. 83 is the Poor Law Act, 1845.

Burgh.—See § 5 and notes. In the L.G. Act the word "burgh" has a more restricted signification. See L.G. Act, § 105 *infra*, *v. "Burgh"* and "Police Burgh."

Ship.—See the definition of "premises;" also § 52.

Author of a nuisance.—See § 19 and notes. The word *nuisance* is defined in § 16.

Common lodging-house.—See Part V., §§ 59-70. By § 60 licensed victualling houses are excluded from the provisions as to common lodging-houses.

The sum of fourpence may be altered, but so as not to exceed sixpence. See § 59.

The distinction between common lodging-houses and the lodging-houses referred to in § 44 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.

Keeper of a common lodging-house.—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 Sir A. E. Cockburn (late Chief Justice) and Sir W. P. Wood (late Lord Chancellor). See Glen, p. 135.

Other definitions.—The expressions "drain," "sewer," "street," "sanitary purposes," &c., are defined in the English P.H. Act, 1875, § 4.

4. "The Lands Clauses Consolidation (Scotland) Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," shall, for the special purposes herein-after mentioned, be incorporated with and form part of this Act, and shall be herein-after referred to as "The Lands Clauses Acts."

See §§ 72, 89 (1), 90, and 116.

PART I.

LOCAL AUTHORITY AND BOARD OF SUPERVISION.

Local Authorities, as herein-named, to execute this Act. Board of Supervision to determine the Local Authority in Parishes not wholly within the Jurisdiction of a Town Council, &c.

5. The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in Scotland:

In places within the jurisdiction of any town council, and not subject to the jurisdiction of police commissioners or trustees as after mentioned,—the town council:

In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act,—the police commissioners or trustees:

In any parish, or part thereof, over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend,—the parochial board of such parish:

Provided always, that where any parish shall be partly within and partly beyond the jurisdiction of a town council and of police commissioners or trustees, and of a parochial board, or of any two or more of such bodies, the board, if application be made to them by any of these bodies, or by any person having interest, may, if they see fit, determine which of the said several bodies shall be the local authority within the whole limits or within any portion of such parish, and the board may from time to time recal or vary such determination; and provided further, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

Local Government Act.—(a) Parishes.—As regards rural districts, the L.G. Act effects a complete change both in the executive body and in the area of adminis-

tration of the P.H. Act. The arrangements are somewhat complicated. In the first instance, the powers and duties of parochial boards as L.A.'s are transferred to the county council (§ 11 (4)). Again, each county is for P.H. purposes divided into districts, with a district committee for each (§§ 17 and 77). The district committee consists of the county councillors for the divisions comprised within the district, together with a representative from each parochial board and each burgh within the district (§ 78); but when P.H. business is being transacted, the members who represent burghs are precluded from acting or voting (§ 73 (8)). Upon these district committees the sanitary powers of the county council are, with one or two exceptions, devolved. There is thus to some extent a divided jurisdiction. The district committee is, speaking generally, the L.A. But to the county council are reserved the appointment of M.O.'s and S.I.'s for counties, and the raising of money by rate or loan; while they are further invested with the power of making regulations for the government of district committees, and of taking action on appeals by ratepayers against proceedings of district committees, and on appeals by S.I.'s and M.O.'s (§ 17 (2)).

(b) *Parishes partly burghal.*—In parishes containing burghs, the P.H. Act empowers the Board to determine which body shall be the L.A. within either the whole parish or any portion of it. This provision is not expressly repealed by the L.G. Act, but it is virtually superseded, and the Board have recalled their determinations under this section, so that in no case will the L.A. of a burgh exercise jurisdiction beyond its own boundaries, nor will the L.A. of any rural district extend its jurisdiction into a burgh.

(c) *Burghs.*—For the purposes of the L.G. Act the boundaries of burghs are to be their police or municipal boundaries (§ 44 (b)); but in certain circumstances power is given to the Boundary Commissioners (§ 49), and afterwards to the Secretary for Scotland (§ 51), to alter the boundaries. No change is made by the L.G. Act in the constitution of L.A.'s of burghs; nor does it affect the formation of burghs under the General Police Act, 1862 (§ 99). When a police burgh is formed, the police commissioners become *ipso facto* L.A. within their jurisdiction (§ 99).

The absence from the L.G. Act of any allusion to burghs of barony and of regality has raised the question whether such burghs are affected by its provisions. The burgh of Langholm is neither a royal burgh nor a police burgh under the 1862 Act; it is a burgh of barony, with commissioners, under the Act 3 & 4 Will. IV., c. 46. The question arose: Is the administration of the P.H. Act to be transferred to the county council, or to remain in the hands of the commissioners? An inquiry was addressed to the Secretary for Scotland, who replied that he was "advised that prior to the L.G. Act the L.A. within the burgh of Langholm was undoubtedly the police commissioners, and that the L.G. Act does not divest the police commissioners of this jurisdiction. The L.G. Act by § 11 (4) transfers to the county councils the powers of the L.A.'s of 'parishes,' and having regard to the terms of § 5 of the P.H. Act, 1867, to which the later enactment necessarily relates, it is clear this transfer does not affect places within the jurisdiction of police commissioners."

L.A. bound to execute the Act.—The L.A. are bound to execute the Act, and a resolution not to enforce its provisions would be incompetent and illegal. The L.A. 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 L.A. from the discharge of their duty, nor prevent proceedings being taken against them under the Act.—B.

Where District in more than one County.

6. 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 sheriffs, and the powers of their officers under this Act, shall be regulated accordingly, and the Board may from time to time recal or vary such determination; provided always, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

Local Government Act.—The provisions of this section are affected by the L.G. Act in two different ways. (1.) It is provided in the interpretation clause, that “where part of a parish is situate within, and part of it without, any county or other area,” the expression *parish* “includes each such part.”—(§ 105, *s. v.* “Parish.”) It is further provided that counties shall be divided into districts in such a manner that each parish, so far as within the county, shall be wholly included in one district.—(§ 77 (1).) A parish situated in more than one county will therefore be divided, each portion being treated as a distinct parish, and the parochial board of such a parish will have to elect a representative to the district committee of each district within which a portion of the parish is situated.—(§ 78 (1).) (2.) Power is given to the boundary commissioners to deal with counties, burghs, and parishes, “so that each burgh and parish, if the commissioners shall, in the whole circumstances of the case, deem it necessary or expedient, may be within a single county.”—(§ 49 (1).)

It thus appears that, as regards *parishes* and *existing burghs*, determinations under this section will no longer be required; but in the case of *new burghs*, circumstances may arise in which the Board may be called upon to exercise their powers. The powers of the Boundary Commissioners continue for only two years. A burgh may thereafter be formed, containing portions of two or more counties. In such a case, the Secretary for Scotland might exercise the powers given him under § 51 of the L.G. Act; but it does not appear that a determination under § 6 of the P.H. Act would be incompetent.

*Local Authorities to be Bodies Corporate. Committees
may be appointed.*

7. The local authorities shall respectively be 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 hold lands for the purposes of this Act; and the local authority may appoint any committee or committees of their own body to receive notices, to take proceedings, and 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, thereto duly authorised, may, by minute or other writing signed by the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf; and 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 passing of this Act, by the local authority under any of the before repealed Acts, and shall be vested with all property or pecuniary claims so vested in such last-mentioned local authority.

Local Government Act.—The district committee as L.A. will be subject to the provisions of this section, as well as to the provisions in the L.G. Act regulating the proceedings of district committees. Each district committee is to be designated according to the district within which it acts, and may sue and be sued under that designation (§ 79). For the regulation of its quorum and proceedings, it is to be deemed a committee of the county council (§ 80). That is to say, subject to such regulations as the county council may make, the proceedings and quorum shall be such as the district committee may from time to time direct (§ 74 (1)). The district committee is also subject to the general regulations for its government which the county council have power to make (§ 17 (2)). The district committee is empowered to elect a chairman for a fixed period, and he is to have a casting as well as a deliberative vote. The district committee is also empowered to appoint and to remove a district clerk and district treasurer, and, subject to the approval of the county council, to fix their salaries (§ 80).

General Police Act.—The provisions of the Act of 1862 as to the quorum and proceedings of the commissioners will be found in §§ 58-63.

Quorum.—It is advisable in all cases that the quorum should be fixed, but in the absence of any regulation as to the number, it would not be incompetent, it is thought, for a single member of a district committee, acting as L.A., to transact the business for which a meeting was called, no statutory quorum being fixed either by the P.H. Act or the L.G. Act.

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

Notice of meetings and of business.—In the absence of any statutory notice, or of any regulation on the subject, it is a reasonable rule that ten days' notice should be given of meetings of the L.A. The billet calling the meeting should specify the business to be brought forward; special business cannot competently be transacted unless notice has been given.—B.

Records.—The L.A. acting as such should have separate records of its transactions; and all books and accounts under the P.H. Acts should be distinct from those under other Acts.—B.

Every member of a L.A. is entitled to reasonable access to the books and documents, unless the L.A. should, for sufficient reason, prohibit it. It has not been decided whether a ratepayer has the same right. A ratepayer is entitled to inspect the assessment roll. See *Wingate, &c., v. Meek*, May 21, 1851, 13 D. 972, 23 Jur. 448; and L.G. Act, § 64.

Admission of the public to meetings.—The L.A. may make such regulations as they think fit with regard to the admission to their meetings of the public and representatives of the press.—B.

Committees.—The L.A. may delegate any, or all, of their powers to a committee, but it is 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, the adoption of the Infectious Disease (Notification) Act, &c., &c.—B.

When a committee is appointed to carry out some specific work in a particular part of the district, the members may be selected from those resident in that quarter.—B.

As to committees for special drainage and water-supply districts, see §§ 76 and 89 (5) and notes; also L.G. Act, § 81.

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

It is a rule of law (*delegatus non potest delegare*) that a committee cannot delegate its powers to a sub-committee unless legally authorised to do so. The First Division held that where police commissioners had delegated certain of their duties to a committee under § 63 of the General Police Act, this committee could not delegate their duties to a sub-committee.—*Thomson v. Dundee Police Commissioners* (P.L.M. 1888, p. 94).

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 L.A.—B.

L.A. may appoint persons to act on their behalf.—The L.A. may appoint any person to take proceedings on their behalf. In general, the S.I. will be the proper person to appoint. In the case of bakehouses, however, the power of taking action is given to the M.O. by § 17 (1) of the Factory and Workshop Act, 1883.

As regards legal proceedings, see § 102.

Members of L.A. cannot receive payment for services to L.A.—A member of a L.A. cannot legally accept remuneration for any services he may render to the L.A.; nor can he supply goods by contract or otherwise to the L.A.—B.

See also § 83 (5) of the L.G. Act, *infra*.

Local Authority to appoint Sanitary Inspectors and other Officers.

8. The local authority may, and where it shall be thought necessary by the Board for the purposes of this Act the local authority shall, appoint a sanitary inspector or inspectors, who shall be also inspector or inspectors of common lodging-houses, and a medical officer or medical officers, and may make bye-laws for regulating the duties of such inspectors and medical officers, which byelaws shall not be effectual until they are approved of by the board; and the local authority shall appoint convenient places for their offices, and shall allow to every such inspector or medical officer on account of his employment a proper salary; and if no such inspector or medical officer is appointed, the local authority shall, in all cases in which any duty is laid on them by this Act, appoint some person, where the same shall be necessary, to perform such duty, and shall remunerate him as they shall see fit; and the names and addresses and salaries of the said inspectors and medical officers shall be reported by the local authority to the Board immediately on such persons being appointed and such salaries fixed; and the said inspectors and medical officers shall be bound to make such returns and special reports to the Board as the Board shall require them to make; and the said inspectors shall be removable from office only by the Board, except in the case where the local authority is the town council or police commissioners or trustees in any burgh in Scotland having a Local Act for police purposes, or having a population of ten thousand or

upwards according to the census last taken, in which case the inspectors shall be removable from office by the local authority.

Local Government Act.—The L.G. Act makes important amendments on this section, which will be found in the following notes. See also L.G. Act, *infra*, §§ 17, 52, 53, 54, 83 (5), 118, 119, and 120.

General Police Act.—There is no provision as to S.I.'s in the Act of 1862, but the duties of the inspector of cleansing are largely sanitary in character.

The commissioners are empowered to appoint and pay "a person of competent skill and experience, who shall be styled the *officer of health*." His duties are to ascertain the existence of disease, especially infectious diseases, to point out any local causes of such, and the best means of preventing them, to make reports to the commissioners, &c., &c. He may, with the approval of the Secretary for Scotland, be removed or discontinued by the commissioners, § 111.

But it would appear that the "officer of health" under the General Police Act cannot perform the duties of M.O. under the P.H. Act within the burgh without special appointment and remuneration.

Appointment of M.O.'s and S.I.'s for counties compulsory.—Every county council is required to appoint and pay a M.O. or M.O.'s, and a S.I. or S.I.'s, who shall not hold any other appointment, or engage in private practice or employment, without the express written consent of the council.—L.G. Act, § 52 (1).

M.O.'s and S.I.'s for districts of counties.—The district committees as L.A.'s may either themselves appoint M.O.'s and S.I.'s, or may make arrangements with the county council for rendering the services of the M.O.'s and S.I.'s for the county regularly available within their districts.—L.G. Act, § 52 (2). When the latter course is followed, the officers are the officers of the district under the P.H. Act, and the district committee are not bound to appoint others.—L.G. Act, § 52 (3).

Officers for parts of district.—The L.G. Act provides that appointments may be made either for the whole district or for any part of it, the powers and duties of officers so appointed being, within the area assigned to them, the same as those of officers appointed by the parochial boards as L.A.'s.—L.G. Act, § 17 (3).

Transference to county councils of officers of L.A.'s of parishes.—On 15th May 1890 all officers of the parochial boards acting as L.A.'s become officers of the county council, with the same duties and tenure as before; but the council may redistribute the business, and may abolish the office of any officer, giving him compensation.—L.G. Act, §§ 118 (1), 119 (1), (2), (3), and 120.

Appointments.—Appointments can be made only by the L.A. 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 L.A. would probably be held to have been validly made by the L.A. 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. The election of officers should not be by ballot; such mode of election, except where it is authorised by statute, being of doubtful legality.—B.

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

An appointment of S.I. during the pleasure of the L.A., or for a limited period, is invalid, being inconsistent with the statutory provision that such officers are removable only by the Board.—B. This will now apply to all S.I.'s and M.O.'s appointed under the P.H. Act or the L.G. Act.

Disqualifications.—The appointments of S.I. and M.O., being offices of profit, cannot legally be held by members of the L.A.—B.

A county councillor or his partner in business cannot lawfully be appointed to any place of profit under either the county council or district committee,

and this disqualification applies for six months after such person has ceased to be a county councillor.—*L.G. Act*, § 83 (5).

A minor cannot competently be appointed S.I. or M.O.—B.

In a case where the L.A. wished to combine the offices of S.I. and scavenger, the Board intimated that they did not think it likely that any person willing to be scavenger would be a fit and proper person for the office of S.I.—*Board's Report*, 1877, p. xix. But see note *infra*, "Scavenger."

L.A.'s combining to appoint officers.—In many parts of the country it would be highly expedient for L.A.'s whose districts are contiguous to unite in the selection of a competent person who should be appointed S.I. for their several districts—each L.A. 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 M.O.'s.

Assistants.—There is no statutory provision as to assistant S.I.'s or M.O.'s; it is left to the L.A. 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 S.I. or M.O. cannot be performed by an assistant, unless he is specially authorised by the L.A. in each case.

Offices.—The Act requires that convenient places be appointed for the offices of the S.I. and M.O. It is generally convenient to have both under one roof, along with the other offices of the L.A. But the places appointed for the offices of the S.I. and M.O. need not be exclusively used for that purpose.—B.

Salaries.—The L.A. are required to pay to their S.I. and M.O. a "proper salary." An appointment without 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 have held that a "proper salary" had not been fixed, the amount named by the L.A. being altogether illusory. In one case a L.A. reduced the S.I.'s salary to a nominal sum, manifestly for the purpose of compelling him to resign. The Board held that the L.A. 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 *infra*, "Removal from office," and *Board of Supervision v. Parochial Board of Old Monkland*, 17th Jan. 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.

Regulations and Byelaws.—The L.G. Act authorises the Board to make regulations for the M.O. and S.I. 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.—*L.G. Act*, § 53 (1). See the Regulations, *infra*.

These regulations do not supersede the byelaws authorised by § 8 of the P.H. Act. Any L.A. may make byelaws, which, in the case of a district committee, would be supplementary to the Board's regulations. County councils may also make byelaws under § 8 of the P.H. Act for the S.I.'s and M.O.'s of counties. See the byelaws recommended by the Board, *infra*.

The Board have issued a model series of byelaws for S.I.'s and M.O.'s. (See these byelaws *infra*.) All L.A.'s ought to adopt them. The adoption of byelaws not only conduces to the efficient administration of the law, but prevents the occurrence of misunderstanding between the L.A. and their officers.—B.

The regulations for medical officers and inspectors of nuisances in England, framed by the Local Government Board, will be found in their 10th Report, 1880, App., pp. 13-41.—See also their Report, 1889, App., p. 69, and the 'London Gazette' of 29th March 1889.

S.I. or M.O. may appeal to County Council.—The S.I. or M.O. of a county or district may appeal to the county council, and the council may thereupon make an order under the P.H. Acts.—*L.G. Act*, § 17 (2 c).

Removal from office.—The provisions of the P.H. Act, making S.I.'s removable only by the Board, has been extended by the L.G. Act, and the sanction of the Board is now required to the removal of all S.I.'s and M.O.'s, whether appointed under the P.H. Act or under the L.G. Act. The proviso at the end of § 8 of the P.H. Act, exempting certain burghs from this enactment, is thus superseded.—*L.G. Act*, § 54 (4).

It is incompetent for the L.A. to bring about the removal of a S.I. or M.O. from office by indirect means, such as reducing his salary, or attaching conditions to his appointment, or otherwise.—*B.* See also note *supra*, "Salaries," and *Board of Supervision v. Parochial Board of Old Monkland*, 17th Jan. 1880, 7 R. 469; P.L.M. 1880, 141.

A S.I. cannot demit office or be relieved of his responsibilities until his resignation has been tendered to and accepted by the Board.—*B.* This will now apply also to M.O.'s under the P.H. Acts and the L.G. Act.

Qualifications of M.O.'s.—None but a registered medical practitioner can be appointed M.O. of a county or district or parish.—*L.G. Act*, § 54 (1). After 1st Jan. 1893, the M.O. appointed under the P.H. Acts for a county or district or parish which contains a population of 30,000 or upwards, must in addition be the holder of a diploma in sanitary science, public health, or state medicine.—*L.G. Act*, § 54 (2).

Duties of M.O.'s.—The duties of M.O.'s are set forth in general terms in the byelaws recommended by the Board. See the byelaws, *infra*.

Unless required by a regulation or byelaw, or specially instructed to do so, it is not the duty of the M.O. to attend cases of infectious disease. The main object of the appointment of a M.O. is to afford to the L.A. 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 M.O. that the duty of carrying out the sanitary provisions as to bakehouses is laid by § 17 (1) of the Factory and Workshop Act, 1883. See that Act, *infra*.

When Part III. of the P.H. Act is in force, additional duties may be imposed upon M.O.'s by the directions and regulations of the Board. See § 35.

When the Infectious Disease (Notification) Act has been adopted by a L.A., the M.O. is charged with certain duties. See that Act, *infra*.

Qualifications of S.I.'s.—For the efficient execution of the Act, nothing is of greater importance than the appointment, as S.I.'s, of active, intelligent, and independent men, who understand the nature of their duties, and are able to devote their whole time to the discharge of them.—*Circ.*, 29th July 1870; *Board's Report*, 1870, App., p. 55.

It is essential that the person appointed should possess intelligence and firmness, and should be as little as possible connected with local interests.—*Circ.*, 28th Aug. 1871; *Board's Report*, 1872, App., p. 88.

Except with the express consent of the Board, no person can be appointed S.I. of a county unless he has been for the preceding three years the S.I. of a L.A.—*L.G. Act*, § 54 (3).

Police as S.I.'s.—Prior to 1874 members of the police force were prohibited from holding the office of S.I. In that year the rule was relaxed, and officers of police are allowed to act as S.I.'s, subject to the sanction of the Board, and, in the case of members of the county police, also of the standing joint-committee. (See extract from Home Office Circular of 30th June 1874, *infra*.) The appointments of police officers as S.I.'s have been numerous, and seem to have given satisfaction. In Berwickshire a sergeant of police has been S.I. for nearly the whole county; the chief constable exercised a general supervision, and the local constables assisted in the duties of inspection.

Appointment of S.I. compulsory in certain cases.—The statute gives the Board power to compel L.A.'s to appoint S.I.'s and M.O.'s, and this power the Board have frequently exercised in individual instances. They also issued a circular requiring all L.A.'s having within their jurisdiction a town or village population of 2000 or upwards to appoint S.I.'s.—*Circ.*, 28th Aug. 1871; *Board's Report*, 1872, App., p. 88.

Duties of S.I.'s.—The duties of S.I.'s are laid down in general terms in the byelaws recommended by the Board. See *infra*.

As to the duties of S.I.'s with regard to infectious diseases, see *Circ.* of 26th April 1880, with Dr Littlejohn's Report, *infra*.

The Board have required all S.I.'s to report to them cases of small-pox occurring in their districts.—*Circ.*, 18th Feb. 1888, *infra*.

When Part III. of the P.H. Act is in force, additional duties may be required of S.I.'s by the Board's directions and regulations. See § 35.

Inspector of common lodging-houses.—The S.I. being *ex officio* inspector of common lodging-houses, the L.A. cannot appoint any one to that office who is not S.I.; but there is nothing to prevent a L.A. appointing two or more S.I.'s, and assigning to one of them the discharge of the duties connected with common lodging-houses.—B.

Inspector of dairies.—The S.I. is usually inspector of dairies. See *Circ.*, of 27th Jan. 1887, *infra*.

Scavenger.—The L.A. of a parish in which there was a considerable village arranged to pay part of the wages of a scavenger to clean the village streets, the remainder being paid by the district road trustees. *Held* that such an arrangement was within the powers of the L.A. See *Robertson, &c., v. Parochial Board of Midcalder*, 19th Dec. 1883, 11 R. 350; P.L.M., 1884, p. 250.

Powers of the Board to require Returns and examine Witnesses.

9. It shall be lawful for the Board, upon written application by two or more parties interested or upon the report of any of their inspecting officers, to inquire into the sanitary condition of any parish in Scotland, or into the sanitary condition of any burgh in Scotland not having a Local Act for police purposes, or not having a population of ten thousand or upwards according to the census last taken, and also in these two latter cases with the consent of one of her Majesty's Principal Secretaries of State, after duly considering any representation which may be made to him by any town council, stating that such consent ought not in the case of such burgh to be given; and for this purpose the board are hereby empowered to make 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 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 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; or, in lieu of requiring such oath as aforesaid, the Board may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

Inspecting Officers of the Board.—The two general superintendents of poor, and the two visiting officers of the Board under the Poor Law Acts, are also inspecting officers under the P.H. Acts, the country being divided into four districts, and allocated to them for the purposes of inspection.

Secretary of State.—The powers and duties of the Secretary of State under the P.H. Act are transferred to the Secretary for Scotland by the Act 48 & 49 Vict. c. 61.

General Police Act.—The General Police Act, 1862, gives power to the Privy Council to institute inquiries in burghs and populous places when the mortality exceeds certain proportions.—25 & 26 Vict. c. 101, §§ 80-83.

Summons.—The Board have exercised the power of requiring attendance by summons in one or two cases where the L.A. had refused or delayed to produce books or other documents.

Power to Board to authorise Special Inquiries to be made.

10. It shall and may be lawful for the Board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal Secretaries of State or of Her Majesty's Advocate for Scotland, 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.

Secretary of State—i.e., Secretary for Scotland. See note to preceding section.

Power to Board to appoint Commissioners for conducting Special Inquiries.

11. It shall and may be lawful for the Board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal Secretaries of State or of Her Majesty's Advocate for Scotland, or whenever the Board may be thereunto required by one of Her Majesty's said Secretaries of State or by Her Majesty's Advocate, to appoint some person, not being a member of the Board, but being a member of the Faculty of Advocates, or a duly qualified medical practitioner, or an architect or surveyor or engineer, or two of such persons, 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 all such of the powers of the Board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of Her Majesty's said Secretaries of State or of Her Majesty's said Advocate; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enter on the execution of his duties, take an oath de fidei administratione officii, which oath may be administered to him by any member of the Board, or by any one of the judges of the Court of Session, or by the sheriff of any county; 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 Commissioners of Her Majesty's Treasury, or by such person or persons as they shall name.

Commissioners to conduct special inquiries.—The Board are in the habit of appointing commissioners under this section whenever it appears 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 L.A. applies for the Board's recommendation to a loan from the Public Works Loan Commissioners to meet the cost of some sanitary improvement, it is the practice of the Board to appoint 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.

Secretary of State—i.e., Secretary for Scotland. See note to § 9.

Power to Board to allow Expenses of Witnesses, &c.

12. 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 this Board are now defrayed.

*Penalties on Parties giving false Evidence or refusing to obey
Summons of the Board.*

13. 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, for the second and every subsequent offence any sum not exceeding twenty pounds nor less than five pounds.

Power to Board to appoint Clerks, &c.

14. 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 Commissioners of Her Majesty's Treasury; and the name of every person so appointed or removed as aforesaid shall forthwith be intimated to one of Her Majesty's Principal Secretaries of State for his approval, who shall be understood to approve of such appointment or removal, if no notice to the contrary be received by the Board within twenty-one days from the day of the date of such intimation.

Secretary of State—i.e., Secretary for Scotland. See note to § 9.

Salaries of Legal Members of Board.

15. The sheriffs of Perth, Renfrew, and Ross and Cromarty shall each receive, so long as they act as members of the Board of Supervision, the sum of one hundred and fifty pounds sterling per annum, and such allowance shall come in place of the allowance of one hundred pounds sterling provided to the said sheriffs

by the Act eighth and ninth of Her Majesty, chapter eighty-three, section four.

Act 8 & 9 Vict. c. 83—i.e., the Poor Law Act, 1845.

PART II.

REMOVAL OF NUISANCES.

Meaning of "nuisance."—As to meaning of the word, and as to the two kinds of nuisances—"public" nuisances and "private" nuisances—see Glen, p. 141; and Lumley, p. 127.

The various descriptions of nuisance to which the P.H. Act applies are enumerated in § 16. To these alone the procedure provided by the Act is applicable, but these nuisances are not thereby precluded from being made the subject of action at common law (§§ 104 and 122). On the other hand, there are nuisances at common law which do not come within the purview of the P.H. Act.

Duty of L.A. to ascertain and deal with nuisances.—It is obligatory upon the L.A. 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 § 99; also the Housing of the Working Classes Act, 1885, § 7, *infra*.

Nuisances beyond district.—The L.A. have power to deal with nuisances affecting their district, but situated in the district of another L.A.—§ 99.

Local Government Act.—The power given to any five ratepayers 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"—L.G. Act, § 17 (2 c). Nuisances not specified in the P.H. Act may be dealt with under § 57 of the L.G. Act, which empowers the county council 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."

Coal Mines Regulation Act, 1887.—Any unfenced shaft of a disused mine is declared to be a nuisance under § 16 of the P.H. Act. See 50 & 51 Vict. c. 58, §§ 37 (5) and 76 (10), *infra*.

English P.H. Act.—The sections of the English Act dealing with nuisances are §§ 91-111. See Glen, p. 139; and Lumley, p. 105.

Proceedings for removal of nuisances.—The procedure under the P.H. Act is set forth in §§ 18-22 and 105-108. The history of an ordinary case may be thus summarised. The nuisance being ascertained to exist, the S.I. forthwith sends intimation to the author of it. (See Form appended to byelaws for S.I.'s, *infra*. There is no provision in the Act as to this intimation, and action may be competent without it; but it is always expedient to give notice, and where the byelaws for S.I.'s recommended by the Board are in force, it is obligatory. See byelaws for S.I.'s, No. 8, *infra*. In England the notice is statutory. English P.H. Act, 1875, § 94.) If the nuisance is not removed within the time specified in the intimation, or, if removed, is likely to recur, the L.A. may apply to the sheriff by summary petition (§§ 18 and 105; and see Form, *infra*). Any person may be appointed by the L.A. to conduct the proceedings on their behalf (§§ 7 and 102); but prosecutions are usually at the instance of the S.I., under the instructions and authority of the L.A. The proceedings must be directed against the author of the nuisance, but 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 *a*, *b*, *c*, *d*, or *f*, of § 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 *e*, *g*, *h*, *i*, or *j*, of § 16, the proceedings must be before the sheriff (§ 18). In cases under heads *e* and *g*, a

certificate by the M.O. or a requisition by ten inhabitants is indispensable (§ 18, and see Forms, *infra*). 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 (§ 105). Service of the petition may be made by any person (§ 110, and see Forms, *infra*). The sheriff on considering the answers, or on hearing parties, or if the respondent fail to appear, may at once decern (§ 105). 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 (§ 105). No written pleadings are allowed, and in cases under § 16 (A), (i), or (j), the sheriff must take notes of the evidence as in civil proofs (§ 106). 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 (§ 19). If he considers that the nuisance is likely to recur, he will also grant interdict (§§ 18 and 19). 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 L.A. to furnish him with an estimate of the cost (§ 21). If the respondent should fail to implement the decree, or should he infringe the interdict, he becomes liable in penalties (§ 20), and the L.A. may apply for a warrant to have the nuisance removed at his expense (§ 22). Where the author of the nuisance cannot be found, the sheriff has power to ordain the L.A. themselves to execute the necessary works (§ 22). The judgment of the sheriff is final, save in cases under § 16 (A), (i), or (j), when certified in terms of § 107.

Meaning of "injurious to health."—The words "injurious to health" in § 16 must be reasonably construed. It does not appear to be necessary to prove that the health of individuals has actually suffered from the nuisance. Dr Littlejohn, medical officer of the Board, has 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 § 16 (j), 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."—*L.A. of Edinburgh v. Kirk-Session of St Cuthbert's*; P.L.M. 1874, p. 203.

Description of Nuisances under this Act.

16. The word "nuisance" under this Act shall include—

- (a.) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper drainage, or suitable water-closet or privy accommodation or cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates or unfit for human habitation or use.

General Police Act.—There are several provisions in the General Police Act relating to the sanitary condition of dwellings. See, *inter alia*, §§ 142, 161, 168, 178, 199-215, 242, 247, 349-356.

Housing of the Working Classes Act.—The duty of putting in force any powers they may possess with regard to the sanitary condition of premises is laid on L.A.'s by § 7 of the Housing of the Working Classes Act, 1885. The same Act empowers L.A.'s to adopt the various Acts relating to Dwellings of the Working Classes, most of which deal with insanitary houses. § 9 of that Act provides that the enactments of the P.H. Act as to nuisances shall apply to tents, vans, &c.; but it is doubtful how far this and other provisions of the Act can be put in force in Scotland. See Memorandum, *infra*.

English P.H. Act.—The section of the English Act of 1875 corresponding to § 16 is § 91. See Glen, p. 139; and Lumley, p. 105.

Premises.—See definition, § 3 *supra*.

Inhabited houses.—Under § 16 (a) the duty of the L.A. arises only when the house is occupied.—B.

Uninhabitable houses.—Houses rendered unfit for human habitation by the existence of a nuisance may be closed until rendered fit for habitation. See end of § 19.

Underground dwellings.—For the provisions as to letting of cellars and underground dwellings, see §§ 45-47.

Want of proper drainage.—See § 85, which provides for houses being sufficiently drained.

Cesspool.—Under § 16 (a) the want of a cesspool may cause a nuisance. Under § 16 (b) a foul cesspool may cause a nuisance. Premises may be drained into cesspools when there is no sewer within 100 feet (§ 85). As to proper construction of cesspools, see Practical Suggestions, *infra*.

Water-closet, privy, &c.—As to proper construction thereof, see Practical Suggestions, *infra*.

(b.) Any pool, watercourse, ditch, gutter, drain, sewer, privy, urinal, cesspool, or ashpit so foul as to be injurious to health, or any well or other water supply used as a beverage or in the preparation of human food, the water of which is 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.

Watercourses, ditches, &c.—Special powers of dealing with foul watercourses, &c., are given by § 24.

Drains and sewers.—The general provisions of the Act with regard to drains and sewers will be found in Part VI., *infra*. The procedure in § 18 *et seq.* does not apply to nuisances from public drains and sewers, vested in the L.A. under § 71. The L.A. are bound to "cause their sewers to be so constructed, kept, and cleaned as not to be a nuisance"—§ 73. If the L.A. neglect this duty, proceedings may be taken under § 96.

Privy.—As to proper construction of privies, see Practical Suggestions, *infra*.

Cesspool.—See note to § 16 (a), *supra*; also Practical Suggestions, *infra*.

Ashpit.—See § 16 (d), also Practical Suggestions, *infra*.

Wells.—The jurisdiction of the L.A. extends to all sources of water supply used by the inhabitants, and it is the duty of the L.A. 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 L.A. 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 (§§ 18, 19, &c.) The L.A. have the same

power to examine private wells as they have in the case of any other suspected nuisance (§ 17). And the examination may include a chemical analysis, the cost of which may competently be charged against the P.H. assessments, whether the well be public or private.—B. Water being expressly excluded from the operation of the Food and Drugs Act, 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 L.A. 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 L.A. in a case of this kind, the Board suggested that, in respect of the contiguity of the remaining wells to those that have been analysed, the sheriff might reasonably take the view that the presumption that these wells are contaminated is so strong, that it would require to be proved (if desired by the persons using them) that the water is 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 L.A., 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 L.A. were advised by the Board that the proper course was to proceed against the owner under § 16 (b) and § 19, to have him ordained to shut up the well.—B.

Water for cattle.—The question whether water used for cattle (apart from dairy purposes) is included in § 16 (b) is attended with doubt, and it would be unwise for a L.A. to take proceedings in regard to such water without consulting their legal adviser.—B.

Streams.—Although streams are not specified in § 16 (b), it is evident from the use of the word in § 19 that they are included in the expression "other water supply."

Pollution of water.—The pollution of drinking-water by gas-washings, &c., is dealt with in §§ 27-29. The pollution of streams by sewage from public works is prohibited by § 83; but ampler powers are provided at common law, and by the Rivers Pollution Act, 1876. (See that Act, *infra*.) For the law as to the pollution of potable streams by sewage, see the case of *Caledonian Railway Co. v. Baird*, note to § 19, *infra*.

(c.) Any stable, byre, pigstye, or other building in which any animal or animals are kept in such a manner as to be injurious to health.

Byres.—L.A.'s have special powers to deal with dairies, cowsheds, and milk-shops. See the Contagious Diseases (Animals) Act, 1886, § 9, and the relative orders and circular, *infra*.

As to the proper construction of byres, see Practical Suggestions, *infra*.

Pigsties.—It is *ultra vires* of a L.A. to hold that no pig should be kept within ten yards of a dwelling—*M'Creadie v. M'Broom*, 19th January 1860, 22 D. 405.

Each case must be considered on its own merits, and the L.A. can only interfere when the animals are kept so as to be injurious to health.

English P.H. Act.—The corresponding provision in the English Act of 1875 is § 91 (3); but in addition, § 44 empowers the L.A.'s of urban districts to make byelaws "for the prevention of the keeping of animals in any premises so as to be injurious to health." A rural authority which had urban powers under this section, made a byelaw prohibiting the keeping of swine within 50 feet of a dwelling-house. The court held that the byelaw was unreasonable and bad. But this decision seems to hold only in rural districts, for in the case of an urban district it was held that a byelaw preventing pigs being kept within 100 feet of a dwelling-house was valid. See Glen, p. 89; Lumley, p. 67; and Knight's 'Annotated Bye-Laws,' pp. 32, 203.

(d.) Any accumulation or deposit of manure or other offensive matter within fifty yards of any dwelling-house within the limits of any burgh, or wherever situated, if injurious to health, or any accumulation of police manure within a quarter of a mile of the municipal boundaries of any burgh (excepting the city of Glasgow), or any accumulation of deposits from ashpits or manure from town or village laid nearer than fifty yards to a public or parish road or dwelling-house.

Accumulations of manure.—§ 16 (d) refers to three different kinds of accumulations, and enacts provisions with regard to each. (1.) Manure and offensive matter in general. This is a nuisance when within fifty yards of a dwelling within any burgh. (2.) Police manure, which includes the whole miscellaneous refuse of a burgh vested in the Police Commissioners and removed by them. This is a nuisance if within a quarter of a mile of any burgh save Glasgow. (3.) Deposits from ashpits, or manure from town or village. This is a nuisance if laid down within fifty yards of a public or parish road or dwelling-house. In all other cases, accumulations of manure of whatever kind do not constitute a nuisance unless they are proved to be injurious to health.

Opinion of Counsel.—QUERY. Reference is made to § 16, subdivision (d), and the question is, Whether any accumulation or deposit of manure within fifty yards of any dwelling-house within the limits of any burgh can be prosecuted for as a nuisance, without the prosecutor being obliged to aver and to prove that the accumulation or deposit "is injurious to health"?

OPINION.—We are of opinion that in a prosecution under § 16, subdivision (d), of the Act for any accumulation or deposit of manure within fifty yards of any dwelling-house within the limit of any burgh, it is not necessary to aver or prove that such accumulation or deposit is injurious to health. (Signed) *George Young, E. S. Gordon, Geo. Monro.* See Board's Report, 1872, App., p. 106.

General Police Act.—The sections of the General Police Act relating to the removal of refuse are §§ 132-145.

Burgh.—See definition in § 3.

Dwelling-house.—The word "dwelling-house" in § 16 (d) would probably be held to include any house intended for human habitation, whether presently occupied or not; but it is doubtful whether it would apply to a church.—B.

Scavengers.—The L.A. may employ scavengers. See note to § 8, *supra*.

Removal of manure.—The L.A. have power to secure the periodical removal of manure from stables, mews, &c. (§ 51); but the periods of removal prescribed by the L.A. under § 51 must be such as to prevent the accumulations becoming a nuisance under § 16 (d).—B.

Removal of offensive refuse by the L.A. is a very common practice, and it does not appear that their power has ever been disputed in a court of law.

It is inconsistent with the purpose of the Act that a L.A. should clean out

the ashpits of one part of their district, and leave those of another part uncleaned, merely because the operation of cleaning is remunerative in the one case and unremunerative in the other. Such a mode of administering the Act is illegal. On the other hand, it is only reasonable that a householder should at his own expense put the matter to be removed in a place to which the servants of the L.A. can have easy access.—B. See also Practical Suggestions, *infra*.

Manure depots.—There is frequently a difficulty in obtaining a stance for the deposit of town manure, neither the P.H. Act nor the General Police Act providing powers for acquiring a site compulsorily. A clause giving such powers was, on the suggestion of the Board, inserted in the Burgh Police and Health Bill.

Cleaning of private property.—L.A.'s have no power to apply the P.H. assessment to the cleaning of private property. If any property is in such a state as to cause a nuisance, the L.A. can call upon the author of the nuisance to remove it, and if he fails to do so, can have it removed at his expense. But for the L.A. at the public expense to undertake the cleaning of private property, which it is the duty of the owners and occupiers to clean, would be an abuse of the Act.—B.

English P.H. Act.—The corresponding provision of the English Act of 1875 is § 91 (4); but there are, in addition, sections specially providing for scavenging and cleansing—§§ 42-50. L.A.'s may either themselves undertake the removal of refuse and the cleaning of ashpits, &c., or they may make byelaws with regard to such matters. The Local Government Board, England, have issued a model series of byelaws. See their Report, 1878, App., p. 71; and Knight's 'Annotated Bye-laws,' pp. 17-34.

- (c.) Any work, manufactory, trade, or business injurious to the health of the neighbourhood, or so conducted as to be offensive or injurious to health, or any collection of bones or rags injurious to health.

Offensive trades.—Certain trades of the kind referred to in § 16 (c) are specially dealt with in § 30. But the provisions of § 30 do not supersede those of § 16, and a business which is a nuisance under § 16 (c) may be proceeded against, although it has received consent under § 30.

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

Much information as to the trades dealt with in § 16 (c) will be found in Dr Ballard's Report on Effluvia 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.

Milk.—The selling or sending out of milk from premises where infectious disease exists would probably be held to be a nuisance in terms of § 16 (c).—B.

Opinion of Counsel.—QUERY. Reference is made to § 16, subdivision (c), and the question is, Whether any work, manufactory, trade, or business can be prosecuted for as a nuisance on an averment and proof that the same is offensive, without an averment and proof that it is injurious to health? And if this question be answered in the affirmative, counsel are requested to state what kind of offensiveness would require to be proved.

OPINION.—We answer the first branch of the query in the affirmative; and with reference to the second, 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 had been or necessarily must be so.—The Opinion of George Young, E. S. Gordon, Geo. Munro. See Board's Report, 1872, App., p. 107.

Proceedings.—Any proceedings against nuisances under § 16 (c) must be founded on a certificate by the M.O., or a requisition by ten inhabitants—§ 18. See also Forms, *infra*.

General Police Act.—Offensive trades are dealt with by § 448 of the General Police Act.

The General Police Act also (§ 357) requires dealers in rags and bones to keep their premises clean, and to fumigate them three times a-week. Under the same section the collecting and keeping of rags, bones, &c., if proved to be prejudicial to health or comfort, may be altogether prohibited.

English P.H. Act.—Section 91 of the English Act of 1875, which in general corresponds to § 16 of the Scotch Act, has no sub-section similar to § 16 (c); but offensive trades are specially dealt with in §§ 112-115. See Glen, p. 180; and Lumley, p. 127.

(f.) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates.

Overcrowded houses.—Where two convictions for overcrowding a house have been obtained within three months, the court may empower the L.A. to close the house for such time as may be deemed necessary. See § 47, *infra*.

When Part III. of this Act is in force, special powers are given to deal with overcrowded houses. § 37, *infra*.

Lodging-houses.—Power to prevent overcrowding in common lodging-houses is given under § 62, and in other lodging-houses under § 44.

Houses attached to public works.—§ 16 (f) applies to dwelling-houses attached to factories and works, although these works themselves may be under the Factory and Workshop Acts. See Board's Report, 1872, p. xxviii.

Schools.—There is some doubt whether § 16 (f) applies to schools other than boarding-schools. Complaint was made to the Board as to a boarding-school for young ladies being overcrowded, and their medical officer, Dr 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.

Proceedings.—It would appear that in cases of overcrowding under § 16 (f), 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 § 16 (f). 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. L.A. of Kilsno*, 17th March 1876, 3 Couper 239. But if the nuisance is caused by the house being divided into separate dwellings, the owner would be the proper person to proceed against. § 19.

English P.H. Act.—The corresponding provision of the English Act is § 91 (5). See Glen, p. 139; Lumley, p. 105.

(g.) Any factory, workshop, or workplace, not under the operation of any general Act for the regulation of factories or bakehouses, and not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, and injurious or dangerous to the health of persons employed therein, or any such factory, workshop, or workplace as is so overcrowded, while work is carried on therein, as to be dangerous or injurious to the health of those employed therein.

Factory and Workshop Acts.—The Factory and Workshop Acts, 1878 and 1883, contain a number of provisions as to the sanitary condition of public works,

referring more particularly to nuisances affecting the persons employed therein. Factory Inspectors are required to give notice to the L.A. of any nuisance in a factory or workshop which is punishable or remediable under the P.H. Act but not under the Factory Acts, and the L.A. are bound to take action thereon. See the Acts, *infra*.

Bakehouses.—The supervision of the sanitary condition of retail bakehouses is transferred to L.A.'s by the Factory and Workshop Act, 1883. See *infra*.

Water-closets in factories.—The L.A. have power to cause a sufficient number of w.-c.'s or privies to be provided in factories. § 41, *infra*.

Proceedings.—All proceedings against nuisances under § 16 (g) must be founded either on a certificate by the medical officer or a requisition by ten inhabitants—§ 18.

English P.H. Act.—The corresponding provision in the English Act of 1875 is § 91 (6). See Glen, p. 139; Lumley, p. 105.

- (h.) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible matter used in such fireplace or furnace, and is used within any burgh, for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gas-work, or in any manufactory or trade process whatsoever.

Furnaces badly worked.—In a complaint by a L.A. under § 16 (h), it was held that it would be sufficient to constitute a nuisance within the meaning of the Act if a furnace, though well constructed, were systematically badly worked. *L.A. of Dumfries v. Murphy*, 14th March 1884, 11 R. 694; P.L.M. 1884, p. 469.

Duty of L.A. as to smoke nuisances.—The L.A. are bound to enforce the provisions of any Act that may be in force within their district requiring fireplaces and furnaces to consume their own smoke—§ 99.

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 police commissioners.

English P.H. Act.—The corresponding provision in the English Act of 1875 is § 91 (7). See Glen, p. 139; Lumley, p. 106.

- (i.) Any chimney (not being the chimney of a private dwelling-house) sending forth smoke so as to be injurious to health:

Provided that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act.

English P.H. Act.—The corresponding provision in the English Act of 1875 is § 91 (7). See Glen, p. 139; Lumley, p. 106.

- (j.) Any churchyard, cemetery, or place of sepulture so situated or so crowded with bodies or otherwise so conducted as to be offensive or injurious to health.

Closing of burial-grounds.—There are two modes of closing burial-grounds—either under §§ 4 and 5 of the Burial Grounds Act (see following note), or by proceedings before the sheriff under § 16 (j) of the P.H. Act. The latter course is attended with little expense, and it has been held that it is not necessary to aver danger to health; it is sufficient to prove that a churchyard is overcrowded.—B.

In proceedings under § 16 (j), 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. § 18.

For cases in which churchyards have been closed under § 16 (j), see *L.A. of Edinburgh v. Kirk-session of St Cuthbert's*, P.L.M. 1874, p. 203; and *L.A. of Gourock*, P.L.M. 1876, p. 86. In the latter 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 § 16 (j) is in terms of § 107. See P.L.M. 1876, p. 95.

Burial Grounds Act.—L.A.'s have no powers under the Burial Grounds (Scotland) Act, 1855 (18 & 19 Vict. c. 68). The execution of that Act is intrusted to the Parochial Board, or, within Royal and Parliamentary Burghs, to the Town Council—§ 2. Any two members of the Parochial Board, or ten ratepayers, or two householders residing within a hundred yards of any burial-ground or proposed burial-ground, or the Board of Supervision (see P.H. Act, § 96, *infra*), 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—§§ 4 and 5. The Parochial Board may provide a new burial-ground, which must not be nearer than 100 yards to any dwelling-house, unless the owner, lessee, and occupier consents—§§ 9-12. The Secretary for Scotland may make regulations "for the protection of the public health and the maintenance of public decency"—§ 21. These regulations apply only to burial-grounds provided under the Act, and do not extend to those of cemetery companies, although in these latter cases regulations are often much required.

English provisions.—The 91st section of the English Act of 1875, which in general corresponds to § 16 of the Scotch Act, contains no sub-section similar to § 16 (j), but the Public Health (Interments) Act, 1879, empowers L.A.'s to provide cemeteries, and to make bye-laws with regard to them. See Glen, p. 1000; Lumley, p. 506. The Local Government Board issued a circular on the subject, with model bye-laws, 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.

Power of Entry to Local Authority or their Officers.

17. If the local authority or sanitary inspector have reasonable grounds for believing that nuisance exists in any premises, such local authority or inspector may demand admission for themselves, the superintendent of police, and the medical officer, or any other person or persons whom the local authority may desire to inspect 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 in progress or are usually carried on; and if admission be refused, the local authority 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, with or without intimation to the owner, occupier, or person in charge of the premises, by order in writing, require the occupier or person having the custody of such premises to admit the local authority and others foresaid; 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 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.

Power of entry.—L.A.'s and their officers have no right to enter premises against the will of the occupier without an order, as provided in § 17.

Forms.—For petitions and further procedure see Forms, *infra*.

Dairies, &c.—For the purpose of enforcing the orders and regulations as to dairies, cowsheds, and milk-shops, the L.A. and their officers have the same powers of entry as under § 17. See the Contagious Diseases (Animals) Act, 1886, § 9 (4), *infra*.

Bakehouses.—With regard to retail bakehouses, M.O.'s have the same powers of entry as factory inspectors have under the Factory Acts. See the Factory and Workshop Acts, 1878, § 68; and 1883, § 17 (1), *infra*.

English P.H. Act.—The corresponding sections of the English Act of 1875 are §§ 102 and 103. See Glen, p. 168; Lumley, p. 119.

*Proceedings by Local Authority when Nuisances are
ascertained to exist.*

18. In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, or is certified to them in writing, signed by the medical officer, or where the nuisance in the opinion of the local authority did exist at the time when demand of admission was made or the certificate was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner herein-after directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand of admission was made or the certificate was given, 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 herein-after mentioned; provided that in the cases under the heads

marked (c.) and (g.) in section sixteen, such application shall be made only on medical certificate as aforesaid, or on a requisition in writing under the hands of any ten inhabitants of the district of the local authority, and that in these cases, and the cases under the heads marked (h.) and (i.) in said sections, shall be made only to the sheriff; and farther, that in the cases under the head marked (j.) 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.

Procedure.—See §§ 105-108, and Forms, *infra*.

The L.A. and their officers have no power to remove nuisances on private property without legal warrant, unless the owner or occupier (as the case may be) consents to the removal.—B.

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.*, 1st March 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 L.A. and the sheriff do not arise until a nuisance actually exists.—B. See also *Steel, &c., v. L.A. of Gourock*, note to § 73, *infra*; and English case *Mogg v. Bocken*, note to § 41, *infra*.

English P.H. Act.—The provisions as to procedure in cases of nuisance under the English Act of 1875 are contained in §§ 104-108. See Glen, p. 172; Lumley, p. 121.

Form of Interlocutor.

19. 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 of the premises may be ordained to provide sufficient privy or water-closet or ashpit accommodation, means of drainage or ventilation for, or to repair, make safe, and habitable, or to floor, pave, cleanse, whitewash, disinfect, or purify, the dwelling-house, building, or premises, or to drain, empty, cleanse, fill up, cover, repair, or remove any pool, ditch, gutter, watercourse, privy, cesspool, drain, or ashpit, or to shut up or purify any well, or to provide

a substitute for that complained of, or to abstain from any operation which may pollute a well or stream from which the inhabitants obtain a supply of water, or to cease to use the water of any well or stream as a beverage or in the preparation of human food, or to remove the animal, or to carry away the offensive matter, or to discontinue the work, trade, manufactory, or business, or prevent the injurious effects thereof (according to the nature of the case), or to limit the number of persons who may be accommodated in any house or part thereof overcrowded, or the number of separate dwellings into which such house or part thereof may be divided or let for the use of separate families or persons, or to increase the means of ventilation, or to shut up or regulate the use of any churchyard, cemetery, or place of sepulture, or to do such other works or acts as are necessary to remove the nuisance complained of, in such manner and within such time as in the interlocutor 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 render a house or building unfit for human habitation, he may prohibit the using thereof for that purpose until it is rendered fit for that purpose, or do otherwise as the case may in his judgment require.

See Forms of Interlocutors, *infra*.

A L.A. 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 L.A. 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. L.A. of Cadder*, 14th June 1877, 4 R. (Justiciary) 39; P.L.M. 1877, p. 480. The L.A. thereafter raised an action to recover the cost of the works from the owner of the ground on which they were executed. The court assolized the defender, holding that, in order to entitle the L.A. 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 L.A. to do so; or that at the date of the order on the L.A. it should have appeared that the author of the nuisance was unknown.—*L.A. of Cadder v. Lang*, 11th July 1879, 6 R. 1242; P.L.M. 1879, p. 532. Subsequently, on an action by an inferior heritor concluding for interdict against the L.A. discharging sewage into the stream, and so rendering it unfit for primary purposes, it was held that, as the L.A. were not owners of the drain, and did not cause or contribute to the nuisance, the action was wrongly directed against them, and that the proper defenders were the proprietors of the houses from which sewage entered the drain.—*Par. Board of Barony v. L.A. of Cadder*, 26th January 1883, 10 R. 510; P.L.M. 1883, p. 179.

The L.A. of a burgh lodged a complaint against the proprietors of certain lands divided by a burn to have it found that the burn was a nuisance, being polluted by sewage. It was proved that the pollution was not caused by the

defenders or their tenants, but by parties higher up. The sheriff decided that the defenders, as owners of the lands on which the nuisance existed, were the authors of the nuisance, and ordained them to abate it. Judgment affirmed.—*L.A. of Govan v. Mackinnon, &c.*, 10th July 1885; P.L.M. 1885, p. 488.

A proprietor erected a village for the accommodation of the miners in his employment. Drains for surface-water were led into a stream, and arrangements were made for removal of refuse, &c., which, if attended to, would have prevented polluting matters from entering the stream. An inferior heritor raised an action for interdict, alleging that the water from the drains polluted the stream. Held that the pollution was proved, and that unless it was stopped pursuer would be entitled to interdict. Lord Gifford said, "An upper proprietor is not entitled, in any circumstances or by any means whatever, to pollute a pure and potable stream which passes through his property, or to send it down changed into an impure and unwholesome stream upon his neighbour's property. I cannot go along with the argument that in the case of ordinary dwelling-houses erected *in bona fide* in the usual way, and *sine animo injuriandi*, the evil is practically inevitable, and therefore that the upper proprietor has a right to cause it. I think he has no right to cause it. If he cannot erect a village without polluting this stream, and it may be depriving his neighbours of their only supply of pure water, then he can let the village alone. . . . An upper proprietor cannot, in any circumstances, send sewage water into a pure stream to the effect of destroying that stream for its primary uses."—*Caledonian Railway Co. v. Baird & Co.*, 14th June 1876, 3 R. 839.

Penalty for Contravention of Decree and of Interdict.

20. 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, as the case may be, shall be liable, in the case of nuisances specified in clauses (a.), (b.), (c.), (d.), (f.), (i.), and (j.) 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 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 specified in clauses (e.), (g.), and (h.) in the said section, the party not complying with or infringing such decree shall be liable to a penalty not exceeding five pounds nor less than two pounds for the first offence, and of ten pounds for the second, and for each subsequent conviction a sum 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 such last-mentioned nuisance (h.), 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 suspend his final determination upon condition that the author of the nuisance shall undertake to adopt within a reasonable and definite time such means as he shall judge to be practicable,

and order to be carried into effect, for mitigating or preventing such injurious effects.

Recovery of penalties. See §§ 103 and 105, and Forms, *infra*.

English P.H. Act.—The section of the English Act imposing penalties is § 98. See Glen, p. 165; Lumley, p. 117.

Order when structural Works are required.

21. 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.

Local Authority to do Works on Owner's or Occupier's default, or if Person causing Nuisance cannot be found.

22. 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 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; and all expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance or the owner of the premises.

L.A. not entitled to remove nuisance without warrant.—The L.A. are not entitled to remove a nuisance on private property without a warrant from the sheriff, or a magistrate or justice.

Recovery of expense from authors of nuisances.—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 L.A. lodged a complaint against several proprietors as to a nuisance near their premises. The sheriff remitted to a man of skill, who reported as to the cause, but professed himself unable to distinguish the author. The sheriff authorised the reporter to remedy the nuisance, and decerned against the proprietors for the expense. On a suspension at the instance of one of the proprietors, *held* (Lord Kyllachy) that the sheriff was bound to have given him an opportunity of remedying the nuisance himself.—*Mather v. L.A. of Pulteneytown* (see 'Scotsman' of 20th November 1889). See also *United Kingdom Temperance, &c., Institution v. L.A. of Cadder*, and *L.A. of Cadder v. Lang*, *supra*, note to § 19.

Procedure for recovery of expenses.—See § 105.

English P.H. Act, 1875.—Corresponding provisions, §§ 98 and 100. See Glen, pp. 165, 167; Lumley, pp. 117, 119.

Manure, &c. to be sold.

23. Any article or articles removed by the local authority in pursuance of this Act may be 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 article or articles are not of the value of two pounds or upwards, in which case the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the 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 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.

English P.H. Act, 1875.—Corresponding provisions, § 101. See Glen, p. 167; Lumley, p. 119. Also § 49, Glen, p. 95; Lumley, p. 70.

Foul Ditches, &c., may be replaced by Sewers.

24. Whenever any watercourse, ditch, gutter, or drain along the side of any public road, street, or lane shall be used or partly used for the conveyance of any water, sewage, or other matter from any 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, subject to the approval of the Board, to lay down such sewer or other structure within the limits of their district, or, 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 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 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 herein-after provided with reference to the general charge and expenses incurred by the local authority under this Act.

Foul watercourses, &c.—Foul watercourses, ditches, gutters, drains, &c., are also nuisances under § 16 (b).

Approval of Board to works.—All applications for the approval of the Board must be made in the prescribed form, and must be published in the newspapers. See Form, *infra*. The Board will consider any objections to the proposed works, if lodged in due time; but they have no power to dispose of objections of parties to be assessed.—B.

Application to sheriff to assess damages.—See Forms, *infra*.

Procedure to recover assessment.—See § 105. An owner refused to pay his share of the assessment under § 24. Held that proceedings could be taken under § 105 as for a sum of money due to the L.A.; 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 general P.H. assessment.—*L.A. of Selkirk v. Brodie*, 16th March 1877, 4 R. (Justiciary) 21; P.L.M. 1877, p. 324.

Act not to affect Navigation of Rivers or Canals, or Irrigation of Lands.

25. Nothing in this Act contained 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.) The supply of water required for the purposes of any waterworks established by 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;
 - (3.) 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;
- 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.

English P.H. Act, 1875.—Corresponding provisions, §§ 327 and 331. See Glen, pp. 591, 597; Lumley, pp. 420, 425.

Penalty on Sale of unwholesome Meat.

26. The sanitary inspector may at all reasonable times enter any premises to inspect and examine any carcass, meat, poultry, game, flesh, fish, fruit, or vegetables exposed for sale, or which there is probable cause for believing to be intended for human food; and in case any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables appear to him to be unfit for such food, the same may be seized without any warrant; and if it appear to the sheriff, or any two magistrates or justices, that any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables are unfit for the food of man, he or they shall, by a writing under his or their hand or hands, order the same to be destroyed, or to be so disposed of as to prevent the same being exposed for sale or used for such food; and the person to whom such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables belong, or in whose custody the same are found, shall be liable to a penalty not exceeding ten pounds for such carcass, piece of meat or flesh, or for any quantity of fish, poultry, game, fruit, or vegetables, or any refuse thereof, and also to pay all expenses caused by the seizure, detention, or disposal thereof.

Recovery of penalties.—See §§ 103 and 105.

General Police Act.—The provisions of the General Police Act dealing with unwholesome food are contained in §§ 272-277.

English P.H. Act, 1875.—Corresponding provisions, §§ 116-119.—See Glen, p. 192; Lumley, p. 133.

Other Acts as to food.—The special statutes dealing with the sale of unwholesome or adulterated food are—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).

Milk.—Milk is not provided for in § 26. But the sale and use of milk from diseased cows is prohibited by the Dairies, Cowsheds, and Milkshops Order, 1885, art. 15. See the Order, *infra*. See also Dr Littlejohn's Report on Bovine Tuberculosis, *infra*.

Trichinosis disease in pigs.—See Board's Circular, dated 28th March 1881, *infra*.

Bovine tuberculosis.—See Board's Circular, dated 7th May 1888, *infra*. The L.A. of Glasgow presented a petition to the sheriff for an order to destroy a carcass affected with tuberculosis. The sheriff granted the order. *Lang v. Couper*, 20th June 1889. The whole proceedings have been printed.

Penalty for causing Water to be corrupted by Gas Washings, &c.

27. Any person engaged in the manufacture of gas, naphtha, vitriol, paraffine, 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 for the supply of water for domestic purposes shall be fouled, shall forfeit for every such offence a sum not exceeding fifty pounds.

General Police Act.—§ 224 contains like provisions to those in this section.

English P.H. Act, 1875.—Corresponding section, § 68. See Glen, p. 116; Lumley, p. 89.

Other Acts.—Similar provisions are found in the Gasworks Clauses Act, 1847 (10 Vict. c. 15), § 21, and the Waterworks Clauses Act, 1847 (10 Vict. c. 17), § 62, the penalty in these cases being £200. These Acts are only in force when incorporated with some other Act.

Pollution of water.—The pollution of water by discharges from public works is dealt with in § 83 (see that section, and notes); and the pollution of streams generally is dealt with in the Rivers Pollution Act. See that Act, *infra*.

A few years after the passing of the P.H. Act, certain riparian proprietors on the river Almond, in the counties of Edinburgh and Linlithgow, memorialised the Board as to the pollution of the river by paraffin works. The Board expressed the opinion that the memorialists would obtain a more speedy and effectual remedy by means of an action at common law at their own instance, than by the interposition of the L.A.'s under the P.H. Act. The powers of L.A.'s as to the pollution of streams are defined by §§ 27 and 83, and the Act contains no express authority for two or more L.A.'s jointly prosecuting offenders. The Board feared that the extent and nature of the pollution were such as to render doubtful a successful issue in any proceedings, joint or separate, which the L.A.'s might take under their limited statutory powers. The rights of proprietors at common law, however, are much more extensive, and the Board saw no impedi-

ment to the proprietors being able to vindicate their rights from infringement.
—Board's Report, 1872, p. xxvii.

Such Penalties, &c., to be sued for within Six Months.

28. 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.

See §§ 103 and 105; also Forms, *infra*.

Daily Penalty during the Continuance of the Offence.

29. 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 monies recovered by the local authority under this or the preceding section shall, 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.

Application of penalties.—The application of the penalties to the payment of damages is an exception to the provision in § 103 that penalties are to be applied for the purposes of the Act.

Recovery of penalties.—See §§ 103 and 105; and Forms, *infra*.

Offensive Trades to be subject to Regulations.

30. The business of a blood boiler, bone boiler, tanner, slaughterer of cattle, horses, or animals of any description, soap

boiler, skinner, tallow melter, tripe boiler, or other business, trade, or manufacture injurious to health, shall not, after the passing of this Act, be newly established or enlarged in any building or place within any burgh or village, or within five hundred yards therefrom, without the consent in writing of the local authority previously had and obtained, and published in one or more newspapers circulating within the district; and if any question arises under this section as to the existence or limits of a burgh or village, or as to the extent included within the said five hundred yards, or as to whether a business, trade, or manufacture, other than those above specified, is injurious to health, or as to whether such consent ought to have been given, any such question shall be finally determined by the Board; and the party dissatisfied may bring the same before the Board within twenty-one days after the resolution or order of the local authority has been published as aforesaid; and any person contravening this enactment shall, in addition to discontinuance of such business, trade, or manufacture, be liable for each offence to a penalty not exceeding fifty pounds, and a further penalty of not exceeding forty shillings for each day during which the offence is continued; and the local authority may from time to time make such byelaws with respect to any such businesses so newly established as they may think necessary, and in order to prevent or diminish the noxious or injurious effect thereof.

General Police Act.—Section 448 of the General Police Act is in similar terms to § 30 of the P.H. Act. But the Police Act also contains special provisions as to slaughter-houses, §§ 358-363. These require all slaughter-houses to be licensed, and to be subject to byelaws, offences against which are punishable by penalties, and by temporary closing of the premises. On a second conviction the licence may be revoked, and in such cases a new licence may be refused. The commissioners are also empowered to provide public slaughter-houses, and where these are provided, slaughtering in any other place within the burgh, or within two miles of its boundaries, is prohibited.

English P.H. Act, 1875.—The provisions of the English Act as to offensive trades and slaughter-houses are contained in §§ 112-115, and 169, 170. See Glen, pp. 180, 316; Lumley, pp. 127, 224. They apply exclusively to urban districts. Urban L.A.'s have power to provide slaughter-houses (§ 169).

Businesses under § 30 may become nuisances.—When any business included in § 30 is proved to be a nuisance under § 16 (e), the fact that it received the consent of the L.A. will not prevent proceedings being taken to abate the nuisance.—B.

Offensive trades.—Much information as to the class of trades coming under § 30 is contained in Dr Ballard's Report on Effluvia Nuisances, which is printed in the reports by the M.O. of the Local Government Board, England, for 1876-77-78. It has also been published separately.

Consent of L.A.—It is the consent of the L.A. of the district in which the business is situated which must be obtained. The consent should be given by the L.A. and not by a committee. Consent of new does not seem to be necessary when the business is merely transferred to a new occupant.—B.

Consent for a specified period.—There appears to be no incompetency in the

L.A. consenting to the establishment of a business for a specified period, or on the condition that the occupation of the premises shall be for a specified period.—B.

Consent prior to erection of premises.—A L.A. may competently grant consent before the premises are erected, if the site and plans are satisfactory; and a new consent after the building is erected is not required.—B. In an English case decided in the Exchequer Chambers, Justice Willes said: "A licence to erect a slaughter-house means, *prima 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*. See Knight's 'Annotated Bye-laws,' p. 220; Glen, p. 754; Lumley, p. 709. Perhaps the safest course is for the L.A., if satisfied with the site and plans, to grant a conditional consent, and to delay giving the formal consent until the premises are completed. This is the course which the Metropolitan Board of Works followed under the Slaughter-houses, &c. (Metropolis) Act, 1874. See Knight's 'Bye-laws,' p. 223.

Consent to public slaughter-house.—When commissioners of police resolve to provide a public slaughter-house, the consent of the commissioners in their capacity as L.A. must be obtained and published in terms of § 30.—B.

Publication of consent.—The publication of the consent is the duty of the L.A., not of the applicant.—B.

Appeals.—The question of the relation between the appeal to the Board under § 30 and the appeal to the County Council under § 17 (2 c) of the L.G. Act is discussed in a note to § 76, where a similar question arises in connection with the appeal to the sheriff.

Action when L.A. refuse consent.—The Board obtained the opinion of counsel as to the proceedings competent in the event of a L.A. refusing consent. QUERY. 1. When consent to the establishment of a trade or business under § 30 of the P.H. Act has been refused by a L.A., can the party dissatisfied competently bring the resolution of the L.A. under the review of the Board of Supervision? 2. Can the Board competently reverse a resolution of the L.A. refusing consent, and grant consent in terms of the section?

OPINION.—1 and 2. The language of the clause (30) is not clear; but we are of opinion that a refusal of consent by the L.A. is not final. Undoubtedly a work such as the clause refers to cannot, in the specified localities, be established or enlarged without the written consent of the L.A.; but the enactment, as we construe it, does not leave to that authority the final determination of the matter; for any question as to—1st, the character of the work; 2d, the locality, as entitled to protection or not; and 3d, the giving of consent, is to be "finally determined by the Board." A question "as to whether such consent ought to have been given" may arise where "such consent" has not been given—that is, has been refused. The expression is defective, and ought, we think, to have been either, "whether or not such consent ought to have been given," or "whether such consent ought to have been given or refused"; but we construe it as if it had been so expressed. The limitation of time for appealing to the Board applies only where consent has been given—and, indeed, looking to the reason of it, is only applicable to that case. Where consent has been refused, and the Board, on appeal, determines that it "ought to have been given," we think a remit must be made to the L.A. to give it, for their consent in writing is necessary by the Act, though the Board is, according to our opinion, empowered finally to determine whether they ought to give it. If they have refused it, and the Board shall finally determine that they ought to have given it, we think they will be bound to give it on that determination being communicated to them.—The Opinion of George Young, E. S. Gordon, Geo. Monro. See Board's Report, 1872, App., p. 107.

Business resumed by a new tenant after a break.—A business under § 30 had been discontinued for three years. It was then started again by a different person. The Board expressed the opinion that the cessation of business for three years is such a break as to make the business on its resumption (especially by another tenant) a business newly established in the sense of the Act.—B.

Inquiry prior to granting consent.—As the Act does not provide for consent, when legally granted, being withdrawn or recalled, it is the duty of the L.A. to exercise the greatest care to ascertain, before granting consent, 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 'Bye-Laws,' p. 161.

Extent of business.—To prevent disputes as to whether a business to which consent has been given has or has not been afterwards enlarged, the L.A. 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 'Bye-Laws,' p. 164.

Duty of L.A. to prosecute.—It is the duty of the L.A. to prosecute persons carrying on businesses in contravention of the section, for the penalties provided therein.—B.

Construction of slaughter-houses.—For the proper construction of slaughter-houses, see *Practical Suggestions*, *infra*.

Public Slaughter-houses.—The L.A. has no power to erect a public slaughter-house; but in burghs the Commissioners may provide slaughter-houses (General Police Act, §§ 358, 363). The Police Commissioners are responsible for the management of their slaughter-house, and for any nuisance that may arise therefrom; and they cannot relieve themselves of the responsibility by letting it to a tenant.—B.

There is some doubt whether it is competent for commissioners to erect a slaughter-house beyond the boundaries of the burgh. The Town-Clerk of Glasgow (Marwick) has expressed the opinion that such a course is not contemplated by the General Police Act. When commissioners select a site for a slaughter-house beyond the burgh boundaries, the Board invariably recommend that application be made to the sheriff to extend the boundaries so as to include the site. It is obvious that the commissioners would have difficulty in enforcing byelaws if the slaughter-house were beyond their jurisdiction.

Byelaws.—The sanction of the Board to byelaws under § 30 does not appear to be required by the statute. It is difficult to define the nature and extent of the conditions on which the L.A. would be entitled to insist; but any reasonable rules calculated to prevent injury to the public in the prosecution of the business would be within the discretion vested in the L.A.—B.

Model Byelaws as to various offensive trades have been issued by the Local Government Board, England; see their Report, 1883, App., p. 20.

Byelaws as to slaughter-houses.—The Local Government Board, England, have issued a model series of byelaws for slaughter-houses, which are printed in their Report for 1878, App., p. 120. See also Knight's 'Bye-Laws,' p. 151.

Public slaughter-houses, being under the management and control of the Police Commissioners, require few byelaws. On this point the Local Government Board, England, 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 in the model series relating to private slaughter-houses." See *Local Government Board's Report*, 1883, App., p. 13; and Knight's 'Bye-Laws,' p. 173.

PART III.

PREVENTION AND MITIGATION OF DISEASES UNDER
ORDER IN COUNCIL.

Provisions of Part III.—The provisions of Part III. are operative only when they have been put in force by an Order of the Secretary for Scotland in the manner described in § 31. When Part III. is in force, the Board have power (§ 33) to issue directions and regulations for the purposes specified in § 35; and the duty of seeing to the execution of these is laid on L.A.'s (§ 35).

Part III. has been put in force from time to time whenever the prevalence of cholera in other countries made it advisable to adopt precautions against its introduction into Scotland. The Orders of Council and of the Secretary for Scotland, and the directions and regulations of the Board issued on such occasions, will be found in the various annual Reports of the Board. Memoranda on the following subjects connected with the prevention and treatment of cholera will be found in the Board's Report for 1884, App., p. 23 *et seq.*—viz., "Precautions against the Infection of Cholera," "Treatment of Diarrhœa and Cholera," and "Instructions for Disinfection." A memorandum on hospital accommodation, with plans of hospital huts, is printed in the Board's Report, 1872, App., p. 101. A memorandum as to the proceedings advisable in places attacked or threatened by epidemic disease, will be found in the Report of the M.O. of the Local Government Board (England) for 1887, App., p. 195.

In 1889, Part III. was put in force, and regulations were issued to meet the threatened introduction of small-pox from North Africa, where that disease was prevalent (Board's Report, 1889, p. xxi, and App., p. 23).

English P.H. Act, 1875.—The corresponding provisions of the English Act are §§ 130 and 134-140. See Glen, pp. 207, 213; Lumley, pp. 143, 146.

*Privy Council empowered to issue Orders for Prevention of
Diseases.*

31. Whenever any part of the United Kingdom appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the Lords and others of Her Majesty's Most Honourable Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's Principal Secretaries of State being one), may, by Order or Orders by them from time to time made, direct that the provisions for the prevention of diseases contained in Part III. hereof be put in force in Scotland, or in such parts thereof or in such places therein as in such Order or Orders may be expressed, and may from time to time, as to all or any of the parts or places to which any such Order or Orders extend, and in like manner, revoke or renew any such Order; and, subject to revocation and renewal as aforesaid, every such Order shall be in force for six calendar months, or for such shorter period as in such Order shall be expressed; and every such Order of Her

Majesty's Privy Council or any members thereof as aforesaid shall be certified under the hand of the Clerk in Ordinary of Her Majesty's Privy Council, and shall be published in the 'Edinburgh Gazette,' and such publication shall be conclusive evidence of such Order.

Meaning of "epidemic, endemic, or contagious disease."—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, goitre 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*.

Privy Council.—The powers of the Privy Council are transferred to the Secretary for Scotland by the Act 48 & 49 Vict. c. 61, § 5 (2).

*When Order is issued, Board to be vested with certain Powers.
Power to appoint a Medical Officer and additional Clerks.*

32. When any such Order has been issued, the Board shall be vested with the powers after provided; and it shall be lawful for Her Majesty to appoint the sheriff of any county in Scotland, other than Renfrew, Perth, or Ross and Cromarty, to be an additional member of the Board during the subsistence of such Order, and such sheriff shall receive such remuneration as the Commissioners of Her Majesty's Treasury may think proper, not exceeding one hundred and fifty pounds per annum, to be paid out of money to be voted for that purpose by Parliament; and the Board may also appoint a general or superintending medical officer to act under their directions during such period, and such officer shall receive a salary to be fixed and paid in like manner; and the Board may, with the sanction of the said Commissioners of Her Majesty's Treasury, employ such additional clerks as may be necessary during such period; and the salary of such clerks and the office expenses incurred under this Act shall be defrayed in the same manner as the general expenses of the Board are now defrayed.

Extraordinary appointments.—It has not yet been found necessary to make any appointment of a sheriff or medical officer as authorised by § 32.

Power to Board to issue Regulations to carry out such Provisions of Order. Local Extent and Duration of the Regulations of the Board. Publication of Rules and Regulations.

33. From time to time, after the issuing of any such Order as aforesaid, and whilst the same continues in force, the Board may issue such directions and regulations as they shall think fit for the prevention, as far as possible, or mitigation of such epidemic, endemic, or contagious diseases, and from time to time may revoke, renew, and alter any such directions and regulations; and the same shall extend to all parts or places in which the provisions of this Act for the prevention and mitigation of disease shall, for the time being, be put in force under such Orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts or places, and then to such parts or places as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such Order, be applicable to the same parts or places; and all such directions and regulations shall be published by being inserted in the 'Edinburgh Gazette,' which publication shall be conclusive evidence thereof, and may be further published, and may be specially communicated to any local authority, by the Secretary of the Board, as the Board may direct.

Directions and Regulations.—The directions and regulations issued by the Board from time to time will be found in their Annual Reports.

Orders of Council, Directions and Regulations of Board, to be laid before Parliament.

34. Every Order of Her Majesty's Privy Council, and direction and regulation of the Board under Part III. of this Act, shall be laid before both Houses of Parliament forthwith upon the issuing thereof, if Parliament be then sitting, and if not then within fourteen days next after the commencement of the then next session of Parliament.

Privy Council—i.e., Secretary for Scotland; see note to § 31.

Matters to be provided for by such Regulations. Local Authority shall execute Regulations, and may direct Prosecution for violating the same.

35. The Board, by such directions and regulations, may provide,

For the speedy interment of the dead :

For house to house visitation :

For the dispensing of medicines, and for affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases such medical aid and such accommodation as may be required :

For any such matters or things as may to them appear advisable for preventing or mitigating such diseases :

And the local authority shall superintend and see to the execution of such directions and regulations, and shall do and provide all such acts, matters, and things as may be advisable for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require, and may direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such directions and regulations, and such wilful violation or neglect shall be deemed to be an offence under this Act.

Duty of L.A.'s.—The duty of the L.A. is not restricted to the execution of the directions and regulations. They are also required to do everything that may be advisable for mitigating the disease.

Power for Local Authority, &c., to enter Premises.

36. The local authority acting in the execution of such directions and regulations, or the officers or persons by them in this behalf authorised, may enter at reasonable times in the daytime and inspect any premises where they have ground for believing that any person has recently died of any such disease, or that necessity may otherwise exist for executing in relation to the premises any of such directions and regulations.

Power of entry without warrant.—No warrant is needed in such cases.
Premises.—See definition in § 3.

When Order in Council in force, overcrowded Houses to come under Common Lodging Houses provisions.

37. When any such Order of Council is in force in any place, on the certificate of a sanitary inspector, or of a medical officer, or of two duly qualified medical practitioners, or other sufficient evidence, that any house or part of a house is so overcrowded as to be dangerous to health, the local authority shall have power to regulate the same according to the provisions of this Act in reference to common lodging houses.

Order of Council—i.e., Order of the Secretary for Scotland ; see note to § 31.
Common lodging house provisions.—See Part V., §§ 59-70, *infra* ; particularly § 62.

Order in Council to extend to Ports and Arms of the Sea.

38. All Orders of Council for executing this Act shall extend to ports and arms of the sea lying within the jurisdiction of the Admiralty, and adjacent to the places to which such Orders relate ; and the Board may issue, under the said Orders, directions and regulations for cleansing, purifying, ventilating, and disinfecting, and preventing disease in ships and vessels, as well upon arms and ports of the sea aforesaid as upon inland waters.

Order of Council—i.e., Order of the Secretary for Scotland ; see note to § 31.
Ships.—See provisions as to ships in §§ 52-56.

PART IV.

GENERAL PREVENTION AND MITIGATION OF DISEASE.

Measures to be taken by L.A.'s.—In addition to the measures which the L.A. are by statute bound to take with the view of preventing the outbreak and spread of infectious disease, the Board have at various times recommended precautionary and preventive measures. See the Board's Circulars, *infra*.

Nurses.—Although express powers to provide nurses are not given in the Act, there can be little doubt that the L.A. have power to engage their services whenever it is deemed necessary to do so in order to prevent the spread of disease among the population. The L.A. are under no legal obligation, however, to provide a nurse for any sick person, unless their not doing so would be a source of danger to the health of the community. In short, their duty is to protect the health of the community, not to provide assistance for the sick.—*Board's Report*, 1884, p. xxi.

When a nurse is provided by the L.A. for the purposes of the P.H. Act, the expense will form a charge upon the assessments.—B.

Closing of schools.—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. The L.A. have no power to compel the School Board to close their schools, but if on the certificate of their M.O., the L.A. recommended the School Board to do so, that Board would incur a grave responsibility if they disregarded the recommendation. Provision is made by the Education Department to meet the case of a school closed on account of epidemic disease. See the Scotch Code (1890), Art. 19, p. 7, note (*Exception ii.*)

Power to provide Hospitals.

39. The local authority may provide within their district hospitals or temporary places for the reception of the sick, for the use of the inhabitants.

Such authority may build such hospitals or places of recep-

tion, provided the Board approve of the situation and construction thereof, or they may make contracts for the use of any existing hospital or part of an hospital, or for the temporary use of any place for the reception of the sick.

Such authority may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of their district, on payment by the local authority of such annual or other sum as may be agreed upon.

Two or more contiguous local authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, provided the Board approve of the situation and construction thereof, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act, and if any question shall arise as to the allocation of expenses, the same shall be determined by the Board, whose decision shall be final; and such common hospital shall be deemed to be for the purposes of this Act an hospital within the district of each of the local authorities so combining.

Extent of powers of L.A.—The mode in which hospital accommodation is to be provided is left to the discretion of the L.A. They may themselves erect buildings either of a temporary or permanent character, or they may make arrangements for the use of existing hospitals, or they may purchase or rent a house or other building and adapt it for the purpose. In no circumstances, however, are they entitled to create a nuisance. In the case of *Mutter v. Fyfe*, 23d Dec. 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* (Glen, p. 210; Lumley, p. 145), 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."

The danger of infection from the proximity of a hospital has been proved to be much exaggerated, there being, indeed, far more risk of infection from a single case in a house, than from the patients in a properly organised hospital.

Hospital must be within the district.—The L.A. are authorised to provide hospitals "within their district." It is therefore incompetent for them to provide hospitals outwith their district, except in the case of two or more L.A.'s combining in terms of the last paragraph of § 39. In such cases the hospital may be within the district of any of the L.A.'s combining. The erection of a combination hospital in the district of a L.A. not included in the combination is of doubtful legality, and the Board advised certain L.A.'s contemplating such a course not to proceed with the scheme.—B.

See also § 42, and note.

Non-infectious cases.—The power to erect hospitals does not appear to be restricted to hospitals for infectious disease; but the treatment of infectious disease is the primary object of such hospitals. The hospital of the L.A. may be used for cases of ordinary sickness or for surgical cases on the following conditions—that no cases of ordinary sickness be admitted when the hospital is in use for

infectious cases; that only such ordinary cases be admitted as could be easily removed in the event of a case of infectious disease occurring; that all cases of ordinary sickness be removed as soon as the hospital is required for an infectious case; and that after the hospital has been in use for infectious cases, it shall not be used for ordinary sick until the M.O. is satisfied that it can be so used without risk.—B.

Site and construction.—For information as to the proper site and construction of a hospital, see Practical Suggestions, *infra*.

Approval of Board.—The approval of the Board is required to the situation and construction of hospitals under the Act. For this purpose 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 M.O. as to the fitness of the building for occupation. These certificates are made on forms supplied by the Board.

Removals to hospital.—See § 42, and notes.

Medical attendance.—In large hospitals resident medical officers are necessary. In smaller hospitals, the L.A. 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 L.A., 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.

Rules for hospitals.—The L.A. 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, but the Board are always ready to afford assistance and advice to L.A.'s.

Expenses of treatment in hospital.—See notes to § 42.

Expenses of combination hospitals.—The L.A.'s combining to provide common hospitals are able in almost every case to allocate the expenses fairly. In cases of dispute, the statute provides a reference 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.

Loans for hospitals.—See the P.H. Amendment Acts, 1871, § 2, and 1875; also the L.G. Act, § 67.

Local Government Act.—No capital works in a county or district can be undertaken without the consent in writing of the Standing Joint Committee. Capital works include the erection, rebuilding, or enlargement of buildings. L.G. Act, § 18 (6) (7).

All property of L.A.'s of parishes passes to the county council, to be held by them for the purposes for which such property was or would have been held by the previously existing L.A.'s. L.G. Act, § 25 (1); also § 90.

English P.H. Act, 1875.—The corresponding section of the English Act is § 131. See Glen, p. 209; Lumley, p. 144.

Power to provide Means of Disinfection, and Carriages for Conveyance of infected Persons.

40. The local authority in each district may provide a proper place with all necessary apparatus and attendance, for disinfection of woollen or other articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge; and it shall be lawful at all times for the local authority to provide

and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein or otherwise to a hospital or place for the reception of the sick or to his own home; and farther, if the local authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check contagious or infectious disease, it shall be the duty of the local authority to give notice in writing, requiring the occupier or owner of such house or part thereof to cleanse and disinfect the same; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty not exceeding one pound for every day during which he continues to make default; and the local authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the occupier or owner; and when such occupier or owner is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out such cleansing and disinfection, the local authority may, at their own expense, cleanse and disinfect such house or part thereof, and any such articles therein.

Means of disinfection.—The L.A. ought to provide facilities for disinfection. A disinfecting room should form an adjunct to every hospital. Where a special disinfecting room has not been provided, the L.A., when necessity arises, should obtain the use of an empty room, barn, or other building, where the bedding and other articles can be hung up and fumigated with sulphur or otherwise disinfected. Supplies of disinfectants should at all times be kept in readiness by the S.I.

Means of conveying infected articles to the disinfecting room should also be provided. Steel trunks with close-fitting lids secured by locks are sometimes used. They require to be disinfected every time they are used.

Method of disinfection.—Instructions as to the process of disinfection will be found in the Board's Circular of 3d December 1874. See *infra*.

Destruction of infected articles.—There is no provision in the Act expressly authorising the destruction of infected articles by the L.A., but there can be no doubt that they are entitled to destroy any articles which are likely to retain or carry infection, and to grant compensation to the owner under § 116. The following course was recommended by the Board with regard to disinfection of bedding and bedclothes during an outbreak of small-pox. If the articles are soiled in any way by the discharges of the patients, or if they are much worn and not worth the expense of thorough cleansing, they should be destroyed and compensation given. If the case has been slight, with no soiling of bedding and bedclothes, and if the articles are in good condition, disinfection should be carried out.

In a case brought under the notice of the Board, clothes and other articles had been destroyed by instructions of the medical attendant. Application was made to the L.A. for compensation. The Board expressed the opinion that the case was exceptional and urgent, and that in the circumstances the claim might fairly be allowed to a reasonable extent in the public interest.—B.

Disinfection of articles in common lodging houses.—See § 66.

Disinfection of houses.—To allow of efficient cleansing and disinfection, and (when required) examination of the house drains and fittings, the patient must be removed to a hospital. If treated at home, he should on recovery be removed under proper precautions to another house for a week or ten days.—B.

Notice as to disinfection.—See Forms, *infra*. The notice may be served either on the occupier or the owner, and the L.A. will in each case have to consider which is the proper person to perform the necessary operations.

After the certificate has been obtained and the notice served, the L.A. are entitled without further procedure to carry out the disinfection. If they meet with resistance, they may apply to the sheriff for a warrant to effect a forcible disinfection. They may at the same time proceed to recover the penalty. §§ 103 and 105.—B.

Recovery of expenses of disinfection.—Unless a certificate has been obtained and notice served in terms of § 40, the L.A. are not entitled to recover from the occupier or owner the expenses of any operation of disinfection.—B.

English P.H. Act, 1875.—The corresponding provisions will be found in §§ 120, 122, 123 of the English Act. Power to destroy infected articles is given by § 121. See Glen, p. 196; Lumley, p. 137.

Local Authority may erect Public Water-closets, &c.

41. The local authority may erect such public 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 the local authority may also, by written notice to the owner or occupier of any schoolhouse or of any factory or building in which more than ten persons are employed at one time 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.

Construction of water-closets, &c.—For information as to the proper construction of water-closets, &c., see Practical Suggestions, *infra*.

Expense of public water-closets, &c.—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 L.A., and pay off the debt by annual instalments. This has been done in several instances. But the L.A. cannot pledge future assessments for payment of such a debt.—B.

Public water-closets, &c., must not create a nuisance.—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 under § 16 (b).—B.

An English L.A. 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 L.A. to delegate its powers to a society was not *ultra vires*. *Mogg v. Boeken*, 'Sanitary Record' for Nov. 1888, p. 243.

Notice as to schools and factories.—See Forms, *infra*.

Coal Mines Regulation Act, 1887.—The provisions of § 41 are applied to the surface buildings in connection with mines by the Act 50 & 51 Vict. c. 58, §§ 74 and 76 (10). See *infra*.

General Police Act—Provisions similar to § 41 are contained in §§ 135 and 211 of the General Police Act.

English P.H. Act, 1875.—§ 38 of the English Act corresponds to the provisions of § 41 of the Scotch Act referring to schools and factories; while § 39 corresponds to the provisions as to public water-closets, &c., but applies to urban authorities only. See Glen, pp. 81, 82; Lumley, pp. 61, 62.

Removal of Persons sick of Infectious Disorders, and without proper Lodging, in any District.

42. Where a hospital or place for the reception of the sick is provided or exists within the district of a local authority, the sheriff or any magistrate or justice may, on the application of the local authority, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the local authority, of any person suffering from any dangerous, contagious, or infectious disorder, and being without proper lodging or accommodation, or lodged in a room occupied by others besides those in attendance on such person, or being on board any ship or vessel, or may direct the removal from the room occupied by such person of all others not in attendance on him, the local authority providing suitable accommodation for such other persons.

Compulsory removal.—Voluntary removal may be carried out without a warrant, but whenever objection is made, a medical certificate and order of the sheriff or magistrate 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 L.A.

Compulsory removal under § 42 can only be carried out when a hospital is provided or exists within the district in terms of § 39. See § 39 and note.

The L.A. should in all cases authorise the S.I. or M.O., in terms of § 7, to exercise the powers of the L.A. under § 42, otherwise a meeting of the L.A. would have to be called to authorise application in each case, and the object of the provision would be defeated by the delay which would take place before the removal could be effected.—B.

Application to sheriff.—See Forms, *infra*.

Removal of cases from ships.—The L.A. have power under § 55 to make rules for the removal to hospital of persons brought into their district by ships.

Removal of cases from common lodging houses.—When cases of infectious disease occur in common lodging houses, they may be removed to a hospital by the L.A. without a warrant. See § 66.

Removal to poorhouse hospital.—Some L.A.'s appear to be of opinion that

they are entitled to send cases of infectious disease to the hospital at the poor-house. L.A.'s have no power to remove persons to the poorhouse hospital. That hospital cannot legally be used for any one who is not a proper object of parochial relief.—B.

Mode of removal.—L.A.'s ought to provide ambulances under § 40. For the manner in which removal to hospital is to be effected, see Circular of 3d Dec. 1874, *infra*.

Expense of treatment.—In the case of persons able to pay, there appears to be no reason why the L.A. should not apply for payment of the expense of maintenance and treatment in the hospital. But the L.A. must keep in mind that the main object of the provision for removal being to secure the public health by the speedy isolation of infected persons, no consideration should be allowed to stand in the way of the effective attainment of this object. Moreover, though there may be an equitable claim against the patient or his relatives for these expenses, no power of recovery is given by the Act.—B.

Respective obligations of L.A. and parochial board in regard to poor persons suffering from infectious disease.—In a number of cases a difficulty has arisen as to the respective liabilities of parochial boards and L.A.'s in regard to the treatment and maintenance of poor persons suffering from infectious disease, and the Board have frequently had to explain the law on the subject. The following extracts indicate the Board's views:—

"A difference of opinion having arisen between a parochial board and the local authority as to the responsibility for fever patients, and the cost of providing for them when such patients are not in receipt of parochial relief, but are alleged, or assumed to be, proper objects of relief, we pointed out that neither the Poor Law Act nor the Public Health Act confers any power on the local authority or the sanitary inspector to determine whether a person is to be admitted to parochial relief or not, and that the parochial board are not entitled to delegate their functions in that matter to any other body or person. We intimated that, in cases of fever, it would not be expedient or safe for the local authority to delay proceedings until an application for parochial relief was made to and decided by the parochial board, and that the proper course in such cases was without delay to send the patient requiring removal to the infirmary, and simultaneously to make a claim against the parochial board when the local authority or sanitary inspector considered the patient a proper object of parochial relief. We had no doubt that the parochial board would at once admit and assume liability in every case in which, in their judgment, the patient was entitled to parochial relief; and if in any case the parochial board should refuse liability, it rests with the sheriff to decide, upon appeal, whether the patient is a proper object of relief or not.

"A similar difference of opinion having arisen as to the respective obligations of the parochial board and local authority to provide hospital accommodation, we stated that the Public Health Act neither added to nor diminished the duties and responsibilities of the parochial board under the Poor Law Act in any part of the parish, whether under the jurisdiction of the parochial board as local authority, or of other local authorities. We intimated that the parochial board are still responsible for, and have to defray out of the funds raised for the relief of the poor, the cost attending the care of all paupers and proper objects of parochial relief for whom application has been made; but that, in the case of all other persons, the cost of executing the Public Health Act is a charge, under that statute, to be defrayed by the local authority out of the assessment raised by virtue of the Public Health Act."—*Board's Report*, 1870, p. xxii.

"The persons who may be compulsorily removed to a hospital by the local authority, under § 42 of the Public Health Act, may be divided into two classes.

"1. Those who are proper objects of parochial relief.

"2. Those who are not proper objects of parochial relief.

"In deciding the present question, the latter class need not be considered, as in no view can any liability attach to the parochial board in respect of the removal or treatment of such persons.

"The first class may again be divided into—

"(a) Persons on the roll of poor.

"(b) Persons who have applied for parochial relief in respect that they are disabled by fever or other infectious disease.

"(c) Persons disabled by infectious disease who have not applied for relief, but have been removed to the hospital by the officers of the local authority.

"In all these cases it may be assumed that before the passing of the Public Health Act the parochial board would have been bound to afford (out of the assessment raised for relief of the poor) maintenance and whatever might be necessary in the way of medical attendance and treatment.

"But by the Public Health Act, the treatment of infectious and contagious disease, in so far as it affects the public health, has been intrusted not to the parochial board, but to the local authority. The local authority have been empowered to build public hospitals, and to remove compulsorily to these hospitals persons suffering from infectious or contagious disease; and powers of assessment for these purposes have also been given. So that there can be no doubt that it is competent for the local authority to expend the assessment levied under the Act in the erection of hospitals, and in the treatment therein of persons suffering from infectious disease.

"There is no provision in the Act enabling the local authority to recover these expenses, or any part of them, from the parochial board. If the framers of the Act had intended that a right to recover should be given, it would probably have been expressly provided. On the other hand, it does not appear entirely equitable that the duty of the parochial board to maintain and provide medical treatment for persons who are proper objects of parochial relief, should cease when these persons are removed to a hospital. The answer to this contention may be that, for the protection of the public health, Parliament has empowered the authority established for the protection of the public health to take all measures sanctioned by the Act which may be considered necessary for the purpose, and to defray the expense out of the assessment which they are empowered to levy for the purposes of the Act.

"On the whole, while the Board entertain grave doubt whether the expenses of maintenance and treatment in a hospital can be recovered by the local authority from the parochial board, they are of opinion, as the question is of importance, that it would be expedient to obtain an authoritative judgment from the Court of Session on a joint case."—*Letter to L.A. of Saltcoats, 15th March 1887.*

"The question of the respective duties of the parochial board and local authority, in dealing with cases of infectious or contagious disease, is not altogether free from difficulty; and a good deal must depend upon the circumstances of each case.

"1. A pauper, or the dependant of a pauper, is attacked with infectious or contagious disease. In such a case it is the duty of the parochial board to provide such medical relief and attendance as may be necessary for the proper treatment of the patient. Even in the case of a pauper, however, it may become the duty of the local authority to intervene; that is to say, should they be of opinion that, for the protection of the public health of the district, it is necessary that the pauper or his dependants should be removed to a hospital or elsewhere, it would become their duty to effect such removal, and the expense thereby incurred would form a proper charge against the assessment under the Public Health Act.

"2. The dependant of an able-bodied man is attacked with contagious or infectious disease. In such circumstances it would probably be held that the parent had no claim to parochial relief. But it is precisely in such a case that the isolation and treatment of the patient is, in the interest of the public health, most imperative, and there can be no doubt that the local authority would be bound to take immediate measures to prevent the spread of the disease. This can only be done by the medical treatment and effective isolation of the patient, and the expense thus incurred would, in the opinion of the Board, form a proper charge against the assessment under the Public Health Act.

"The Board are aware that cases may arise which do not belong to either of these classes, and it is in these cases that the difficulties to which the Board

allude may be expected to arise. But it may perhaps be laid down as a general rule that a local authority is better able to cope with an outbreak of infectious or contagious disease than the parochial board, and that it is the primary duty of the local authority to be prepared to take without delay such measures as may be necessary to check the spread of the disease. Wherever, therefore, the sanitary inspector or the medical officer of the local authority learns that a case of infectious or contagious disease exists in a family which is not in receipt of parochial relief, he should lose no time in securing the isolation and treatment of the patient; and even in the case of a family in receipt of relief (and who are being attended by the medical officer of the parochial board), he ought to visit the house for the purpose of satisfying himself that the circumstances and surroundings of the family are such as to render action on the part of the local authority unnecessary."—*Letter to L.A. of Dalserf, 21st March 1888.*

See also 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 Mr J. B. Balfour, obtained by the parochial board of Govan, 9th Jan. 1877, P.L.M., 1877, p. 274; and the following sheriff court decisions: *L.A. of Burgh of Ardrrie v. Inspector of New Monkland*, P.L.M., 1870-71, p. 398; *Insp. of Glasgow v. Insp. of Killarow*, 18th March 1881, P.L.M., 1881, p. 322; *Shotts v. New Monkland*, 28th July 1885, P.L.M., 1885, p. 498; *Glasgow v. Shotts*, 14th Dec. 1886, P.L.M., 1887, p. 198; *Glasgow v. Bothwell*, 4th March 1887, P.L.M., 1887, p. 203; *Kilmartin v. North Knapdale*, 17th April 1889, P.L.M., 1889, p. 326.

English P.H. Act, 1875.—The corresponding provision of the English Act is § 124. See Glen, p. 200; Lumley, p. 139.

Places for the Reception of dead Bodies may be provided at the Public Expense. Burial of dead Bodies.

43. Any local authority may provide a proper place for the reception of dead bodies, and where any such place has been provided, and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, the sheriff or any magistrate or justice may, on a certificate signed by a legally qualified medical practitioner, order by a writing under his hand the body to be removed to such proper place of reception at the cost of the local authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the local authority to bury such body; and it shall also be the duty of the local authority to bury any dead body found within the district, and which is unclaimed, or which no sufficient person undertakes to bury; but any expense so incurred in regard to any such burial may be recovered by the local authority in a summary manner from any person legally liable to pay the expense of such burial.

Mortuaries.—The Burial Grounds (Scotland) Act, 1855, empowers parochial boards 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, §§ 20, 21.

The Local Government Board, England, have issued model byelaws for mortuaries, along with a Memorandum containing valuable 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.

Respective duties of L.A. and parochial board with regard to burials.—The parochial board 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 parochial board 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*, 15th Aug. 1880, P.L.M., 1880, p. 602; and *Bothwell v. Shotts*, Nov. 1885, P.L.M., 1886, p. 87.

If the relatives of a poor person are unable from poverty to bury the body, it is the duty of the L.A. to undertake the burial. In cases of doubt or dispute the L.A. should at once 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 parochial board or other persons, the duty of the L.A. does not arise, and no liability attaches to them.—B.

Respective duties of L.A. and police.—The only duty of the L.A. 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 L.A. emerges. Preserving the clothes for identification and taking charge of articles found on the body are duties that lie on the police.—B.

Order for removal to mortuary.—See Forms, *infra*.

Bodies found at sea.—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 L.A. of that district are liable to bury it.—B.

English P.H. Act, 1875.—The corresponding provision of the English Act as to mortuaries is § 141. See Glen, p. 220; Lumley, p. 149. The provision as to burials is § 142. See Glen, p. 225; Lumley, p. 150.

*In Burghs, &c, the Local Authority may make Regulations
as to Lodging Houses, with consent of the Board.*

44. The local authority having jurisdiction under this Act in any burgh or populous place containing, according to the census last taken, a population of not less than one thousand inhabitants, may, after publication of the proposed regulations in one or more newspapers circulating in the district for one month, make, with consent of the Board, regulations for all or any of the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
2. For the registration of houses thus let or occupied in lodgings:
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state:

4. For enforcing therein the provision of privy accommodation, or water-closet accommodation, and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases :
5. For the cleansing and limewhiting at stated times of such premises :
6. For the enforcement of the above regulations by penalties not exceeding forty shillings for any one offence, with an additional penalty not exceeding twenty shillings for every day during which a default in obeying such regulations may continue.

Houses let in lodgings.—The provisions of § 44 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 § 62 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 § 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 § 44, which applies to all houses let in lodgings irrespective of the charges made.

When regulations are made under § 44 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 S.L., subject to the directions of the L.A., to select the houses which it is desirable to supervise, to place these on the register, and to see that in these cases the regulations 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 P.H. Act, issued by the Local Government Board, 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 Local Government Board, 1881, App., p. 157.

Publication of regulations.—The regulations must be published *in extenso*. All that is required is reasonable advertising for a month, say, once weekly. It will be sufficient to advertise the regulations once, and in subsequent advertisements to refer to the first advertisement for their terms, adding that they can also be seen at the office of the L.A.—B.

English P.H. Act, 1875.—The corresponding section of the English Act is § 90. See Glen, p. 137; Lumley, p. 102.

Merchant Shipping (Fishing Boats) Act, 1883.—Under the Act 46 & 47 Vict. c. 41, § 48, the L.A. of any district comprising a seaport may, with the sanction of the President of the Board of Trade, make regulations for seamen's lodging houses.

Housing of the Working Classes Act, 1885.—By § 44 of the P.H. Act the power of making regulations is confined to burghs and populous places of not less than 1000 inhabitants. Under the Act 48 & 49 Vict. c. 72, § 8, the power is extended to every sanitary authority. But there is some doubt as to how far this enactment applies to Scotland. See Memo., *infra*.

Rules as to underground Dwellings.

45. It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar whatsoever, or any vault or under-

ground room (not being entirely open on one or other of its sides), which vault or room shall be less in height from the floor to the ceiling than seven feet in the case of houses built prior to the passing of this Act, or less in height than eight feet in the case of houses built subsequently to the passing hereof, 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 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 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 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 room shall be part of a house built before the passing of this Act), or which shall not be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, after the local authority have given notice to the owners thereof that the letting of such cellars, vaults, or underground rooms as dwelling places is prohibited from that time forth; and it shall be 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 it shall not be lawful, after such notice, to let or continue to let, or to occupy or suffer to be occupied, separately, as a dwelling house, any such cellar, vault, or underground room.

General Police Act.—Similar provisions will be found in § 352 of the General Police Act.

English P.H. Act, 1875.—The provisions as to cellar dwellings in the English Act are §§ 71-75. See Glen, p. 122; Lumley, p. 93.

Occupation as a dwelling.—A definition of what constitutes or amounts to occupation is given in § 74 of the English P.H. Act, 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." See Glen, p. 124; Lumley, p. 95.

Penalty on letting underground Dwellings.

46. Every person who lets separately, or who knowingly suffers to be occupied for hire as a dwelling, any vault, cellar,

or 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 after conviction of the first offence.

General Police Act.—§ 353.

English P.H. Act.—§ 73. See Glen, p. 124 ; Lumley, p. 94.

*Cases in which Two Convictions have occurred within
Three Months.*

47. Where two convictions against the provisions of this Act relating to the overcrowding of any house, or the 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 were or were not the same, it shall be lawful for the sheriff or any magistrate or justice 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.

Overcrowding of houses.—See § 16 (f), *supra*.

English P.H. Act, 1875.—The corresponding section of the English Act as to overcrowding of houses is § 109. See Glen, p. 179 ; Lumley, p. 125. The corresponding section as to cellars is § 75. See Glen, p. 125 ; Lumley, p. 95.

*Penalty on Person suffering from infectious Disorder entering
public Conveyance without notifying to Driver that he is so
suffering.*

48. If any person suffering from any infectious disorder shall enter, or any person in charge of a person so suffering shall place such person in, any steamboat, sailing vessel, railway carriage, stage coach, hackney carriage, or other public conveyance, without previously notifying to the owner or person in charge thereof that such person is so suffering, the person so contravening this provision shall, on conviction thereof before any sheriff, magistrate, or justice, be liable to a penalty not exceeding five pounds; and no owner or person in charge of any public conveyance shall be bound to convey any person so suffering.

Proper party to take proceedings.—The L.A. of the district in which the offence is committed is the proper party to prosecute. A man residing in Motherwell sent his servant in a cab to Airdrie in the district of the L.A. 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 L.A. of New Monkland prosecuted for a contravention of §§ 48 and 49. The sheriff dismissed

the complaint quoad § 48, having some doubt as to the *locus standi* of the L.A. of New Monkland, the offence under § 48 not having been committed within their jurisdiction. But he convicted the respondent of a contravention of § 49. *L.A. of New Monkland v. King*, 4th Nov. 1873, P.L.M., 1874, p. 33.

English P.H. Act, 1875.—The corresponding provision of the English Act is § 126. See Glen, p. 202; Lumley, p. 140.

Infectious Disease (Notification) Act, 1889.—L.A.'s will be better able to prevent offences under §§ 48 and 49 if they adopt the Notification Act. See the Act, *infra*.

Penalty on any Person with infectious Disorder exposing himself, or on any Person in charge of such Sufferer causing such Exposure.

49. Any person suffering from any infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or person in charge of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or person in charge, conveyed any such sufferer, and any person who, without previous disinfection, knowingly gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction of such offence before the sheriff or any magistrate or justice, be liable to a penalty not exceeding five pounds: Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any such bedding, clothing, rags, or other things, for the purpose of having the same disinfected.

Sending infected person in a cab.—See *L.A. of New Monkland v. King*, note to § 48, *supra*.

Conveyance of corpses.—The provisions of § 49 do not apply to the conveyance of the corpses of persons who have died of infectious disease. When such cases come to the knowledge of the L.A., it is their duty to see that every possible precaution is taken to prevent the spread of infection.—B.

Children attending school.—It is competent for the L.A. to make an arrangement with the School Board to require that children who have been suffering from infectious disease should not be readmitted to school, unless they have obtained a medical certificate that they are free from infection.—B.

English P.H. Act, 1875.—The corresponding provisions are §§ 126, 127. See Glen, p. 202; Lumley, p. 140.

Penalty on Persons letting Houses in which infected Persons have been lodging.

50. If any person knowingly lets any house, room, or part of a house in which any person suffering from any infec-

tious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate given by him, and lodged with the sanitary inspector or other person appointed to perform the duties of sanitary inspector, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section the keeper of an inn or hotel shall be deemed to let part of a house to any person admitted as a guest into such inn or hotel.

English P.H. Act, 1875.—The corresponding section is § 128. See Glen, p. 206; Lumley, p. 142.

Removal of Manure in Mews, &c.

51. Where notice has been given by the local authority or their officer or officers for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the local authority or their officer or officers shall direct, he or they shall be liable, without further notice, to a penalty of not exceeding twenty shillings per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner.

Notice by public announcement.—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.

Periods of removal.—The periods of removal must be so regulated by the L.A. as to prevent such an accumulation of manure as would constitute a nuisance under § 16 (d).—B.

Proceedings for recovery of penalty.—After notice has been given and disregarded, the L.A. may, without further notice, proceed to recover the penalty under § 103 or § 105.—B.

English P.H. Act, 1875.—The corresponding section of the English Act is § 50. See Glen, p. 96; Lumley, p. 71.

General Police Act.—The commissioners may regulate the hours for removing dung, &c., under § 145 of the General Police Act.

Provision as to Ships within the Jurisdiction of Local Authority.

52. Any 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, 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; but this section shall not apply to any ship belonging to Her Majesty or to any foreign Government.

Ships.—See definition of "ship" and "premises" in § 3.

Removal of ships from one place to another.—If the M.O. certifies that it is a proper precaution in the interests of the public health that a ship should be removed from one place to another within the district of the L.A., there seems to be no doubt that the L.A. are entitled to give instructions accordingly.—B.

English P.H. Act, 1875.—The corresponding section of the English Act is § 110. See Glen, p. 179; Lumley, p. 126.

Infectious Disease (Notification) Act.—The Act 52 & 53 Vict. c. 72, applies to ships. See the Act, *infra*, § 13.

Provision as to District of Local Authority extending to Places where Ships are lying.

53. For the purposes of this Act, any ship that is in a place within three miles of the coasts 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 whose district nearest adjoins the place where such ship is lying, the distance being measured in a straight line.

District prescribed by Board.—Under this section the Board prescribed the extent of the district of the L.A. of Aberdeen.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 110. See Glen, p. 179; Lumley, p. 126.

Infectious Disease (Notification) Act.—A similar provision is contained in § 13 (2) of the Act 52 & 53 Vict. c. 72. See the Act, *infra*.

Medical Officer of Parish to be allowed to charge for attending Sick on board any Ship, and to be paid by Captain.

54. Whenever, in compliance with any regulation of the Board which they may be empowered to make under this Act, any medical officer shall perform any medical service on board of any ship, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the parish or place for which he is appointed, and such charges shall be payable by the person in charge of the ship, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services

shall be rendered by any medical practitioner who is not a medical officer, 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 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.

Regulations of Board.—See §§ 35 and 38.

Medical certificate.—The question has frequently arisen whether the medical inspection and certificate constitutes a "medical service" in terms of § 54, the fee for which is payable by the master. In 1871 the Sheriff of Edinburgh decided that such certificate was a "medical service." But the soundness of this view is disputed by shipowners, and the action of L.A.'s has not been uniform.

English P.H. Act, 1875.—The corresponding section of the English Act is § 138. See Glen, p. 218; Lumley, p. 148.

Power to remove to Hospital sick Persons brought by Ships.

55. Any local authority may, with the sanction of the Board, lay down rules 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 disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

Removal to hospital.—See §§ 39 and 42.

English P.H. Act, 1875.—The corresponding section of the English Act is § 125. See Glen, p. 201; Lumley, p. 140.

*Description of Ships within Provisions of 6 Geo. 4. c. 78, and
Power to reduce Penalties imposed thereby.*

56. Every ship having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled An Act to repeal the several laws relating to quarantine, and to make other provisions in lieu thereof, although such ship has not commenced the voyage, or has come from or is bound for some place in the United Kingdom; and nothing in this Act contained shall interfere with or prevent the execution of any orders, regulations, or restrictions to be made by the Lords and others of Her Majesty's

Privy Council pursuant to the said Act; and any expenses incurred by any local authority in carrying into effect such orders, regulations, or restrictions shall be deemed to be expenses incurred by them in carrying into effect this Act; and all penalties imposed by the said Act of the sixth year of King George the Fourth, chapter seventy-eight, may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

English P.H. Act, 1875.—See § 343 of the English Act, and Schedule V., Part III.; Glen, pp. 620, 696; Lumley, pp. 431, 493.

Power to defray cost of Vaccination in certain cases.

57. The local authority may defray the cost of vaccinating such persons as to them may seem expedient, not being paupers or the children of paupers, or persons ordered to be vaccinated in terms of the eighteenth section of the Act twenty-sixth and twenty-seventh Victoria, chapter one hundred and eight.

Vaccination under the P.H. Act.—The Act 26 & 27 Vict. c. 108 is the Vaccination (Scotland) Act, 1863, which is administered by parochial boards.

The scope of § 57 of the P.H. Act is set forth in the Board's Circular of 18th February 1888, as to small-pox. See *infra*.

Revaccination.—The importance of revaccination 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 revaccination 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 revaccinated at the age of twelve years or thereabouts, and to urge upon all persons beyond this age, who have not been successfully revaccinated, the duty of obtaining for themselves the additional protection which may be had by this means."

Salary of M.O. does not cover vaccination.—Vaccination is special work, and cannot fairly be held to be covered by the salary of the M.O. under the P.H. Act. In fixing the remuneration, the L.A. may safely be guided by the scale provided in § 2 of the Vaccination Act—viz., 1s. 6d. for each vaccination within two miles of the M.O.'s residence, and 2s. 6d. when beyond two miles.—B.

Vaccination in foreign countries.—Notes as to the vaccination laws in various European countries will be found in the Report of the M.O. of the Local Government Board, England, 1882, App., p. 40.

Power to provide Grounds for Public Recreation.

58. The local authority may provide, maintain, lay out, and improve grounds for public recreation, and support or contribute towards any premises provided for such purposes by any person whomsoever.

Public hall.—The erection of a public hall by the L.A. is not contemplated under § 58.—B.

General Police Act.—Power to provide and maintain public parks and pleasure grounds is given to the Commissioners by § 367 of the General Police Act.

Public Parks (Scotland) Act, 1878.—The Act 41 Vict. c. 8, empowers L.A.'s of burghs to acquire lands compulsorily for parks or pleasure grounds, and to assess, borrow, and make byelaws for such parks.

English P.H. Act, 1875.—The corresponding section of the English Act is § 164, which applies only to urban authorities. See Glen, p. 306; Lumley, p. 216.

PART V.

REGULATION OF COMMON LODGING HOUSES.

Common lodging houses.—See definition in § 3. For the provisions as to lodgings not comprehended in that definition, see § 44.

Provisions of Part V. compulsory.—Misapprehensions being frequently entertained regarding Part V. of the Act, the Board in a circular explained that the whole of the enactments in that part of the statute are compulsory, with the exception of the permissive power to make rules and regulations conferred by § 62. In the great majority of parishes, there must be one house, or more, falling under the statutory appellation of "common lodging house," and, with regard to all such houses, the imperative enactments of the statute apply. It is in every case obligatory on the local authority to keep a register, in terms of § 59, and on the keepers of such houses to comply with the provisions of the statute.

The Board pointed out that these very useful provisions will be altogether defeated if the local authority fails to exercise a strict supervision over the houses referred to, and to prosecute the keepers who disregard the statutory requirements. They also suggested to the local authority in every district where such houses exist the expediency of exercising their powers under the 62d section of 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 are satisfied that a strict enforcement of the laws relating to common lodging houses will 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 of 16th December 1869.*

Prosecutions.—In burghs where there are police magistrates, contraventions of the provisions of Part V. may be prosecuted as police offences under § 103. In other cases they will come under § 105.

English P.H. Act, 1875.—The provisions of the English Act with regard to common lodging houses are contained in §§ 76-89. They are similar to those of the Scotch Act. In the English Act there is no definition of a common lodging house, and the opinion of the law officers of the Crown was taken as to the meaning of the expression. Their opinion will be found in Glen, p. 134; Lumley, p. 96. See also the Memorandum prefixed to the model byelaws issued by the Local Government Board, and printed in their Report, 1878, App., p. 77.

Common Lodging Houses to be Registered.

59. The local authority shall cause a register to be kept, in which shall be entered the names and residences of the keepers of all 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; and the local authority may refuse to register as the keeper of a common lodging house any person who does not produce to the local authority a certificate of character, in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively assessed for the relief of the poor of the parish within which such lodging house is situate; and the local authority may, from time to time, on the approval of the Board, raise or diminish the sum payable per night, according to which, as herein-before mentioned, it is ascertained whether a house or part thereof is a common lodging house, but so as not to exceed sixpence per night.

Registration compulsory.—The L.A. are bound to keep a register, and every person who keeps a common lodging house must be registered. If the house has been inspected and approved, as required by § 60, and if a certificate of character has been produced in terms of § 59, it does not appear that the L.A. can refuse to register.—B.

Yearly renewal of licence.—The yearly renewal of licences for common lodging houses, however desirable it may be, is not provided for in the Act.—B.

Removal from register.—There is no provision in the statute authorising a L.A. to cancel a licence once granted, save in terms of §§ 64 and 70, and the question whether the L.A. possess such a power has never been decided.—B.

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 L.A. 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 the L.A. would have been justified in cancelling his licence in consequence. *Gunn v. Cadenhead*, 25th May 1888, 15 R. (Justiciary) 57; P.L.M., 1888, p. 351.

L.A. have no power to erect a common lodging house.—There is no provision in the Act authorising a L.A. to erect a common lodging house. But under the Labouring Classes Lodging Houses Act, 1851, L.A.'s are empowered to provide and furnish lodgings for the labouring classes. See Memorandum as to the Housing of the Working Classes Act, 1885, *infra*.

Altering the sum payable per night.—The sum payable per night, according to which it is ascertained whether a house is a common lodging house, is fixed by § 3 at fourpence. Under § 59, the L.A. may, with the approval of the Board, raise or diminish this sum. The Board have in many cases approved of it being raised, never of it being diminished.

English P.H. Act, 1875.—The corresponding provisions of the English Act are contained in §§ 76, 78. See Glen, pp. 125, 128; Lumley, pp. 95, 97.

No Lodger to be received in Common Lodging House till it has been Inspected and Registered.

60. From and after the date when this Act shall come into operation, it shall not be lawful to keep or use as a common lodging house any house, not being a licensed victualling house, or to receive or retain any lodgers therein, unless such house shall have been inspected and approved for that purpose by the inspector of common lodging houses for the district, and shall have been registered as by this Act provided; and if any person shall contravene this enactment he shall be guilty of an offence under this Act.

Inspection and approval.—As it appears that when a common lodging house has once been approved and placed upon the register it cannot be removed therefrom, except under §§ 64 and 70, great importance must be attached by L.A.'s to the inspection, and no house should be approved which is not fitted for the purpose. The points to be kept in view are set forth in the Memorandum prefixed to the model byelaws recommended by the Board. See *infra*.

English P.H. Act, 1875.—The corresponding provisions of the English Act are contained in §§ 77, 78. See Glen, p. 128; Lumley, p. 97.

Evidence of Register.

61. 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 *prima 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 person having such charge with a certified copy of any such entry for payment of twopence.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 76. See Glen, p. 125; Lumley, p. 95.

Power to Local Authority to make Rules and Regulations respecting Common Lodging Houses, to take effect when confirmed by the Board.

62. The local authority may from time to time make rules and regulations respecting common lodging houses within its jurisdiction for the 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, and for promoting the cleanliness and ventilation of such houses, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made; and the said local authority may, by any such rules and regulations, impose upon offenders against the same such reasonable penalties as they shall 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 the sum of forty shillings for each day after written notice of the offence from the said local authority; and the said local authority may alter or repeal any such rules and regulations: Provided always, that all such rules and regulations imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: Provided also, that such rules and regulations shall not be of any force or effect until the same be submitted to and confirmed by the Board, who are hereby empowered to confirm or disallow the same as they may think proper: Provided further, that no such rules and regulations shall be confirmed unless notice of the intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the parish or place to which such byelaws relate one month at least before the making of such application; and for one month at least before any such application a copy of the proposed rules and regulations, in writing, signed by the chairman of the meeting at which they were made, shall be kept at the office or usual place of meeting of the local authority, and be open during business hours thereat for the inspection of parties assessed to the relief of the poor in such parish or place, without fee, and the local authority shall cause every such party assessed as aforesaid who shall apply for the same to be furnished with a copy thereof, on payment of sixpence for every one hundred words contained in such copy.

Model rules and regulations.—The Board have prepared a series of rules and regulations, which they recommend L.A.'s to adopt. They will be found *infra*.

Seamen's lodging houses.—Under § 48 of the Merchant Shipping (Fishing Boats) Act, 1883 (46 & 47 Vict. c. 41), L.A.'s of seaports may, with the sanction of the President of the Board of Trade, make regulations for seamen's lodging houses.

Publication of notice.—The notice of the intention of the L.A. to apply for confirmation of rules and regulations is usually advertised weekly for a month, but the Board have been satisfied with one publication. It is not necessary to publish the rules and regulations themselves.—B.

English P.H. Act, 1875.—The power to make byelaws is given by § 80 of the English Act. The provisions as to penalties are contained in § 183, and as to confirmation in § 184. The model byelaws issued by the Local Government Board will be found in their Report, 1878, App., p. 77.

Such Rules and Regulations, when confirmed, to be printed, and furnished gratis to Keepers of Common Lodging Houses.

63. All such rules and regulations made by the local authority in pursuance of this Act shall, when confirmed as aforesaid, be printed, and hung up in the office or usual place of meeting of the said local authority, and copies thereof 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, and copies shall also be furnished to any party assessed as aforesaid, upon application, and payment of one penny each for the same; and a copy of such rules and regulations, purporting to be signed by the secretary of the Board, shall be received in evidence of such regulations, and of the duly making and confirming thereof, without proof of the signature.

Evidence of confirmation.—See also § 111.

English P.H. Act, 1875.—The provisions as to printing and evidence of bye-laws are contained in §§ 185, 186. See Glen, p. 361; Lumley, p. 249.

Power to Local Authority to require an additional Supply of Water to Common Lodging Houses.

64. Where it appears to the local authority that a common lodging house is without a proper supply of water for the use of the lodgers, and that such a supply 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 obtain such supply, and to execute all works necessary for that purpose; 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.

Water supply.—The general power of the L.A. to compel owners to provide a supply of water is contained in § 89 (2).

Notice to owner or keeper.—For Form, see *infra*. The notice may be served either on the owner or the keeper. The safest course is to serve it on both.

English P.H. Act, 1875.—The corresponding section of the English Act is § 81. See Glen, p. 131; Lumley, p. 99.

Power to Local Authority to order Reports from Keepers of Common Lodging Houses.

65. 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.

Order of L.A.—See Form, *infra*.

English P.H. Act, 1875.—The corresponding section of the English Act is § 83. See Glen, p. 132; Lumley, p. 100.

Local Authority may remove sick Persons from Common Lodging Houses to Hospitals, &c.

66. When a person in a common lodging house is ill of fever or any infectious or contagious disease, the local authority may 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 of the parish, or of any qualified medical practitioner, that the disease is infectious or contagious, and that the patient may be safely removed; 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 may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, the amount of such compensation being first certified in writing upon a list of such articles.

Removal to hospital.—See § 42. No warrant is required in this case.

Certificate of removal.—See Form, *infra*.

Disinfection.—See § 40.

Compensation.—See § 116.

English P.H. Act, 1875.—The corresponding provision as to removal to hospital is contained in § 124. See Glen, p. 200; Lumley, p. 139.

As to giving Notice of Fever, &c., occurring in Common Lodging Houses.

67. The keeper of a common lodging house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof either to the medical officer or to the inspector of common lodging houses, or the inspector of the poor of the parish in which such common lodging house is situated, who shall forthwith inform the local

authority and the medical officer that such notice has been received, and thereupon the medical officer shall forthwith visit and report on the case.

Infectious Disease (Notification) Act.—Where the Notification Act has been adopted, the notice under § 67 should be sent to the Medical Officer. See the Act, *infra*.

English P.H. Act, 1875.—The corresponding section of the English Act is § 84. See Glen, p. 132; Lumley, p. 100.

As to Inspection of Common Lodging Houses.

68. The keeper of a common lodging house shall, at all times when required by any officer of the local authority, give him free access to such house and every part thereof.

Access to whole house.—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*, 25th May 1888, 15 R. (Justiciary) 57; P.L.M., 1888, p. 351.

English P.H. Act, 1875.—The corresponding section of the English Act is § 85. See Glen, p. 132; Lumley, p. 101.

As to cleansing of Common Lodging Houses.

69. The keeper of a common lodging house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, 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 of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash 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.

English P.H. Act, 1875.—The provision of the English Act as to limewashing is contained in § 82. See Glen, p. 131; Lumley, p. 100.

*Conviction for Third Offence, &c., to disqualify Persons
from keeping Common Lodging Houses.*

70. 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, without the

previous licence in writing of the local authority, which licence the local authority may withhold, or may grant on such terms and conditions as they think fit.

English P.H. Act, 1875.—The corresponding provision of the English Act is § 88. See Glen, p. 134; Lumley, p. 102.

PART VI.

SEWERS, DRAINS, AND WATER SUPPLY.

Sewers and drains.—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 is given in the P.H. (Scotland) Act, but in the English Act of 1875, § 4, they 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. 5, 22; Lumley, p. 16.) Roughly speaking, then, a *drain* in the sense of the English P.H. 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 the P.H. (Scotland) Act and in the General Police Act. Sometimes, however, the word "drain" seems to include "sewer," as in § 84.

General Police Act.—The provisions of the General Police Act as to public sewers are contained in §§ 182-198; those as to drainage of houses in §§ 199-209; those as to water supply in §§ 216-227.

English P.H. Act, 1875.—The provisions of the English Act as to sewerage and drainage are contained in §§ 13-34; those as to water supply in §§ 51-67. See Glen, pp. 36, 97; Lumley, pp. 31, 71.

Sewers to be vested in Local Authority.

71. All sewers presently existing within a district, and not being private property, or not being and continuing under the management of persons appointed by the Crown or by Act of Parliament, shall be vested in the local authority: 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.

Ownership of sewers.—As to the rights implied in ownership of sewers, and the interest in the soil thereby conferred on the L.A., see Glen, p. 37; Lumley, p. 32.

English P.H. Act, 1875.—The corresponding section of the English Act is § 13. See Glen, p. 36; Lumley, p. 31.

Local Government Act.—All drainage works vested in parochial boards as L.A.'s are transferred to the county council, and vested in them for the same interest and purposes, and subject to the same conditions and restrictions as before. L.G. Act, § 90.

General Police Act.—The corresponding section of the General Police Act is § 182.

Power to purchase Sewers.

72. The local authority may, in terms of the Lands Clauses Acts, 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; 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 the said last-mentioned Acts.

Lands Clauses Acts.—See §§ 4 and 90.

English P.H. Act, 1875.—The corresponding section of the English Act is § 14. See Glen, p. 40; Lumley, p. 33.

General Police Act.—The corresponding section of the General Police Act is § 183.

Power to make Sewers. Sewers to be cleansed.

73. The local authority shall have power to construct within their district, and, also when necessary for the purpose of out-fall or distribution of sewage, without their district, such sewers as they may think necessary for keeping their district properly cleansed and drained, and may carry such sewers through, across, or under any turnpike or other road, or any street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any street or road, and after reasonable notice in writing (if upon the report of surveyor it should appear to be necessary), into, through, or under any lands whatsoever, and from time to time to enlarge, lessen, alter, arch over, or otherwise improve, or to close up or destroy all sewers vested in them, provided no nuisance is created by such operations; and 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 constructed, kept, and cleansed as not to be a nuisance, and for the purpose of cleansing and emptying them may construct and place either above or under ground, such reservoirs, sluices, engines, or other works as may

be necessary, and may 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 of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, but so as not to create a nuisance.

Power of L.A. to make sewers.—The construction of sewers may either be undertaken under this section, or a special drainage district may be formed under § 76. In burghs sewers may also be constructed under the General Police Act. When constructed under this section, the expense is chargeable against the general P.H. assessment; when constructed under § 76, the expense is chargeable against the special drainage assessment authorised by § 93; when constructed under the General Police Act, the expense is chargeable against the sewer rates leviable upon owners in terms of that Act.

Under § 73, the L.A. may proceed *ex proprio motu*, and without a requisition; under § 76, a requisition by ten inhabitants is indispensable.

To the L.A. is left the selection of a scheme, and the responsibility of seeing that it is properly carried out. The Court has no power to review the resolution of the L.A. on a complaint that the scheme may prove a nuisance. *Steel, &c., v. Police Commissioners of Gourock*, 11th July 1872, 10 M. 954; P.L.M., 1873, p. 84.

Surface drains.—It does not appear that the sewers authorised by § 73 must of necessity be underground, and the Board have frequently held that an open sewer may be constructed by the L.A., and the expense charged against the P.H. assessment.

Sewers must not create a nuisance.—The L.A. are not entitled to create a nuisance by the construction of sewers. Nor are they entitled to pollute streams by the discharge of sewage into them. *Parochial Board of Barony v. Police Commissioners of Kirkintilloch and L.A. of Cadder*, 12th June 1880, P.L.M., 1880, p. 371. And *Caledonian Railway Co. v. Baird & Co.* (see § 19, note). Compare also the provisions of the Rivers Pollution Act, *infra*.

Should a nuisance be created by the L.A., action may be taken by the Board, or by the parties interested. But such action is not competent until a nuisance actually exists; the mere allegation that it will exist is insufficient. *Steel, &c., v. Police Commissioners of Gourock*, *supra*.

A sewer so foul as to be injurious to health is a nuisance under § 16 (b).

Flushing and ventilation of sewers.—A properly constructed sewer is not liable to become a nuisance if regularly flushed and sufficiently ventilated. Sewers cannot safely exist without means of flushing. When the water supply is abundant, there is no difficulty; but when the supply is limited, special apparatus is required, as the irregular flushing by rain is insufficient in dry seasons, and fails just when most needed. Efficient ventilation is also necessary to prevent nuisance, especially when sewers discharge into the sea, and are tide-locked at intervals. Some difference of opinion exists as to the best method of sewer ventilation. See § 82.

Laying sewers through private property.—The L.A. 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 the 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.

As to sewers under wharves, docks, &c., see § 25.

Local Government Act.—Drainage works being "capital works" as defined by § 18 (7) of the L.G. Act, cannot be undertaken by the district committee or county

council without the consent in writing of the standing joint-committee in terms of § 18 (6).

English P.H. Act, 1875.—The corresponding provisions of the English Act are contained in §§ 15, 16, 18, 19. See Glen, pp. 42, 44, 56, 57; Lumley, pp. 33, 35, 45.

General Police Act.—The corresponding provisions of the General Police Act are contained in §§ 186, 187, 188.

Powers of utilizing Sewage.

74. The local authority may from time to time, for the purpose of utilizing sewage, agree with any person as to the supply of such sewage or the distribution thereof over land, and as to the works to be made for the purpose of such supply or distribution, 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; 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 contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage.

Utilisation of sewage.—See account of the sewage farm at Forfar in the Board's Report, 1881, App., p. 19. L.A.'s may themselves undertake works for the application of sewage to land, or they may contract for the supply of sewage to other persons.

A proprietor had, prior to the passing of the P.H. Act, constructed sewers for carrying to his lands sewage from his property within a burgh. The L.A. 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 L.A. to interdict them from discharging sewage on his lands. The L.A. 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. L.A. of Wishaw*, 15th July 1887, 14 R. 920; P.L.M., 1887, p. 488.

English P.H. Act, 1875.—The corresponding provision is contained in § 27. See Glen, p. 67; Lumley, p. 53.

Power of Entry.

75. 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 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 authorized, to enter and do all or any of the works or operations foresaid.

Application to sheriff for warrant.—See Forms, *infra*.

A S.I. 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 S.I. to appear before him again with a written report of his proceedings. The S.I. appeared as ordered, and craved expenses of process. The respondent maintained that the L.A. 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 L.A., 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 L.A. *L.A. of Campsie v. Brown*, P.L.M., 1874, p. 148.

English P.H. Act, 1875.—The corresponding provision is § 305. See Glen, p. 560; Lumley, p. 403.

Formation of Special Drainage District.

76. Upon requisition to that effect made in writing by not fewer than ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days notice, and shall consider the propriety of forming part of their district into a special drainage district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the resolution to the sheriff, and the sheriff, not being a sheriff substitute resident within the 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 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; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by a sheriff substitute, in which case it may be appealed to the sheriff.

P.H. Amendment Act, 1882.—The Amendment Act of 1882 provides for the enlarging, limiting, or combining of special districts. See the Act, *infra*.

Local Government Act.—Where a special district has been formed in a parish,

a sub-committee—consisting partly of persons resident in the special district, whether members of the district committee or not—may be appointed by the district committee to manage and maintain the works. Where the special district is partly within a burgh, this sub-committee shall also comprise representatives of the L.A. of the burgh. Where a special district is wholly within a police burgh formed after the passing of the L.G. Act, the police commissioners will become the L.A. within the special district, but the assessment will continue to be levied as before. L.G. Act, § 81.

Drainage works being "capital works," any operations by district committees under § 76 of the P.H. Act will require the consent in writing of the standing joint committee. L.G. Act, § 18, (6), (7). See also note on "Appeals," *infra*.

General Police Act.—Subject to the approval of the sheriff, burghs may be divided into separate drainage districts under § 185 of the General Police Act, and such districts may be assessed separately under § 98.

The commissioners of a burgh, in exercise of their powers under the General Police Act and the P.H. Act, and with a view to the imposition of the several rates authorised by either of these Acts, resolved to form into a special drainage district a certain part of the burgh. The sheriff held that the resolution was incompetent, being founded both on the General Police Act and the P.H. Act, and that the proceedings should have been under one or other, not under both. *Mackay, &c., v. Police Comrs. of Maryhill*, 6th May 1889; P.L.M., 1889, p. 482.

Requisition.—See Form, *infra*.

It is incompetent for a L.A. to form a special district without a requisition.—B.

It is at least doubtful whether a requisition can be competently withdrawn after it has been presented and the statutory procedure commenced.—B.

It is safer that the requisition should be considered and disposed of by the L.A. itself than by a committee. Board's Report, 1870, p. xxiii.

Inhabitants of the district.—The requisition is to be signed by "ten inhabitants of the district." The word "inhabitant" is to be read in the most general sense as including any person residing in the district. "District" means here the whole district of the L.A. It is not necessary that the requisitionists reside in the proposed special district.—B.

An inhabitant is not disqualified as a requisitionist by being a member of the L.A. Board's Report, 1870, p. xxiii.

See also remarks by Sheriff of Ross-shire (Cheyne) and English decisions quoted by him in *Mackenzie v. L.A. of Urray*, 29th March 1889; P.L.M., 1889, p. 321.

Notice of meeting.—Twenty-one clear days' notice must be given, and the notice should contain a distinct statement of the business to be brought before the meeting.—B.

Boundaries of District.—The resolution of the L.A. must specify the limits of the proposed special district, otherwise much inconvenience and litigation may result. In the case of a village, for instance, it is not sufficient to say, "the village of —"; the boundaries must be in some manner defined.—B.

The whole district of the L.A. cannot be formed into a special district; but more than one special district may be formed by a L.A.—B.

Formation of special district after works are executed.—It is doubtful if a special district can be formed after works have been executed.—B.

A L.A. executed drainage works without forming a special district. After the completion of the works a requisition was presented to the L.A., but they refused to form a special district. Appeal was taken, and the sheriff held that after the works had been completed under the general powers of the L.A. without objection on the part of the appellants, they were not entitled afterwards to form a special district. *Ainslie v. L.A. of Ormiston*, P.L.M., 1879, p. 428.

Publication of Resolution.—The resolution must be published *in extenso* in the newspapers. The publication should be made within the ten days during which an appeal is competent; but publication is not an indispensable preliminary to an appeal.—B.

Appeals.—With regard to appeals to the sheriff under § 76 of the P.H. Act, some difficulty has been introduced by the provision in § 17 (2 c) of the L.G. Act giving to any five ratepayers the power to appeal to the county council from any

proceedings or order of a district committee. This appeal to the county council does not supersede the appeal to the sheriff; consequently it would appear that two modes of appeal against resolutions under § 76 of the P.H. Act will be available. It is difficult to determine the relation between these two appeals. It appears unreasonable that there should be two concurrent appeals. It is equally unreasonable that, when an appeal has been taken to the sheriff, whose decision is declared to be final, an appeal to the county council should thereafter be competent. On the other hand, if an appeal is taken in the first instance to the county council, subsequent proceedings before the sheriff might be barred, in respect that (1) the ten days during which the appeal to the sheriff is competent would probably have elapsed before the decision of the county council could be obtained; and (2) there is no provision for appeal from the decision of the county council to the sheriff. The sheriff, however, might possibly hold that in such cases the functions of the L.A. are not finally discharged until the decision of the county council has been given. The most prudent course would appear to be for the persons aggrieved by the resolution of the district committee to appeal to the county council, and at the same time to lodge an appeal with the sheriff, requesting him, when the case came up for hearing, to sist proceedings until the decision of the county council should be given.

Duty of L.A. after special district has been formed.—When a special drainage district has been formed, it is the duty of the L.A. to carry out an efficient scheme of drainage. The statute leaves them no option in the matter.—B.

The L.A. are bound to make not only the main drains, but also the branch drains along streets formed or to be formed; and the drains should be so constructed as to convey all the sewage of the special drainage district, otherwise the drainage system cannot be regarded as efficient.—*Board's Report, 1875, p. xxvi.*

In the case of a dwelling house which, though presently standing alone, will in the course of a very few years form part of a street, it appears reasonable that the L.A. should extend the drainage and water-supply system to such a house.—B.

Assessments in special drainage districts.—See § 93; also note "Local Government Act," *supra*.

Loans for special drainage districts.—See § 86, and P.H. Amendment Act, 1875.

English P.H. Act, 1875.—A similar provision is contained in § 277 of the English Act. It applies to rural authorities only. See Glen, p. 528; Lumley, p. 380.

Power to drain into Sewers of Local Authority.

77. Any owner or occupier of premises within the district of a local authority liable for general or special sewerage or drainage 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 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.

Regulations as to drainage connections.—The L.A. 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.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 21. See Glen, p. 60; Lumley, p. 46.

Rivers Pollution Act, 1876.—The Rivers Pollution Act, § 7, requires the L.A.

to give facilities to manufacturers to enable them to carry liquid refuse into their sewers. See the Act, *infra*.

Use of Sewers by Persons beyond District.

78. 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 general or special sewerage or drainage assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority, upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, or, in case of dispute, shall be settled by the sheriff.

Right of persons beyond district to drain into sewers.—It appears that L.A.'s have no power to prohibit persons outside the district from draining into their sewers. See decision in Sheriff Court of Lanarkshire, *Allan, &c., v. Police Comrs. of Partick*, 23d May 1887, P.L.M., 1887, p. 541.

Application to sheriff.—See Forms, *infra*.

English P.H. Act, 1875.—The corresponding section of the English Act is § 22. See Glen, p. 62; Lumley, p. 48.

General Police Act.—The corresponding section of the General Police Act is § 194.

Penalty for making unauthorized Drains.

79. Every person not being authorized by the local authority who shall make any drain into any sewer vested in the local authority, shall be liable in a penalty not exceeding five pounds, besides shutting up said drain or paying the expense of shutting it up.

Damage to sewers.—If damage be caused to the sewers by the unauthorised connection made with them, the person would also be liable in the penalty provided by § 101, in addition to the cost of repairing the sewer.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 21. See Glen, p. 60; Lumley, p. 46.

General Police Act.—The corresponding section of the General Police Act is § 190.

Estimates for Work.

80. Before entering into any contract for executing any such work as herein-before or after mentioned, falling under Part VI. 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.

L.A. not bound to proceed by contract.—It does not appear that the effect of § 80 is to limit the L.A. 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.

English P.H. Act, 1875.—The corresponding provision of the English Act is § 174 (3). It applies to urban authorities only. See Glen, p. 325; Lumley, p. 229.

General Police Act.—The corresponding section of the General Police Act is § 189.

Not to build over Sewers.

81. Unless with consent of the local authority, no building shall be erected over any sewer belonging to the local authority, and no vault, arch, or cellar, shall be made so as to interfere with any such sewer.

Meaning of "building."—"Building" includes "house," and is a word of wider signification. For the English decisions as to the meaning of "building," see Glen, pp. 66, 280; Lumley, p. 15.

A local Act prohibited the erection of all houses "and every other building whatever" within thirty feet of the centre of a road. *Held* that this prohibition did not apply to a parapet wall one foot high surmounted by a railing. *Police Commissioners of Partick v. The Great Western Steam Laundry*, 27 Jan. 1886, 13 R. 500.

English P.H. Act, 1875.—The corresponding section of the English Act is § 26. See Glen, p. 65; Lumley, p. 52.

General Police Act.—The corresponding section of the General Police Act is § 191.

Sewers to be trapped.

82. All sewers and drains, whether public or private, shall be provided by the persons to whom they severally belong, with proper traps or other coverings or means of ventilation, so as to prevent stench or deleterious exhalation.

Sewer traps and ventilation.—The Model Byelaws with respect to new streets and buildings issued by the Local Government Board, England, contain regulations as to the trapping and ventilation of house drains. See these Byelaws, Nos. 63, 65, 66, printed in the Local Government Board's Report, 1878, p. 102; also Knight's 'Bye-Laws,' pp. 117, 119, 123.

English P.H. Act, 1875.—See the provisions of §§ 19 and 40 of the English Act; Glen, pp. 57, 83; Lumley, pp. 45, 63.

General Police Act.—The corresponding provision of the General Police Act is § 192.

Distilleries, &c., to deposit Refuse.

83. The owners or occupiers of distilleries, manufactories, and other works 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 offensive or injurious to the health of those living in the vicinity thereof, or to use the best practical means for rendering the same inoffensive or innoxious before discharging it into any river, stream, ditch, sewer, or other channel.

Pollution of streams by refuse from manufactories, &c.—The pollution of waters by gas washings, &c., is dealt with in §§ 27-29 of the P.H. Act. See these sections and notes, *supra*.

The Board, shortly after the passing of the P.H. 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 83d section of the Public Health 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. 2d, That the manufacturers polluting the river Leven are likewise liable to be prosecuted for penalties under the 27th and 29th sections of the 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, and that under the 83d section, 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.*

But the provisions of the P.H. Act with regard to the pollution of streams are now of secondary importance, a more efficient remedy being provided by the Rivers Pollution Act. See that Act, *infra*, §§ 2, 4, 7.

General Police Act.—The corresponding provision of the General Police Act is § 193.

Drain discharging below High-water Mark.

84. If the local authority shall consider it necessary for public health that any drain should discharge itself below high-water mark, they shall be entitled, with the consent of the Board of Trade, (without prejudice to any question as to the right to the foreshores,) to construct the requisite works for that purpose.

Carrying drains below high-water mark.—A L.A. issued an order compelling all proprietors to carry their drains to low-water mark. The Board held that the order was one which could not be enforced; and that, if the L.A. 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 § 84 with the consent of the Board of Trade.—B.

General Police Act.—The corresponding section of the General Police Act is § 195.

As to the Drainage of Houses.

85. If a dwelling house, distillery, manufactory, or other work, or any erection, or enclosure for the keeping of live stock 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 notice, require the owner of such house, distillery, manufactory, work, erection, or enclosure, within a reasonable time therein specified, to make a sufficient drain emptying into any 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 feet 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 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 expenses incurred by them in so doing may be recovered from such owner in a summary manner.

Notice to owners.—See Forms, *infra*.

Drainage of houses.—Under this section the L.A. 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 L.A. themselves. —B.

In the Model Byelaws with respect to new streets and buildings issued by the Local Government Board, England, there are regulations (Nos. 60-66) as to the drainage of houses. Nos. 62 and 64 relate to the material, size, mode of laying, &c., of house drains. See the Local Government Board's Report, 1878, App., p. 102; also Knight's 'Bye-Laws,' pp. 113-125.

Cesspools.—See § 16 (a) and (b), and notes, *supra*; also Practical Suggestions, *infra*.

English P.H. Act, 1875.—The corresponding section of the English Act is § 23. See Glen, p. 63; Lumley, p. 48.

General Police Act.—The corresponding section of the General Police Act is § 199.

Power of borrowing for Sewers.

86. It shall be lawful for the local authority to borrow for the purpose of making, enlarging, or constructing sewers, and on the security of the after-mentioned special sewer assessments, where such exist, and general assessments or either of them, 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 general assessments or any of them in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignments and discharges thereof may be in or near to the forms contained in the schedule hereto annexed, and such bonds shall be signed by the chairman and two members 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 member or officer of the local authority 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 local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within 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 in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of making, enlarging, and re-constructing sewers, and to no other purpose whatsoever.

Loans from Public Works Loan Board.—On the recommendation of the Board, L.A.'s may obtain loans for drainage works from the Public Works Loan Board at a low rate of interest. See the P.H. Amendment Act, 1875, *infra*.

Assessments.—See §§ 93, 94, 95.

Local Government Act.—The District Committee has no power to raise money by rate or loan. *L.G. Act*, § 17 (2 a).

For the borrowing powers of county councils, see *L.G. Act*, § 67.

General Police Act.—The corresponding provisions of the General Police Act are contained in §§ 196, 197.

English P.H. Act, 1875.—The borrowing powers under the English Act are contained in §§ 233-244. See Glen, pp. 442-459; Lumley, pp. 307-318.

Local Authorities may combine.

87. Two or more local authorities may, with the sanction of the Board, combine together for the purpose of executing and maintaining any works by this Act authorized in regard to sewerage or drainage that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

Sanction of Board.—The sanction of the Board is required to L.A.'s combining to construct drainage works, but under § 92, which gives corresponding powers as to water supply, the sanction of the Board is not required. It is immaterial in what form the application for sanction is made. It may be either a joint application or an application at the instance of each of the L.A.'s.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 285. See Glen, p. 532; Lumley, p. 383.

Supply of Water for Burghs above 10,000.

88. With respect to burghs having a population of ten thousand or upwards according to the census last taken, or having a local Act for police purposes, it shall be lawful for the local authority, if they think it expedient so to do, to contract or arrange with any water company established by Act of Parliament for a supply of water, or, where there is no such company, themselves to provide a supply of water, to such extent as may be necessary for the sanitary and other public purposes of this Act herein-before provided.

Burghs of 10,000 or upwards and burghs with local Acts.—Such burghs cannot take advantage of the various provisions as to water supply contained in § 89, unless the local Act makes no provision for water supply, in which case they come under the proviso in § 1 of the P.H. Amendment Act, 1871. See that Act, *infra*.

As to the power of such burghs to borrow for water supply works, see note to § 89 (6).

Powers of L.A. with regard to water supply.—See notes to § 89.

Water for sanitary purposes.—A question arose whether the L.A. has power under § 88 to provide water for domestic use. The Board held that the introduction of a supply of water for domestic use and the removal thereby of the insanitary conditions arising out of an insufficient or unwholesome supply, is one of the "sanitary purposes" of the P.H. Act.—B.

General Police Act.—Power to provide a water supply is given to all burghs by § 220 of the General Police Act.

English P.H. Act, 1875.—Local authorities are empowered to introduce water under § 51 of the English Act, no distinction being made between the larger burghs on the one hand and the smaller burghs and rural districts on the other. See Glen, p. 97; Lumley, p. 71.

Supply of Water for Burghs under 10,000.

89. With respect to the improvement of burghs having a population of less than ten thousand, according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

- (1.) The local authority, if they think it expedient so to do, may acquire and provide or arrange for a supply of water for the domestic use of the inhabitants, and for that purpose may conduct water from any lake, river, 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 promoters of undertakings by the Lands Clauses Acts: Provided always, that they shall make reasonable compensation for the water so taken by them, and for the damage which may be done to any lands by reason of the exercise of the powers hereby conferred in terms of the said Acts; and further, that for the purposes of this Act the words "lands" and "land" in the said Acts and in this Act shall include "water" and the right thereto: Provided also, that it shall not be lawful for the local authority to provide or supply water in any burgh, parish, or district which any company, established by Act of Parliament, is authorized to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such company.

Local Government Act.—The powers of L.A.'s of parishes being transferred by the L.G. Act to the county councils and district committees, the words *counties or districts of counties* must be substituted for "parishes," and the words *county councils or district committees* for "parochial boards."

Water supply works being included in the "capital works" specified in § 18 (7) of the L.G. Act, cannot be undertaken in any county or in any district thereof without the consent in writing of the standing joint committee, in terms of § 18 (6).

Power and duty of L.A. to provide water supply.—The L.A. may introduce water either under § 89 (1) or § 89 (5). In the former case the expense falls to be paid out of the general assessment; in the latter the assessment is confined to the special water supply district.

Although the words of the Act appear to be permissive and not obligatory, failure to provide a water supply where such is required renders a L.A. liable to be proceeded against under § 96 or § 97.

It is upon the L.A. 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 L.A. alone to decide.—B.

Contracts and agreements for supply of water.—The L.A. may make contracts or agreements for a supply of water, and although in districts which a water company is authorised to supply the L.A. have no power themselves to provide water, they may nevertheless enter into a contract or agreement with any such company.

The L.A. of Barony entered into an agreement with the Glasgow Water Commissioners to supply part of the district of the L.A. A ratepayer raised an action of suspension and interdict against the L.A., 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 L.A. had not acquired their undertaking. *Held* (Lord Adam) that the proviso in the latter part of § 89 (1) did not apply, the Water Commissioners having power under their own Act to make an agreement with any L.A. for a supply of water. *Macfarlane, Strang, & Co. v. Motion*, 11th July 1884, P.L.M., 1884, p. 638.

The L.A. of a burgh had a contract with a water company to supply their district with water. The contract expired, and the L.A. did not renew it. Certain ratepayers applied to the Board to compel the L.A. to provide a supply. The Board held that they could not interfere, in view of the latter part of § 89 (1).—B.

Power to acquire water.—In general the L.A. obtains water by agreement with the proprietors, but when a proprietor refuses, the L.A. must resort to an Act of Parliament or a Provisional Order. The latter course is cheaper. The procedure requisite to obtain a Provisional Order will be found in § 90.

In a case where the right to take water was vested in the tenants of certain mills, the Board held that it was competent for the L.A. to take on lease the mills, that being apparently the only way of getting the water.—B.

When the L.A. take water from a stream they are not bound to purchase the rights of inferior heritors. A L.A. took water from springs which ultimately found their way into a stream. A lower proprietor sought to interdict the L.A., and claimed damages from them for abstracting the water. It was argued that the L.A. 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 L.A. 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, § 116 providing other procedure. *Peterhead Granite Polishing Co. v. Parochial Board of Peterhead*, 24th January 1880, 7 R. 536; P.L.M., 1880, p. 200.

Duty of L.A. in laying pipes.—It is the duty of the L.A. to lay the main pipes, and to provide street wells, &c.; but they are not entitled to provide service-pipes for private houses at the expense of the ratepayers.—B.

In burghs the L.A. have power in certain circumstances to require owners to lay service-pipes from the main pipe to their houses, and when the owners refuse the commissioners may lay down such service-pipes themselves, and recover the expense from the owners. See § 221 of the General Police Act.

The mains must be brought within a reasonable distance of the houses. But what a reasonable distance is depends on circumstances, and in the event of a dispute can only be settled in a court of law. The decision would probably to some extent depend on the number of persons to be supplied. It might not be obligatory on a L.A. to extend their mains to meet the convenience of a single ratepayer; whereas, if a large number of persons were inconvenienced by the distance, the court might hold that the L.A. were acting unreasonably in failing to make the supply more accessible.—B.

Supply to private houses.—The L.A. have power to allow householders to take the water into their houses. A question arose as to whether the L.A. 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 L.A., 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.

In burghs the commissioners have power under § 210 of the General Police Act to compel proprietors to take water into their houses.

Water for purposes of trade.—See § 89 (3).

Amount of water required.—The supply to be provided for domestic use should be not less than 10 gallons per head. But provision has also to be made for waste, watering streets, flushing drains, extinguishing fires, and other public purposes, so that 20 or 25 gallons per head is usually required.

Waste of water.—It is the duty of the L.A. to use all precautions to prevent the waste of water, and if water is persistently wasted they should apply for interdict against the offenders. The power of the L.A. to withdraw the supply from those who waste water is doubtful.—B.

In burghs a penalty of £5 is imposed upon persons who waste water, under § 223 of the General Police Act.

Byelaws for regulating the water supply.—There is no provision in the statute empowering the L.A. to make byelaws or regulations as to the terms or conditions on which water may be obtained. But there can be no doubt as to the advisability of such byelaws, and a number of L.A.'s have adopted them. It is doubtful, however, if such byelaws can be enforced.—B.

In burghs byelaws for regulating the water supply may be made under § 227 of the General Police Act.

Water for extinguishing fires.—There is nothing in the Act as to water for fires, but probably the L.A. may supply water gratuitously for such purposes. The cost of providing fire-plugs may also fairly be charged against the P.H. assessment. But the cost of hose and the equipment of a fire-brigade should not be paid out of the P.H. assessment. In rural districts these expenses should be met by private subscription, in burghs they can be met out of the police assessment.—B.

See also §§ 219 and 346 of the General Police Act.

General Police Act.—The provisions of the General Police Act as to water supply are contained in §§ 216-227.

English P.H. Act, 1875.—The provisions of the English Act as to water supply are contained in §§ 51-70. See Glen, p. 97; Lumley, p. 71. Further powers are given by the Public Health (Water) Act, 1878. See Glen, p. 983; Lumley, p. 496.

House without Supply of Water.

- (2.) If any house within the district is without a proper supply of water at or near the same, the local authority shall compel the owner to obtain such supply, and to do all such works as may be necessary for that purpose:

Distance of water supply from dwellings.—The distance at which a water supply may be from a house to satisfy the terms of § 89 (2) is a question of circumstances, which in cases of dispute will be decided by the Court.

In a case where the nearest supply was from a well 280 yards distant, the Board held that there was not a supply of water at or near the house, and called upon the L.A. to take steps in terms of § 89 (2).—B.

Duty of L.A.—The terms of § 89 (2) are obligatory, and it is the duty of the L.A. to see that every house within their district has a proper supply of water at or near the same.

Introduction of water into houses.—The L.A. may allow owners to introduce water into their houses, but there is no power under the P.H. Act to compel owners to do so. In burghs the L.A. may compel water to be taken into houses under § 210 of the General Police Act.

English P.H. Act, 1875.—Under the English Act the L.A. may compel owners to furnish water to their houses when that can be done at a reasonable cost (§ 62). See Glen, p. 109; Lumley, p. 82. Further powers in this direction are given to rural L.A.'s by the Public Health (Water) Act, 1878. See Glen, p. 983; Lumley, p. 496.

Water for Baths, &c.

- (3.) The local authority, if they have any surplus water after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied: Provided, that when water is thus supplied from such surplus, it shall not be lawful for the local authority to charge the parties obtaining the same both with the special water assessment and also for the supply of water

obtained by them; but the local authority may either charge the special water assessment leviable on such premises, or charge for the supply of water furnished to the same, as they shall think fit:

Water for domestic purposes.—There is no definition of "domestic purposes" in the P.H. Act; but definitions are given in § 225 of the General Police Act, and § 12 of the Waterworks Clauses Act, 1863.

The Board have held 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 § 89 (3). It was held 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*, 1st August 1879, P.L.M., 1879, p. 549.

A dairyman was held liable to be charged specially for water, and not exempt on the ground that cows are domestic animals. *Robertson v. L.A. of Culter*, 11th July 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. *L.A. of Beith v. Muir*, April 1887, P.L.M., 1887, p. 318; also 20th July 1887, P.L.M., 1887, p. 545.

Special water assessment.—The special water assessment referred to in § 89 (3) can only be the assessment leviable under § 94 (1), where a special water supply district has been formed. There is no other special water assessment authorised by the P.H. Act. Except in a special district there is no provision for separating the assessment required for water from the general assessment leviable under § 94 (2). The effect of § 89 (3) 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 L.A. making a separate charge for surplus water supplied under § 89 (3), although the persons using such water have been assessed under § 94 (2).—B.

An assessment for water under the P. H. Act entitles those paying it to a supply for domestic purposes without further charge. See opinion of counsel—the Lord Advocate (afterwards Lord Moncreiff) and Solicitor-General (afterwards Lord Young)—obtained by L.A. of Cathcart, 29th April 1869, P.L.M., 1869-70, p. 568.

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. *L.A. of Beith v. Muir*, April 1887, P.L.M., 1887, p. 318; also 20th July 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. *L.A. of Kilbirnie v. Owner of Commercial Hotel*, 7th March 1889, P.L.M., 1889, p. 213.

In an English case a water company was authorised by a private Act to levy an assessment for water for domestic purposes, and to sell water by meter for purposes other than domestic. Held (Queen's Bench Division) that the company were not thereby precluded from selling water by meter for domestic purposes. *Southwark and Vauxhall Water Company v. Dickenson*, 'Sanitary Record,' February 1889, p. 401.

English P.H. Act, 1875.—The provision of the English Act authorising the L.A. to provide water for trading or manufacturing purposes is contained in § 65. See Glen, p. 114; Lumley, p. 86.

General Police Act.—Under § 222 of the General Police Act water may be supplied for trade purposes on such terms as may be agreed on, or in the event of disagreement on such terms as shall be fixed by the sheriff.

Cisterns, &c. to be supplied with Water.

- (4.) 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, and 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 burgh rates :

Powers of L.A. as to pumps, wells, &c.—Under § 89 (1) the L.A. may provide and maintain new pumps and wells ; under § 89 (4) 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 L.A.

It has been held that the L.A. are entitled to cover up or otherwise protect from pollution any well from which the public have 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*, Court of Session, 19th March 1879, 6 R. 858 ; House of Lords, 8th March 1880, 7 R. (H.L.) 28.

Labouring Classes Lodging Houses Act.—Under § 39 of the Labouring Classes Lodging Houses Act, 1851 (14 & 15 Vict. c. 34) the L.A. have power to supply water to lodging houses provided under that Act "either without charge or on such other favourable terms as they shall think fit." See Memorandum as to the Housing of the Working Classes Act, 1885, *infra*.

English P.H. Act, 1875.—The corresponding provisions of the English Act are contained in §§ 64, 65. See Glen, p. 112 ; Lumley, p. 84.

General Police Act.—The corresponding section of the General Police Act is § 216.

Special Water Supply District.

- (5.) Upon requisition to that effect made in writing by not fewer than ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days notice, and shall consider the propriety of forming part of their district into a special water supply district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district ; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution ; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the same to the sheriff ; and the sheriff, not being a sheriff substitute resident within the 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 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; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by a sheriff substitute, in which case it may be appealed to the sheriff:

Special water supply districts.—See the various notes as to special drainage districts under § 76, which apply equally to special water supply districts.

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. L.A. of Alva*, 10th Sept. 1868, P.L.M., 1868-69, p. 64.

When a L.A. have introduced water into their district, it is incompetent to form part of such district into a special water supply district. *Crieff Hydro-pathic Company v. Police Commissioners of Crieff*, P.L.M., 1871-72, p. 81.

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. *L.A. of Houston v. Barbour*, 6th Jan. 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. L.A. of Kilwinning*, 3d Dec. 1887, P.L.M., 1878, p. 81.

Where a village is partly in the district of one L.A. and partly in that of another, the proper course is for each L.A. to form the portion within its jurisdiction into a special water supply district, after which they may combine under § 92 to execute and maintain the works.—B.

Supply to persons outside district.—If there is any surplus water there is no reason why the L.A. should not make any arrangement as to its disposal that may be calculated to diminish the assessment upon the ratepayers. Under the English P.H. Act, 1875, § 61, the L.A. of one district is empowered to sell water to the L.A. of an adjoining district. See Glen, p. 108; Lumley, p. 82.

An owner of property within a special water supply district, if he resides outside the district, has no right to the water; but his tenants within the district have such right.—B.

A L.A. complained of persons outside a special water supply district carrying off the water from it. The Board suggested that the L.A. might protect the water by enclosing the wells, giving access by means of keys to ratepayers in the special water supply district only, or by raising an action of interdict against the persons living outside the district who carry off the water.—B.

General Police Act.—There is no provision in the General Police Act authorising a special water supply district to be formed, corresponding to § 185, which authorises the formation of special drainage districts.

Power to borrow for Water Supply.

- (6.) It shall be lawful for the local authority to borrow for the purpose of constructing, purchasing, enlarging, or re-constructing 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 on the security of the after-mentioned

special water assessments, where such exist, and of general assessments, or either of them, 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 general assessments, or either of them, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignments and discharges thereof may be in or near to the forms contained in the Schedule hereto annexed; and such bonds shall constitute a lien over the 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 assessments; but no member or officer of the local authority 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 local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within 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 in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of purchasing, making, enlarging, and re-constructing such works, and to no other purpose whatsoever.

Local Government Act.—The district committee have no power to borrow. *L.G. Act, § 17 (2 a).* The county council may, with the consent of the standing joint committee, borrow for public health purposes. *L.G. Act, § 67.*

Loans from Public Works Loan Board.—See the P.H. Amendment Act, 1875, *infra*.

Security.—Both the general assessment and the special water assessment may be assigned in security for a loan for water works in a special district. The repayment of loans has a prior claim over the assessments, creditors being entitled to recover "out of the first and readiest of the said assessments." Whether a L.A. in possession of heritable property is entitled to borrow on the security of that property has not been decided. It does not appear to be competent for a L.A. to borrow on the security of the water works.—B.

Time of repayment of loans.—Under § 89 (6) loans must be repaid within thirty years; but under the P.H. Amendment Act, 1875, loans from the Public Works Loan Board may be extended over fifty years. Loans from private lenders are subject to the provisions of § 89 (6). Loans obtained by county councils must be repaid within thirty years. *L.G. Act, § 67 (2).*

Borrowing powers of burghs over 10,000.—There is some doubt whether burghs having a population of 10,000 or upwards, and burghs having local Acts, have power to borrow for water supply works under the P.H. Act. Such burghs may introduce water under § 88, but no borrowing powers are given by that section;

and if it be held that the preamble of § 89 refers to all the following sub-sections, the result will be that the larger burghs will have power to borrow under the P.H. Act for purposes other than water, but for water they must have recourse to their borrowing powers under other Acts, except such of them as come under the proviso at the end of § 1 of the P.H. Amendment Act, 1871 (see that Act, *infra*). The Board have been inclined to hold, however, that sub-sections 2, 3, 4, 5, and 6 of § 89 are of general application, and not confined to the burghs and districts mentioned in the introductory part of the section. But in view of the doubt that exists, it may be more prudent for the larger burghs, should they wish to borrow for water supply works, to carry out such works under the General Police Act or their own local Acts, instead of under the P.H. Act.—B.

General Police Act.—Borrowing powers are given under § 384 of the General Police Act.

English P.H. Act, 1875.—The borrowing powers of the English Act are contained in §§ 233-244. See Glen, p. 442; Lumley, p. 307.

Regulations as to the Purchase of Land, &c. Publication of Notices. Service of Notices. Power to Local Board to petition Secretary of State upon Matters herein stated. Secretary of State may direct Inquiry; and may make Provisional Order. No Provisional Order valid until confirmed by Parliament. Costs how to be defrayed.

90. 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 of this Act:

- (1.) The local authority before putting in force any of the powers of the said Lands Clauses Acts with respect to the purchase and taking of land shall

Publish once at the least, in each of three consecutive weeks in the month of November in some newspaper circulated in the district or some part of the district within which such local authority has jurisdiction is situate, an advertisement describing shortly the purpose for which the land is proposed to be taken, naming a place where a plan of the proposed works may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further in the month of December

Serve a notice in manner herein-after mentioned on every owner or reputed owner, lessee or reputed lessee, and 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 party on whom it is required to be served, or, if such party is absent abroad, to his agent; or

By leaving the same at the usual or last known place of abode of such party 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 party :

- (2.) Upon compliance with the provisions herein-before contained with respect to advertisements and notices, the local authority may, if they shall think fit, present a petition to one of Her Majesty's principal Secretaries of State; 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 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 said 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 Secretary of State requires :
- (3.) Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the Secretary of State 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 Secretary of State, no Provisional Order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof :
- (4.) After the completion of the inquiry as last aforesaid, the Secretary of State may, by Provisional Order, empower the local authority to put in force, with reference to the land referred to in such order, the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are herein-before required to be served :
- (5.) No Provisional Order so made shall be of any validity unless the same has been confirmed by Act of Parliament,

and it shall be lawful for the Secretary of State, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament:

- (6.) All costs, charges, and expenses incurred by the said Secretary of State in relation to any such Provisional Order as last aforesaid shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, become a charge upon the assessment or special water supply assessment levied in the district or special water supply district, as the case may be, to which such Order relates, and be repaid to the said Commissioners of Her Majesty's Treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

Procedure to be attended to.—If the L.A. resolve to proceed with the taking of land compulsorily, they must be careful to comply with all the provisions of § 90. The petition to the Secretary for Scotland is a necessary part of the procedure; the words in sub-section 2—"if they shall think fit"—do not relieve the L.A. of the necessity of presenting the petition, they merely confer upon the L.A. the option of abandoning their resolution to proceed, notwithstanding that the preliminary procedure of serving the notices, &c., has been gone through.—B.

Secretary of State.—The powers and duties of the Secretary of State under the P.H. Act are transferred to the Secretary for Scotland by the Act 48 & 49 Vict. c. 61, § 5.

Provisional Orders preferable to local Acts.—A Provisional Order presents various advantages as compared with a private or local Act of Parliament. "A local Act is rarely unaccompanied by disadvantages, which from the nature of the case are almost inseparable from special and exceptional legislation, and it can seldom be obtained except at a heavy cost to the district. On the other hand, a Provisional Order does not modify the general law as regards the district, and the expenses incurred by the L.A. in relation to it are comparatively small. Moreover, in cases where the scheme to which it relates is objected to on the part of residents in the district, the local inquiry which is held after due notice affords the objectors an opportunity of being heard, and obtaining, if desirable, a modification of the proposals of the sanitary authority, without incurring the costs of a parliamentary opposition." Local Government Board's Report, 1876, p. lviii.

Joint application for a Provisional Order incompetent.—From an opinion obtained by the Local Government Board, England, it appears that two or more L.A.'s cannot jointly petition for a Provisional Order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Two courses are open to them. Each L.A. may present a separate petition in respect of the particular lands which it requires; or the several L.A.'s may combine in terms of the P.H. Act, and one of them may thereafter present a petition with respect to all the lands required. See Local Government Board's Report, 1889, App. A., No. 42 (5), p. 103.

English P.H. Act, 1875.—The corresponding section of the English Act is § 176. See Glen, p. 340; Lumley, p. 236. But it appears that in England the

L.A. is not empowered to purchase water rights compulsorily by Provisional Order, there being in the English Act no provision similar to that in § 89 (1) of the Scotch Act, which declares that the words "lands" and "land" in the Lands Clauses Acts and the P.H. Act shall include "water" and the right thereto. If an English L.A. desires to obtain water rights compulsorily, they must proceed by private bill, which is much more expensive. See Glen, p. 597, note to § 332; and Lumley, p. 421, note to § 327.

Loans from Public Works Loan Commissioners.

91. *The Public Works Loan Commissioners as defined by "The Public Works Loan Act, 1853," may advance to the Commissioners mentioned in the one hundred and ninety-sixth section of "The Police and Improvement (Scotland) Act, 1862," for the purposes mentioned in that section, and upon the security therein mentioned, and to any local authority for the purposes mentioned in Part VI. of this Act, such sums of money as may be recommended by one of Her Majesty's principal Secretaries of State.*

Repeal of § 91.—This section is repealed by the P.H. Amendment Act, 1875, § 3. See that Act, *infra*.

Execution and Maintenance of Works as to Water Supply.

92. Two or more local authorities may combine together for the purpose of executing and maintaining any works by this Act authorised in regard to water supply that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

Sanction of Board not required.—The sanction of the Board is required when L.A.'s combine to execute drainage works under § 87, but not when they combine to execute water supply works under § 92.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 285. See Glen, p. 532; Lumley, p. 383.

PART VII.

ASSESSMENTS.

Special Drainage Assessment.

93. Where any special drainage district has been formed as herein-before provided, the expense of the sewerage and drainage incurred by the local authority within the same, or for the

purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for sewerage purposes as herein-before provided, shall be paid out of a special assessment which the local authority shall raise and levy on and within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority.

Formation of special drainage district.—See § 76 and notes, *supra*.

Loans for special drainage district.—See § 86 and notes, *supra*.

Mode of assessing special drainage district.—The assessment in a special district is levied in the same manner as the general P.H. assessment. See § 94 (2), *infra*.

Liability for drainage expenses.—A special drainage district is assessable exclusively for the cost of its own drainage, and is exempt from assessment for the drainage of the rest of the district of the L.A. See §§ 94 (2) and 95 (1), *infra*. But the special drainage district is liable along with the rest of the district of the L.A. for the general assessment for purposes other than drainage.

Feuars resident in a special drainage district must pay the assessment for such district although they provide and maintain the sewers applicable to their own houses.—B.

Preliminary expenses of special districts.—The preliminary expenses in connection with the formation of a special district, including cost of surveys, analyses of water, 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.

Expenses of management.—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 water works in a special district, his salary in respect of such employment is a charge against the special assessment.—B.

Cost of collection.—The cost of collecting the rates in a special district forms a charge against the ratepayers in that district alone.—B.

Cleaning streets in a special drainage district.—The cost of cleaning the streets in a special drainage district may be defrayed out of the special drainage assessment, if such cleaning is necessary to maintain the drainage system in a wholesome and efficient condition.—B.

Valuation of special districts.—The valuation of special districts must be taken from the valuation roll; any other valuation would be illegal. Where any subject, entered *in cumulo* in the valuation roll, is partly within and partly without the special district, the L.A. should get the assessor to value separately the premises within the special district.—B.

Local Government Act.—When a special district is wholly within a police burgh formed after the passing of the L.G. Act, the assessments shall be levied in the same manner as they were before such district was formed into a police burgh. L.G. Act, § 81 (3).

General Police Act.—The provisions as to assessment for sewers under the General Police Act will be found in §§ 96-99; these assessments are leviable on owners only.

If the drainage works in a special drainage district formed under the P.H. Act are carried out under the General Police Act, the expense must be met out of the assessments levied under the General Police Act, and not out of the P.H. assessment; the general principle being that assessments must be laid on in conformity with the Act under which the expense is incurred.

A special drainage district was formed in a parish, 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 § 94 of the P.H. Act, 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*, 9th June 1882, 9 R 917; P.L.M., 1882, p. 414.

Special water assessment.—See § 94 (1) and notes, some of which apply equally to the special drainage assessment.

Assessments in Burghs under 10,000. Special Water Supply Assessment.

94. With respect to burghs having a population of less than ten thousand according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

- (1.) Where any special water supply district has been formed as herein-before provided, the expense incurred for water supply within the same, or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for water supply purposes as herein-before provided, shall be paid out of a special assessment which the local authority shall raise and levy on or within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority:

Formation of special water supply district.—See § 89 (5) and notes, *supra*.

Loans for special water supply district.—See § 89 (6) and notes, *supra*.

Special drainage district.—See § 93 and notes, *supra*, most of which apply also to special water supply districts.

Liability for special water assessment.—Every ratepayer within the special water supply district is liable to be assessed whether he uses the water or not. See opinion of counsel—Lord Advocate (afterwards Lord Moncreiff) and Solicitor-General (afterwards Lord Young)—obtained by L.A. of Cathcart, 29th April 1869, P.L.M., 1869-70, p. 568.

A ratepayer refused to pay the special water assessment on the ground of the distance (about 130 yards) his house was from the nearest well, but intimated that he was willing to pay if the L.A. gave him a supply at a distance equal to the other inhabitants (about 50 yards). The sheriff gave decree for the amount of the assessment. *L.A. of Muirkirk v. Taylor*, 5th July 1877, P.L.M., 1877, p. 431.

A field forming part of a farm was within the boundaries of a burgh, but the farmhouse and steading were situated outside the burgh boundaries. The assessment for water was imposed upon the farmer in respect of the field within the burgh, although he got no supply of water, the corporation not being authorised to supply water beyond their boundaries. The sheriff held that

the corporation were not only empowered but bound to impose the assessment on the field in question. *Caldwell v. Wilson (Collector of Burgh of Irvine)*, 14th Jan. 1888, P.L.M., 1888, p. 209.

Voluntary contributions for expense of water works.—If the consumers of the water voluntarily pay the whole expense of the supply, there is nothing illegal in the L.A. accepting such payment and dispensing with an assessment. But if the L.A. have to raise the money compulsorily, they can only do so by imposing an assessment.—B.

Where the cost of a supply is great, proprietors and others frequently give voluntary contributions to assist the ratepayers. *Board's Report*, 1872, p. xxvii.

Maximum assessment exhausted for water supply.—The maximum assessment under the P.H. Act for all purposes is 2s. 6d. per £. If the assessment for water amounts to 2s. 6d., there is no margin left for drainage or other sanitary purposes. If the L.A. think it expedient, they are entitled to exhaust their assessing powers in the introduction of a water supply, but they must consider whether it is prudent to do so.—B.

Special water assessment may be supplemented by general assessment.—Where the cost of a water supply is so great that the maximum assessment over the special district is insufficient to meet the annual charge for interest and repayment of principal, the deficiency may be met either by voluntary contributions or out of the general assessment over the whole district of the L.A. The Lord Ordinary (Kyllachy) held that the latter course was within the rights of a L.A. *Tolmie v. Parochial Board of Urray*, reported in 'Glasgow Herald' of 12th March 1890.

Application of special water assessment.—The special water assessment must be applied to the expenses of the water works alone, or 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 water works, the expense falls to be paid out of the special water assessment.—B.

Assessment for general Expenses incurred in executing this Act.

- (2.) All charges and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as herein-before or after provided, may be defrayed out of an assessment to be levied by the local authority along with but as a separate assessment from any one of the assessments herein-after mentioned in this section; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is herein-after authorized, where the local authority is a parochial board:

The assessment for the relief of the poor, where the local

authority is a parochial board, or, where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor :

Provided always, that where the local authority is a town council or police commissioners, or trustees acting as police commissioners, or where a parochial board is the local authority in a district, including, as well as the landward part of a parish, a burgh or town having a town council or police commissioners, or trustees acting as police commissioners, the annual value of the following lands or premises shall for the whole assessments under this Act be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland ; viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depôts, wharfs, and buildings, which shall be assessable on their full annual value :
2. All the underground water or gas pipes or underground works of any water or gas company :
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purposes :
4. All mines, minerals, and quarries :

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall thereupon order the petition to be served on the local authority upon a short induciæ, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff substitute it shall be subject to appeal to the sheriff : Provided also, that where a special drainage district has been formed as herein-before provided, and the drainage works therein have been executed and are maintained under the authority of this 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; and where a special water supply district has been formed as herein-before provided, and a sufficient supply of water has been obtained and is maintained therein under the authority of this Act, the lands and premises situated within such special water supply district shall not be liable to assessment for the expense of supplying water for other parts of the district of the local authority:

Mode of levying P.H. assessment in burghs.—The P.H. assessment in burghs is leviable in the same manner as either the prison assessment or the police assessment, according as the L.A. may resolve. Where there is no prison assessment, the P.H. assessment must be levied in like manner as the police assessment: it is not competent to levy it in like manner as the prison assessment might have been levied. If there is no prison or police assessment, the L.A. must assess, not in the manner that these assessments or either of them might have been levied, but in like manner as the assessment for relief of the poor. If there is no assessment for relief of the poor, the P.H. assessment must be levied in like manner as an assessment might have been levied for relief of the poor.—B.

Where powers are given for the same purpose both under the General Police Act and under the P.H. Act, care must be taken that the expense is met out of the assessment authorised by the Act under which the expense has been incurred; sanitary works executed under the General Police Act cannot be paid out of the P.H. assessment, and vice versa.

The P.H. assessment must be imposed as a distinct and separate assessment, although it may be levied along with other assessments.

Mode of levying P.H. assessment in non-burghal districts.—It is provided by § 94 (2) that where the L.A. is a parochial board the P.H. assessment must be levied in the same manner as the assessment for relief of the poor, or where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for relief of the poor. The mode of levying the assessment for the poor is fixed by the Poor Law Act of 1845 (8 & 9 Vict. c. 83), § 34 *et seq.*, as amended by the Act 24 & 25 Vict. c. 37. The assessment is levied, not on the gross rental, but on the annual value after the deductions specified in § 37 of the Poor Law Act have been made.

The L.G. Act alters the assessing body, but not the mode of levying the assessment. The P.H. assessment is to be included in the consolidated rate, but will be a distinct and separate assessment (L.G. Act, §§ 27, 62 (2)). Although the district committee will in general be the L.A., the P.H. assessment will be levied by the county council, the district committee having no power to raise money by rate or loan (L.G. Act, § 17 (2 a)). The area of assessment will be the district of the county, or in undivided counties the whole county (L.G. Act, §§ 17 (4), 26 (4)). The P.H. assessments are to be levied subject to the provisions of the P.H. Act (L.G. Act, §§ 17 (4), 27 (3)).

Classification in burghs.—In burghs the classification set forth in the proviso to § 94 (2) and § 95 (1) will have effect; for the purpose of assessments for water supply, manufactories in burghs are included in the same classification (P.H. Amendment Act, 1871, § 1). The P.H. classification resembles the classification under § 90 of the General Police Act, but includes in addition mines, minerals, and quarries. Under the General Police Act mines, minerals, quarries, and manufactories are included in the classification for the purposes of the water assessment alone.

Classification in parishes.—In a number of parishes the occupants are classified in terms of § 36 of the Poor Law Act, and a differential rating is in force. It

has been held that a classification for the poor-law assessment applies also to the P.H. assessment. See the decision of the sheriff of Lanarkshire in a case at the instance of the inspector of Cambuslang, P.L.M., 1871-72, p. 143. The Board have held that where the classification under the proviso in § 94 (2) is in force, it supersedes and overrides the classification under the Poor Law Act.—B.

The L.G. Act provides (§§ 17 (4), 27 (3)) that the P.H. assessments are to be levied subject to the provisions of the P.H. Act. The various conditions as to classification, deductions, and differential rating of parishes are therefore continued; and thus within one and the same district there will in many cases be different modes of levying the P.H. assessment—one parish having one classification, another a different classification, and a third no classification, while some are assessed according to established usage.

A further difficulty arises with regard to the application of the proviso in § 94 (2) that "where a parochial board is the L.A. in a district, including, as well as the landward part of a parish, a burgh or town having a town council, or police commissioners, or trustees acting as police commissioners," the classification set forth in that section shall come into force. The effect of the L.G. Act upon this proviso is somewhat doubtful. Three views are tenable. 1. If the P.H. assessment is to be levied in strict and literal compliance with the wording of the P.H. Act, there will be no case in which a parochial board will be the L.A., and the proviso will only take effect in burghs. 2. It may be held that the effect of the L.G. Act is to retain the *status quo* as regards P.H. assessments, and that in parishes where the proviso had taken effect prior to the passing of the L.G. Act, it will continue to have effect. (See Nicolson and Mure's edition of the L.G. Act, § 27, note 15.) 3. On the other hand, it may be held that as the L.G. Act substitutes the county council and district committee for the parochial board as the administrators of the P.H. Act, the words "a county council or a district committee" must be substituted for the words "a parochial board" in § 94 (2). In that case the result would be that the classification and differential rating authorised by the proviso would apply to all districts and undivided counties which embraced a burgh; in other words, would apply to almost every district in Scotland.

Power of County Council to modify rating provisions.—The Local Government Act provides (§ 63) that whenever, owing to the enactments as to rating in any district, the provisions of that Act cannot conveniently receive effect, the county council may, subject to the approval of the sheriff, modify or add to these provisions. It is thought that this section provides a remedy for difficulties that may occur in connection with the P.H. assessment. For instance, where a hospital has been provided for a parish, it may be found impossible to extend its use to the whole district of the new L.A. But there is no statutory power enabling the L.A. to limit the assessment for a hospital to the district for which the hospital is available. The result would be that the whole district would have to pay for a work which supplied only a limited portion. But the county council may be able to adjust the matter by a modification of the assessing provisions.

Maximum assessment.—Except in burghs of 50,000 and upwards, the maximum assessment for P.H. purposes is two shillings and sixpence per pound where the powers of the Act as to water or drainage or hospitals have been put in force; where these powers have not been put in force, the maximum is sixpence.

An opinion has been expressed that whenever the maximum assessment of 2s. 6d. is reached in any part, however limited, of the district of the L.A., the L.A. have no power to increase the assessment in those parts of the district where the maximum has not been reached; but such a construction of the Act would seriously affect the assessing powers of the L.A., and it is thought that the Court would hold that the power of the L.A. is not thus limited.

L.A. cannot authorise other persons to assess their district.—A L.A. proposed to enter into an agreement with the Glasgow Water Commissioners, under which the Commissioners were to supply a portion of the parish with water, and levy water rates on the district supplied. The L.A. were advised that, while they had power to contract for a supply of water, they could not authorise other persons to levy water rates within their district. *Opinion of Counsel*—the Lord Advocate

(Moncreiff) and Solicitor-General (Young)—obtained by the L.A. of Cathcart, 29th April 1869, P.L.M., 1869-70, p. 568.

Assessment on unoccupied property.—The L.A. are bound to assess all property entered in the Valuation Roll, whether occupied or not. In the case of unoccupied property, the assessment can be levied only in respect of ownership. *Tod v. Mitchell*, 26th Jan. 1858, 20 D. 445; 30 Jur. 232. *Galloway v. Nicolson*, 19th March 1875, 2 R. 650; P.L.M., 1875, p. 203. See also L.G. Act, § 62 (4).

Exemption from assessment.—Appeals for relief from the P.H. assessment can only be sustained on the ground of "inability to pay."—B.

The L.G. Act (§ 62 (4)) makes provision for occupiers under £4 being relieved from assessment on the ground of poverty.

A parish minister is not liable for Poor Law assessment in respect of his manse and glebe. The question whether he is liable for the P.H. assessment has not been decided. But it was held (Second Division) that a parish minister is liable for assessments under the Education Act in respect of his manse and glebe. (*Hogg v. School Board of Auchtermuchty*, 8th June 1880, 7 R. 986; P.L.M., 1880, p. 411.) As the words of the two Acts are similar, the decision in the one case might be held to rule the other. It may be noted that when this action was brought in the first instance before the sheriff, the claim against the minister included "health rate" in respect of the manse and glebe. But as he admitted liability for this assessment, the question was not decided by the Court.

Assessment on market-gardens.—Where the classification in the proviso to § 94 (2) is in force, market-gardens are entitled to be assessed on one-fourth, being included in "land used for agricultural purposes." *M'Gill v. L.A. of Prestwick*, 18th February 1886, P.L.M., 1886, p. 320.

In an English case greenhouses and glass-houses used by a market gardener were held to be assessable at the lower rate. *Purser v. Worthing Local Board*, 'Sanitary Record' for July 1887, p. 45.

P.H. assessment a prior claim on bankrupt estates.—The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), § 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 L.G. Act (§ 62 (5)) contains a similar provision.

Application of the P.H. assessments.—No part of the P.H. assessment can be applied to the lighting of streets.—B.

The expense of printing names on streets and of repairing street lamps cannot be paid out of the P.H. assessment. *Board's Report*, 1871, p. xxii.

Audit of P.H. accounts.—Under the P.H. Act there is no power of audit, and the only mode by which ratepayers could restrain illegal expenditure was by taking action in a court of law.

The L.G. Act (§ 70) provides an efficient audit of the accounts of county councils and district committees.

English P.H. Act, 1875.—The provisions of the English Act as to assessments are contained in §§ 207-232. See Glen, p. 387; Lumley, p. 267.

General Police Act.—The provisions of the General Police Act as to assessments are contained in §§ 84-108.

- (3.) The assessments specified in this and the preceding section shall not in any year exceed the rate of one shilling and threepence in the pound where the enactments with respect to water for the domestic use of the inhabitants have been put in force, or the rate of threepence in the pound where such enactments have not been put in force.

Repeal of § 94 (3).—This sub-section is repealed by the P.H. Amendment Act, 1871, § 1, save as regards burghs of 50,000 and upwards, and a maximum assessment of 2s. 6d. is authorised where the provisions as to water or drainage or hospitals have been put in force. In other cases the maximum is 6d. See the Amendment Act, 1871, *infra*.

Assessments in Burghs above 10,000, &c.

95. With respect to burghs having a population of ten thousand or upwards, according to the census last taken, or having a local Act for police purposes,—

- (1.) All charges and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as herein-before provided, may be defrayed out of an assessment to be levied by the local authority along with, but as a separate assessment from any other assessment which they may be entitled to levy; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is herein-after authorized where the local authority is a parochial board:

The assessment for the relief of the poor where the local authority is a parochial board, or, where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor:

Provided always, that the annual value of the following lands or premises shall for the whole assessments under this Act be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland; viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depôts, wharfs, and buildings, which shall be assessable on their full annual value:
2. All the underground water or gas pipes or underground works of any water or gas company:
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purposes:

4. All mines, minerals, and quarries :

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall thereupon order the petition to be served on the local authority upon a short *induciae*, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff substitute it shall be subject to appeal to the sheriff: Provided also, that where a special drainage district has been formed as herein-before provided, and the drainage works therein have been executed and are maintained under the authority of this 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:

- (2.) The assessments specified in this section and in the ninety-third section hereof shall not in any year exceed the rate of threepence in the pound.

Assessments in burghs of 10,000 and upwards.—See the notes to § 94 (2), many of which are applicable to § 95 (1).

Burghs having local Acts.—Where the local Act does not make sufficient provision for water supply, or for assessing therefor, the burgh shall be held to come under the provisions of §§ 89 and 94 instead of §§ 88 and 95. See P.H. Amendment Act, 1871, § 1, *infra*.

Repeal of § 95 (2).—See note to § 94 (3).

PART VIII.

ENFORCEMENT OF AND PROCEDURE UNDER THIS ACT.

Procedure if Local Authority neglect its Duty under this Act.

96. If any nuisance shall exist upon or in premises possessed or managed by the 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 authorized 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 two householders residing within the district, or for the inspector of the poor of the parish, or for the procurator fiscal of the sheriff or justice of the peace court of the county, or of the burgh court, or for the 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 regulation or direction of the Board under Part III. 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 authorized or required by or under this Act, it shall be competent for the parties aforesaid, or any one of them, to 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; and further, it shall be competent for the Board 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: Provided always, that in regard to any nuisance for the removal of which drainage works are necessary, the sheriff or other judge or court 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.

Local Government Act.—The L.G. Act provides additional means of compelling the L.A. of a district of a county to carry out the provisions of the P.H. Act. If it appears to the county council that the P.H. Acts are not being properly carried out, they are empowered by § 53 (2) to cause a representation to be made to the Board. Under § 17 (2 c) the M.O. or S.I. of a county or district may appeal to the county council, and the county council may thereupon make an order under the P.H. Acts. The power of appeal given to five ratepayers by § 17 (2 c) may also be made use of when a district committee resolves not to carry out its duty under the P.H. Act.

The L.G. Act does not affect the existing powers of enforcing the provisions of the P.H. Act, and the district committee is declared by § 17 (2 c) to be the body against which proceedings are to be taken.

Power and duty of the Board to prosecute.—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 L.A.

to compel them to perform their duty. The Board receive numerous complaints of the neglect of L.A.'s. Their practice is to inquire into each complaint, and if it appears to be well founded they call upon the L.A. to perform their duty under the Act. In most cases the L.A. comply; but if not, the Board consider whether it is their duty to exercise their powers under § 96 or § 97. If they are satisfied that the neglect of the L.A. is attended with danger to the public health, action is taken against the L.A.—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 L.A. in a court of law, and they leave the complainers themselves to take active steps under § 96 if so advised. 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.

Burial Grounds Act.—See § 16 (j) and notes. See also the case as to Dunnet churchyard, *Board's Report*, 1885, p. xxi; App., p. 30.

English P.H. Act, 1875.—The powers given to the Local Government Board, England, in the case of a defaulting L.A., are contained in §§ 299-302. The Local Government Board may either issue an order, enforceable by writ of *mandamus*, or they may appoint some person to carry out the necessary works at the expense of the L.A. See Glen, p. 551; Lumley, p. 397.

Provision for Refusal or Neglect of Local Authority.

97. In case any local authority shall refuse or neglect to do what is herein 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 authorized 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.

Actions by Board.—The Board have in several instances made application to the Court to compel a L.A. to perform their duty under the Act, and they have in every case been successful in obtaining judgment against the L.A., with expenses.

Neglect by L.A. of duties under other Acts.—It will be observed that § 97 empowers the Board to take steps to compel the L.A. to perform their duties under Acts other than the P.H. 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 L.A., whether at common law, under the P.H. Act, or under any other Act relating to the public health, *e.g.*, the General Police Act, the Rivers Pollution Act, &c.

Procurator Fiscal may sue by Directions of the Board.

98. 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.

English P.H. Act, 1875.—Under § 106 of the English Act the Local Government Board may authorise any officer of police to institute any proceedings which a defaulting L.A. might institute with regard to nuisances. See Glen, p. 175; Lumley, p. 124.

*Duties of Local Authorities as to Inspection of Nuisances, &c.
Procedure where Nuisance beyond District.*

99. It shall be the duty of the local authority to make from time to time, and also when required by the Board, either by themselves or by their officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of the Act in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke: Where a nuisance is situated in a district the local authority of which does not cause the same to be abated, and which nuisance is offensive or injurious 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.

Duty of L.A. with regard to nuisances.—See Part II., Removal of Nuisances, *supra*. It is the duty of the L.A. 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 § 7 of the Housing of the Working Classes Act, 1885, impose upon the L.A. a further obligation with regard to the sanitary condition of premises. See the Memorandum as to that Act, *infra*.

Anonymous complaints.—A L.A. is sometimes indisposed to pay regard to complaints addressed to them anonymously. But it is the duty of the L.A. 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

means 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 L.A. 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 L.A. of much information.—B.

Smoke nuisances.—See § 16 (h) (i) and notes, *supra*.

English P.H. Act, 1875.—The section of the English Act corresponding to the former part of § 99 is § 92; that corresponding to the latter part is § 108. See Glen, pp. 155, 178; Lumley, pp. 110, 124.

Local Authority may require Payment of Costs or Expenses from Owner or Occupier, and Occupier paying to deduct from Rent.

100. It shall be lawful for the local authority, at their discretion, to require the payment of any costs or expenses which the 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 occupier shall be liable to pay the same, and the same shall be recovered in manner authorized 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 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.

Requisition by L.A. on occupier.—See Forms, *infra*.

English P.H. Act, 1875.—The corresponding section is § 104. See Glen, p. 172; Lumley, p. 121.

Penalty for wilful Damage of Works.

101. 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.

English P.H. Act, 1875.—The corresponding section of the English Act is § 307. See Glen, p. 562; Lumley, p. 405.

Appearance of Local Authorities in Legal Proceedings.

102. 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 authorized generally, or in respect of any special proceeding, by resolution of such authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the authority is authorized 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.

Fees chargeable by S.I. for conducting cases.—The L.A. of the burgh of Maryhill brought a case before the police court. The S.I., who was also procurator-fiscal of the burgh and superintendent of police, conducted the case on behalf of the L.A. The respondent was found liable in expenses, and the L.A.'s account was sent to the auditor of court to be taxed. The account contained charges by the S.I. for drawing the complaint, attending court, conducting the prosecution, &c. These charges were objected to by the respondent as not chargeable by the S.I., he not being a procurator or licensed law agent. The auditor, while decidedly of opinion that the S.I. 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 S.I. without any remuneration; 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 (S.I. of Maryhill) v. Carrick*, 26th August 1871, P.L.M., 1871-72, p. 81.

English P.H. Act, 1875.—The corresponding section of the English Act is § 259. See Glen, p. 495; Lumley, p. 344.

Recovery of Penalties.

103. All penalties under this Act, and also all sums of money and expenses herein directed to be recovered in a sum-

mary manner, may, unless otherwise provided in this Act, be recovered at the suit of the local authority, and 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 overcrowding of houses, and all contraventions of the provisions in this Act or of the 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 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 for any period not exceeding fourteen days, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

Procedure to enforce Act.—See § 105.

Prosecutions before police magistrates.—The power to prosecute as police offences the contraventions of the Act enumerated in § 103 applies only to burghs having police magistrates. Where there are no police magistrates, the complaint must be presented to the sheriff under § 105 and the Summary Jurisdiction Acts.

Forms.—It is provided by § 3 of the Summary Jurisdiction (Scotland) Act, 1881 (44 & 45 Vict. c. 33), 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 prescribed by the Summary Jurisdiction Acts.

Application of penalties.—See § 29 and note.

Powers of Act cumulative.

104. All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by Act of Parliament not hereby repealed, or any 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.

Saving of powers at common law.—See § 122.

English P.H. Act, 1875.—The corresponding sections of the English Act are §§ 111 and 341. See Glen, pp. 180, 615; Lumley, pp. 126, 429. But the English Act specially provides that no person who has been adjudged to pay a penalty under the P.H. Act shall for the same offence be liable to a penalty under any other Act.

Form of Applications to the Sheriff.

105. 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 clauses 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 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 imprisonment not to exceed a specified time, but the judgment shall not be invalidated by any deviation from any of the said periods of time.

Forms of Petition.—See the Forms, *infra*. Since the Form of Petition under § 105 was prepared, the Criminal Procedure Act, 1887, has become law, and under § 71 of that Act it is competent to adopt for summary complaints the short forms thereto appended. But the clause is only permissive, and probably it will be safer to follow the form prepared by the Board.

Summary Jurisdiction Acts.—It is provided by the Summary Jurisdiction Act 1881, § 3, that the Summary Jurisdiction Acts, 1864 and 1881, shall apply to all summary proceedings for the recovery of penalties, &c. The form of petition originally prepared by the Board has been now amended in conformity with that enactment.

English P.H. Act, 1875.—The section of the English Act as to summary proceedings for offences, &c., is § 251. See Glen, p. 473; Lumley, p. 329.

No written Pleadings, &c., allowed.

106. 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 the heads marked (*h.*), (*i.*), and (*j.*) in section sixteen the sheriff shall take notes of 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.

Notes of evidence.—It is provided by § 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 § 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.

107. Where in cases under the heads (h.), (i.), and (j.) 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 or the sum of fifty pounds respectively, 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 writ of execution until the appeal be determined; and on such note being lodged, the sheriff clerk shall transmit the process, together with the sheriff substitute's notes of 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 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 an 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 writ 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.

No Appeal otherwise.

108. No appeal shall be competent from any decree or order of any magistrate or justices, 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.

Appeal competent in certain cases.—The Summary Prosecutions Appeals Act, 1875, § 3, amends § 108, in so far as it 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 provisions 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 § 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 § 16 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 § 20 of the P.H. Act,” and found the defender liable in expenses. *Held* that an appeal to the High Court of Justiciary was incompetent under § 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 § 20 of the P.H. Act being thereafter moved for, the cause had not yet been “determined” by the sheriff. *Lec v. L.A. of Lasswade*, 2d Nov. 1883, 11 R. (Justiciary) 1; P.L.M., 1884, p. 300.

A manufacturer whose works were within a burgh presented a petition in the sheriff court to have the L.A. ordained to allow him to empty the drains containing the discharge from his works into the burgh sewers in terms of § 77 of the P.H. Act and § 7 of the Rivers Pollution Act. The L.A., founding on the latter section, stated that the discharge in question would prejudicially affect the sewers and the quality of the sewage, and the sheriff gave judgment upon this issue. *Held* that, in these circumstances, § 108 of the P.H. Act did not operate to prevent an appeal to the Court of Session against the judgment of the sheriff. *Guthrie, Craig, Peter, & Co. v. Magistrates of Brechin*, 9th Jan. 1885, 12 R. 469.

Justices being Members of Local Authority may act.

109. The sheriff, justices of the peace, or magistrates may in all cases, notwithstanding their being members of the local authority or the Board, exercise the jurisdiction vested in them under this Act.

English P.H. Act, 1875.—The corresponding section of the English Act is § 258. See Glen, p. 492; Lumley, p. 341.

Service of Notices, Petitions, and Orders.

110. Notices, petitions, and orders under this Act may be served by any person by delivering the same to or at the resi-

dence of the parties to whom they are respectively addressed, or by being put into the post office duly addressed to the parties; and where addressed to the 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 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, 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.

English P.H. Act, 1875.—The section of the English Act as to service of notices is § 267. See Glen, p. 508; Lumley, p. 358.

Proof of Resolutions of Local Authority and Board.

111. Copies of any orders or resolutions of the local authority or their committee purporting to be signed by the chairman of such body or committee, and all directions and regulations, or orders or resolutions of the Board, signed by their secretary or clerk, 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.

One or more Joint Owners may be proceeded against alone.

112. In case of any demand or complaint under this Act to which two or more parties, whether as 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; 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.

English P.H. Act, 1875.—The corresponding section of the English Act is § 255. See Glen, p. 479; Lumley, p. 334.

Penalty on Occupier obstructing Owner.

113. If the occupier of any premises prevent the 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.

English P.H. Act, 1875.—The corresponding provision of the English Act will be found in § 306. See Glen, p. 561; Lumley, p. 404.

Penalty for violating Act or obstructing its Execution.

114. Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any direction or regulation issued by the Board under this Act, shall be liable for every such offence to a penalty not exceeding five pounds; provided that nothing in this Act shall exempt any person from any penalty or liability to which he may otherwise be subject.

Works of Distribution of Sewage to be deemed a Land Improvement.

115. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an improvement of land authorized by the Land Improvement Act, 1864, and the provisions of that Act shall apply accordingly.

Land Improvement Act, 1864.—That Act enables owners of limited interests in lands to execute certain improvements, and to charge the lands with the cost.

English P.H. Act, 1875.—The corresponding section of the English Act is § 31. See Glen, p. 72; Lumley, p. 56.

Compensation to be made.

116. Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage 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, such compensation shall be ascertained and disposed of in terms of the Lands Clauses Acts.

English P.H. Act, 1875.—The section of the English Act as to compensation is § 308. See Glen, p. 562; Lumley, p. 405. An action was brought under § 308 against the L.A. by the head-master of a school, which had been closed on the solicitation of the L.A., for compensation for loss of emoluments during the time the school was closed. *Held* that the case did not come under § 308. *Roberts v. Falmouth Urban Sanitary Authority*, 'Sanitary Record' for February 1888, p. 398.

Convictions not void for Want of Form.

117. 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.

Summary Jurisdiction Acts.—A similar provision is contained in the Summary Procedure Act, 1864, § 5.

English P.H. Act, 1875.—The corresponding provision of the English Act is contained in § 262. See Glen, p. 497; Lumley, p. 345.

Local Authority or Board not liable for Irregularity of their Officers.

118. The local authority and the Board shall not be liable in damages for any irregularity committed by their officers 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 shall be commenced within two months after the cause of action shall have arisen.

English P.H. Act, 1875.—The provisions of the English Act as to actions against the L.A. and their officers are §§ 264, 265. See Glen, p. 500; Lumley, p. 346.

As to Forms to be used.

119. The forms contained in the 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 all written proceedings or documents under this Act may be wholly or partly printed.

Exemption from Stamp Duties.

120. 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.

Police Constables to aid in executing Act.

121. 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.

Act not to impair Right of Action, &c.

122. Nothing in this Act shall be construed to impair any right of action in respect of nuisances at common law.

See also § 104, *supra*.

SCHEDULE.

BOND FOR BORROWED MONEY.

WE, the local authority of the burgh [or parish] of _____, considering that, by resolution of the said local authority passed on the _____ day of _____, it was resolved to borrow the sum of _____ pounds, under the powers contained in "The Public Health (Scotland) Act, 1867," section _____, for the purpose of [specify purpose], and on security of the after-mentioned 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 to repay the said sum of _____ pounds [here insert obligation to repay in accordance with the arrangement made between the local authority 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 parish] 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 parish] of in favour 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.

THE PUBLIC HEALTH (SCOTLAND) AMENDMENT ACT, 1871.

*(Increases the Maximum Rate of Assessment authorised
by the Act of 1867.)*

34 & 35 VICT., CHAPTER 38.

An Act for amending the Public Health (Scotland) Act,
1867.—[13th July 1871.]

WHEREAS it has been found that the powers of assessment and borrowing contained in the Act passed in the thirtieth and thirty-first year of Her Majesty's reign, chapter one hundred and one, intituled "An Act to consolidate and amend the law relating to the Public Health in Scotland," are insufficient to enable the local authorities to execute the said Act, and it is expedient to amend the said Act in these respects:

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:

Certain provisions of recited Act repealed.

1. That from and after the passing of this Act, sub-section three of section ninety-four and sub-section two of section ninety-five of the said Act, except with regard to burghs having a population of fifty thousand or upwards, according to the census last taken, shall be and are hereby repealed, and in lieu thereof it is hereby declared, that where the provisions of the said Act with respect to water for the domestic use of the inhabitants, or with respect to sewerage and drainage, or with respect to the erection of permanent hospitals for the use of the inhabitants in

terms of section thirty-nine of the said Act and of this Act, have been or shall be put in force, the assessments specified in sections ninety-three, ninety-four, and ninety-five of the said Act shall not in any year exceed the rate of two shillings and sixpence in the pound upon the annual value of lands and premises, whether such rate be payable wholly by the owners or wholly by the occupants or partly by the owners and partly by the occupants, or the rate of sixpence in the pound where none of the said enactments have been put in force: Provided always, that for the purpose of assessments imposed for providing a supply of water for the domestic use of the inhabitants, the annual value of all manufactories within a burgh shall be ascertained in the same manner as the annual value of mines and minerals and quarries is directed to be ascertained in section ninety-four of the said Act; provided also, that when the local Act for police purposes of any burgh does not make suitable and sufficient provision for a supply of water for the domestic use of the inhabitants, or does not authorise an assessment to be levied for that purpose (as to which questions the decision of the sheriff, on a requisition made to him by ten inhabitants, shall be final), then such burgh shall be held to come under the provisions contained in sections eighty-nine and ninety-four of the said first-recited Act, and not under those contained in sections eighty-eight and ninety-five of the said Act.

Provisions as to Hospitals.

2. The thirty-ninth section of the said Act shall be held to authorise the local authority to build or otherwise provide permanent hospitals for the use of the inhabitants in terms of the provisions of the said Act, and it shall be lawful for the local authority to borrow for the purpose of so building or otherwise providing permanent hospitals, on the security of the general assessments specified in sections ninety-four and ninety-five of the said Act, such sums of money and at such times as the local authority shall deem necessary for that purpose, and to assign the said general assessments or any of them in security of the money to be so borrowed, and the bonds to be granted on such borrowing, and transferences or assignments and discharges thereof may be in or near to the forms contained in the schedule annexed to the said Act, and such bonds shall be signed by the chairman and two members of the local authority, and shall constitute a lien over the 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 general assessments, but no member or officer of the local authority 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 local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty-five years from the date of the loan, but the amount of such loans, including interest, shall form a charge against the general 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 wholly in defraying the expense of building or otherwise providing permanent hospitals for the use of the inhabitants, and to no other purpose whatsoever.

Power to borrow.

3. The Public Works Loan Commissioners as defined by "The Public Works Loan Act, 1853," may advance to any local authority for the purpose mentioned in section thirty-nine of the said Act and in this Act such sums of money as may be recommended by one of her Majesty's Principal Secretaries of State.

This Act to be construed with recited Act.

4. Except so far as this Act shall alter the provisions of the said recited Act, this Act shall be construed as part of the same.

Short title.

5. This Act may be cited for all purposes as "The Public Health (Scotland) Amendment Act, 1871."

Assessments.—See §§ 93-95 of the principal Act, and notes thereto.

Loans for hospitals.—The power to borrow applies to permanent hospitals only; the L.A. cannot borrow for a temporary hospital.

It is the opinion both of the Board and of the Public Works Loan Board that the borrowing powers do not extend to buildings for the reception of persons removed from infected houses, where such cases may be kept under observation.

The period of repayment of loans for hospitals is restricted to thirty-five years by the Act of 1871, but is extended to fifty years by § 4 of the Act of 1875 when the money is borrowed from the Public Works Loan Board. (See that Act, *infra*.) Loans obtained by county councils require to be repaid within thirty years. See L.G. Act, § 67 (2).

Repeal of § 3.—The P.H. Amendment Act, 1875, § 3, repeals § 3 of the 1871 Act.

PUBLIC HEALTH (SCOTLAND) ACT AMENDMENT ACT, 1875.

*(Authorises the Public Works Loan Commissioners to advance
Loans at a low rate of interest.)*

38 & 39 VICT., CHAPTER 74.

An Act to amend "The Public Health (Scotland) Act, 1867," and other Sanitary Acts, in respect of Loans for Sanitary Purposes.—[11th August 1875.]

WHEREAS by the "Public Health Act, 1872," the Public Works Loan Commissioners are authorised to make loans to sanitary authorities in England at the rates of interest, and repayable within the periods therein mentioned:

And whereas by the "Public Health (Ireland) Act, 1874," the Commissioners of Public Works in Ireland are authorised to make loans to sanitary authorities in Ireland at the rates, and repayable within the periods therein mentioned:

And whereas it is just that the Public Works Loan Commissioners should be authorised to make loans to sanitary authorities in Scotland at the same rates and repayable within similar periods:

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

Short title.

1. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1875.

Definitions.

2. The expression "Sanitary Acts" shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same; and also Part IV. sections VII. and X., and Part VI. section II. of the General Police and Improvement (Scotland) Act, 1862.

The expression "local authority" shall mean and include any local authority under the Public Health (Scotland) Act, 1867, and any Acts amending that Act, and also the Commissioners acting under the General Police and Improvement (Scotland) Act, 1862.

The expression "Board of Supervision" shall mean the Board of Supervision for relief of the poor in Scotland.

Repeal of 30 & 31 Vict. c. 101. s. 91. and 34 & 35 Vict. c. 38. s.

3. *Power to Public Works Loan Commissioners to lend to local authority in Scotland for sanitary purposes.*

3. Section ninety-one of the Public Health (Scotland) Act, 1867, and section three of the Public Health (Scotland) Amendment Act, 1871, are hereby repealed, and in lieu thereof it is enacted as follows:

The Public Works Loan Commissioners may, with the consent of the Commissioners of the Treasury, on the recommendation of the Board of Supervision, make any loan to any local authority in pursuance of any powers of borrowing conferred by the Sanitary Acts, 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 period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary in order to enable the loan to be made without loss to the Exchequer.

Provided as follows:

- (1.) That in determining the time when a loan under this Act 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 Act shall not extend to any loan required for the purpose of defraying expenses incurred in enforcing the performance of or in performing the duty of a defaulting local authority:

- (3.) That in the case of any loan already made to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may, if they think fit, reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

Period of repayment of sums borrowed by local authorities for sanitary purposes.

4. The provisions of the Sanitary Acts enabling local authorities under the same to borrow money for the purposes of such Acts shall be read and construed as if they provided that any sums of money borrowed from the Public Works Loan Commissioners by such local authority for the purposes of the said Acts shall be repaid within a period not exceeding fifty years.

Purposes for which loans may be obtained.—Loans bearing interest at 5 per cent 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.) But the loans at the lower rate of interest authorised by the Public Health Amendment Act, 1875, require the recommendation of the Board, and can only be obtained for the purposes specified in the Act—viz., water supply, drainage, and hospitals carried out under the P.H. Acts, and water supply and drainage carried out under the General Police Act. The Public Works Loan Board hold that they are not empowered to lend at the lower rate of interest authorised by the P.H. Amendment Act of 1875, for purposes such as burial-grounds, slaughter-houses, offices of the L.A., &c.

Recommendation of Board.—All applications for the recommendation of the Board to loans under this Act 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 L.A. must make a separate application for the amount which it requires, and for which it is prepared to grant security.

All applications for loans 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 L.A. are not prepared to pay out of the current assessment have been made." See Circular of 9th June 1887; *Board's Report*, 1887, App., p. 24.

Fees charged by Public Works Loan Board.—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.

Mode of repayment of loans.—Loans under the P.H. Amendment Act, 1875, are usually repaid by equal annual instalments of the principal with a yearly diminishing amount of interest. They may also be repaid by way of annuity in equal annual sums of principal and interest during the whole period of the loan.

Period of repayment.—The Act sanctions the repayment of loans being spread over a period of fifty years. But in practice it is not usual to spread them over more than from thirty to forty years; the general principle being that all works should be paid for by the generation by which they are undertaken.

Loans obtained by county councils must be repaid in thirty years. See L.G. Act, § 67 (2).

Rate of interest.—The following is the scale of interest charged on loans:—

" Repayable within a period not exceeding thirty-five years, . . .	3½ per cent.
Repayable within a period exceeding thirty-five years, but not exceeding forty years,	3¾ per cent.
Repayable within a period exceeding forty years, but not exceeding fifty years,	4 per cent."

See Report of Public Works Loan Commissioners for 1885-86, p. 6.

Loans for harbours.—The L.A. is authorised to charge the P.H. assessment for the purpose of aiding in raising loans for harbours, &c., or in guaranteeing the principal and interest of such loans. See the Public Works Loans Acts, 1882, § 7, and 1887, § 4 (2).

PUBLIC HEALTH (SCOTLAND) ACT AMENDMENT ACT, 1882.

(Simplifies the Provisions relating to Special Districts.)

45 VICT., CHAPTER 11.

An Act to amend the Public Health (Scotland) Act,
1867.—[19th June 1882.]

WHEREAS by the Public Health (Scotland) Act, 1867, provision is made by section seventy-six for the formation of special drainage districts, and also by section eighty-nine for the formation of special water supply districts:

And whereas it has been found that a change of circumstances sometimes renders it expedient that the boundaries of such special drainage districts and special water supply districts should be altered, but the recited Act contains no provisions whereby such alteration can be effected:

And whereas the Public Health (Scotland) Act, 1867, Amendment Act, 1879, was passed for the purpose of making such provision, but it has been found insufficient for that purpose:

And whereas it is expedient that such provision should now be made, and that the provisions of the first-mentioned Act should be made applicable to the districts so altered, and that the second-mentioned Act should be repealed:

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

Short Title and Construction.

1. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1882, and the first-mentioned Act and this Act shall be read and construed together.

Commencement of Act.

2. This Act shall commence to have effect on the first day of November one thousand eight hundred and eighty-two, which date is herein-after referred to as the commencement of this Act.

Repeal of 42 & 43 Vict. c. 15.

3. From and after the commencement of this Act the Public Health (Scotland) Act, 1867, Amendment Act, 1879, shall be repealed, and in lieu thereof it is provided as follows :

*Special Drainage and Special Water Supply Districts
may be altered, combined, &c.*

- (1.) Where there shall exist within the district of any local authority to which the provisions of the seventy-sixth and eighty-ninth sections of the Public Health (Scotland) Act, 1867, respectively apply, a special drainage district or a special water supply district, as the case may be, it shall be competent to such local authority, upon requisition, as herein-after provided, to meet and consider the propriety of altering the boundaries of any such special drainage district or special water supply district, and to resolve upon such alteration of boundaries being effected, either (1) by enlarging or limiting the said boundaries; or (2) by combining two or more such special drainage districts or special water supply districts or portions thereof; or (3) by enlarging or limiting the said boundaries and combining two or more such special drainage districts or special water supply districts or portions thereof:
- (2.) The local authority shall not be entitled to meet for the purpose of considering the propriety of any such proposed alteration of boundaries, except after receiving a requisition to that effect, made in writing and signed by at least ten of the inhabitants of the district of the local authority; but upon receiving such a requisition it shall be bound to meet for such purpose, and twenty-one clear days notice of

the meeting shall be given to the members of the local authority:

- (3.) In the event of the local authority resolving upon any such alteration of boundaries as aforesaid its resolution shall be advertised, and shall be subject to appeal and review in like manner as is provided by sections seventy-six and eighty-nine of the first-mentioned Act in regard to advertising and appealing against resolutions as to the formation of special drainage districts and special water supply districts under that Act: Provided that if the sheriff or sheriff substitute, as the case may be, shall disapprove of the resolution of the local authority he may vary the same, but only with the consent of the local authority:
- (4.) The whole provisions of the first-mentioned Act applicable to special drainage districts and special water supply districts shall be applicable *mutatis mutandis* to such districts when altered or combined or altered and combined under this Act:
- (5.) The provisions of this Act shall apply to all special drainage districts and special water supply districts, whether formed before or after the commencement of this Act, or altered or combined or altered and combined under the powers conferred by this Act:
- (6.) The repeal of the second-mentioned Act shall not affect anything duly done or any proceeding pending under the said Act, but such proceeding shall be carried on as if this Act had not passed.

Amendment Act of 1879.—The Act of 1882, § 3, repeals the Act of 1879, which was to a similar effect, but was found unworkable.

Special districts.—See §§ 76 and 89 (5) of the principal Act, *supra*, and notes thereto.

Change of circumstances.—The preamble to the Act refers to the fact that a change of circumstances sometimes renders it expedient that the boundaries of a special district should be altered. These words were founded on by a ratepayer who objected to a L.A. extending the limits of a special district; but the sheriff held that the preamble of a statute cannot limit an enacting clause which is not ambiguous, and that it is competent to extend a district although change of circumstances has not been proved. *North British Railway Co. v. L.A. of Parish of Dunfermline*, 5th March 1887, P.L.M., 1887, p. 362.

Where the assessment on a special district is insufficient to meet the expenditure, the L.A. are not entitled to extend the special district merely for the purpose of increasing the area of taxation; it must be shown that the inhabitants of the area proposed to be added will immediately, or in the near future, derive some benefit. *Mackenzie of Ord v. L.A. of Urray*, 29th March 1889, P.L.M., 1889, p. 321.

Liability of combined district for arrears of one of the districts combining.—A question came before the Board 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.

Alteration of resolution of L.A. by sheriff.—It will be observed that in cases arising under the Act of 1882 the sheriff has no power to vary the resolution unless with the consent of the L.A. There is no such restriction in the principal Act. See §§ 76 and 89 (5), *supra*.

PRACTICAL SUGGESTIONS

IN CONNECTION WITH THE PUBLIC HEALTH ACTS,
FOR THE USE OF SANITARY OFFICERS.

(The subjects are arranged alphabetically.)

Ashpit.—Mr M'Neill, inspecting officer of the Board, gives the following statement of the points considered essential in the construction of a proper ashpit:—"The *Ashpit* should be of small capacity—i.e., it should contain not more than from one to one and a half cartload; the floor should not be below the level of the surrounding ground; the erection should be thoroughly watertight; it should be drained into the sewers from its lowest point; it should have a well-fitted door, and, if the floor be not level, it should slope upwards from the opening; there should be a light roof, with projecting eaves of metal or boarding to exclude rain-water, raised on corner posts high enough to permit access on three sides, and to allow a free current of air." A plan and sections of an ashpit such as Mr M'Neill describes will be found in the Board's Report for 1886, App., p. 36. Its dimensions are 6 feet \times 4 feet \times 3 feet, but where there are facilities for frequent removal of the contents, its size might with advantage be reduced. The Model Byelaws for New Streets and Buildings issued by the Local Government Board, England, prohibit the connection of ashpits with drains, on the ground that drains in such circumstances are liable to be choked, and that the presence of a drain-connection suggests that the ashpit is to be used for slops. Exclusion of moisture is an object of primary importance in the construction of an ashpit. Wetness of the contents hastens decomposition and inevitably causes nuisance.

See the regulations as to ashpits in the Model Byelaws of the Local Government Board, Nos. 80-85, printed in their Report, 1878, App., p. 108; also Knight's 'Annotated Bye-laws,' p. 136.

Byres.—When cows are kept in towns or in the neighbourhood of dwellings, the byres are liable to become nuisances unless properly constructed and systematically cleansed. It is always desirable that a byre should be a detached building, but if it adjoins a dwelling-house, there must be a proper party-wall of impervious material. In no case should any apartment over a byre, or directly communicating therewith, be used as a dwelling-house, or as a milk-house or dairy. The walls of the byre should be of stone or brick, faced inside to the height of 4 or 5

feet with smooth cement, or with slate, zinc, or other smooth, non-absorbent material. The walls and ceiling should be regularly lime-washed. A supply of wholesome water should be laid on in the byre, with sufficient pressure to reach, by means of a hose, all parts that it is necessary to wash. There must be proper ventilation and lighting, both of which are most readily provided in the roof. The space allowed for each cow should be about 1000 cubic feet. The stalls should be paved with some even hard material, impervious to moisture, and should slope gently to a channel running along the tail end of the stalls. This channel should at all times be kept sufficiently clear to admit of the liquid being readily carried along to the outside of the byre, where it should discharge over a grating leading to a properly constructed drain. The feeding-trough at the head of the stalls should be of iron, concrete, or other non-absorbent material, and should be kept perfectly clean. The dung should be swept up and carried to the receptacle, and the channel flushed with water, twice a-day. The dung should never be stored within the byre. Where practicable, a dungstead should be altogether dispensed with, the dung being placed at once in the receptacle or conveyance in which it is to be removed. This receptacle should be of iron, and should be regularly washed. The lower part of the walls, and all other parts of the byres liable to be soiled by the droppings of the animals should be washed at intervals. Draff or grains, or other food liable to become sour, should be kept in a covered receptacle of non-absorbent material outside the byre, provided with a drain for carrying off the liquid that may ooze from the draff. This receptacle should be thoroughly cleansed with hot water every time it is replenished.

See Dr Ballard's Report on Effluvium Nuisances in the Report of the Medical Officer of the Local Government Board for 1876, p. 138; also Dr Russell's paper, "On the sanitary requirements of a Dairy Farm," in the 'Sanitary Journal' for April 1889, p. 44.

Cesspools.—Cesspools should only be resorted to when absolutely necessary. They involve the presence in the neighbourhood of dwellings of quantities of putrescent material, and are liable to become nuisances by the soakage of their contents into the soil about dwellings, by the escape of sewage gas, and by the tainting of the air when they are being cleaned. But where there is no sewerage system, and sewage passes into a gutter on the public road or into a field ditch, it may be necessary for the purpose of preventing a nuisance to construct a cesspool to intercept the solid matter. Where a proper system of sewerage exists, all sewage is carried off directly, and cesspools are superseded.

Where a cesspool is requisite, it should be constructed of impervious materials, should have a proper cover and suitable ventilation, should afford ready means of access for purposes of cleaning, should be at least fifty feet from dwelling-houses, and should be so situated as to render it impossible for leakage from it to pollute water used for dietetic purposes. The drain leading to the cesspool must be efficiently trapped and ventilated.

The Model Byelaws for New Streets and Buildings issued by the Local Government Board, England, contain regulations as to cesspools (Nos. 86-89). See Local Government Board's Report, 1878, App., p. 109; and Knight's 'Bye-laws,' p. 137.

Cisterns.—The storage of water in cisterns should wherever possible be avoided, as water is thereby frequently exposed to serious pollution. An examination of the cisterns in various towns has disclosed a disgusting state of matters, many of them being uncovered, full of vegetable growth

and other impurities, and so situated as to be exposed to the vitiated air of overcrowded rooms, and to the emanations from soil-pipes and drains. All cisterns should be covered, and should be cleaned out at intervals of three months. They should be so situated as not to be exposed to dust or to impure air from water-closets or drains, and the overflow pipe should not communicate directly with the drains, but should discharge into the open air over a trapped grating. The water-closet should not be supplied from the same cistern as that which supplies water for household use.

Earth-closet.—There is no mention of earth-closets in the Public Health (Scotland) Act, but § 61 of the English Public Health Act of 1875 provides that any enactment requiring the construction of a water-closet shall be satisfied by the construction of an earth-closet.

The general structure of an earth-closet should be the same as that of a privy (see Privy, *infra*). The great essential is to prevent rain or waste water entering the building or becoming mixed with the contents of the receptacle. Where frequent opportunities of removal are afforded, the contents should be received into pails or other receptacles. Double sets of these should be provided, so that on the full pail being removed a clean one may be substituted. Where the contents cannot be removed frequently, pails are not used, the space under the seat is made larger, and carefully constructed of impervious material. When dry earth is abundantly and properly applied, the contents may be allowed to remain for three months without creating a nuisance. The earth or other deodoriser is contained in a receptacle so placed that its contents can be readily applied to the excreta, the application being generally effected by an automatic apparatus. The success of an earth-closet depends on an abundant supply of perfectly dry earth, and on attention to see that the earth is regularly and effectually applied to the excreta. The best earth is clay or loamy surface soil; sand and gravel are of little use. The Model Byelaws for New Streets and Buildings issued by the Local Government Board, England, contain regulations as to earth-closets (Nos. 70-72). See Local Government Board's Report, 1878, App., p. 106; and Knight's 'Annotated Bye-laws,' p. 129.

Hospital.—The best site for a hospital is a dry, open, and airy situation, with a gentle slope facing the south, and having a porous subsoil. It should not be too near dwelling-houses, but at the same time should have easy access to all parts of the district. A position on or near the main line of communication through the district, but not immediately abutting on a public road, should be looked for. The site should be sufficient to provide for the suitable separation of two distinct forms of infectious disease, and for airing-grounds for the convalescents, as well as for the extension of the hospital accommodation in the event of necessity arising. An interval of 40 feet should separate the buildings on all sides from the boundary fence. If the grounds are planted, it must be seen that the shrubs do not interfere with the free access of air to the buildings. In selecting a site, important considerations are an ample and perfectly pure supply of water and facilities for drainage.

When hospitals are used for small-pox, special provision requires to be made and special precautions taken; recent experience in London tending to show that there is some danger of small-pox spreading in the neighbourhood of hospitals where large numbers of cases of that disease are treated.

Hospitals are built of various materials—such as stone, brick, concrete, wood, iron, &c.; wood or iron cannot be recommended for permanent hospitals, owing to the difficulty in maintaining the wards adequately cool in

summer and warm in winter. The buildings should be so placed as to take full advantage of the sunshine; probably the best arrangement is to have the opposite side windows of the wards facing respectively east and west, or south-east and north-west. The building should be as attractive in appearance as possible, consistent with economy. But efficiency of arrangement and excellence of workmanship must never be sacrificed either to economy or to architectural effect. In preparing the plans, the possible necessity of future extension should be kept in view.

The number of beds required varies according to circumstances, an ordinary provision being one bed for every 1000 of the population. Every hospital should contain at least four wards, two for each sex, so arranged as to admit of two different forms of infectious disease being isolated; and in addition there should be two small rooms, where doubtful cases could undergo isolation and inspection till their true nature was determined. There should also be an administrative building, communicating with the wards by means of a covered passage, and containing (1) a doctor's room; (2) a matron's room; (3) bedrooms for the matron, nurses, and cook; (4) a kitchen and scullery; and (5) presses for linen, patients' clothes, &c. The wards should be of one floor only, but the administrative building may be of two or more. The outbuildings should include a washing-house, mortuary, disinfecting chamber, ambulance shed, and cellarage for coals. The door of the mortuary should be so placed as to conceal its interior from view of the wards.

The space for each bed should be 1500 to 2000 cubic feet, with 120 to 150 square feet of floor. The height of the ceilings should be 12 to 14 feet. The wards should have windows on each side, reaching to the roof, and opening both above and below. Sometimes the bottom rail is made several inches deep, and thus the lower sash can be raised to admit an upward stream of air between the two sashes. The proportion of window surface to cubic space should be about 1 square foot of window to 70 cubic feet of space. In addition to the windows there should in all cases be provision for admitting fresh air at or near the floor level. In the case of small wards, the heating should be by open fires, two fireplaces being required when the ward is more than 25 feet in length. Large wards should have both open fires and hot pipes.

For the inside surface of the walls glazed bricks or tiles are perhaps the most suitable materials; but plaster painted and varnished, or any smooth non-absorbent material which is readily cleansed, may also be used. A common practice is to have the walls up to a height of six feet lined with glazed brick or tile, above that height with plaster or cement limewashed and toned in some cheerful tint. Anything that helps to make the wards bright and attractive is beneficial to the patients, and makes it easier to induce the relatives to agree to their removal. Ornaments that harbour dust should, however, in all cases be avoided.

The floors should be of well-seasoned wood, closely laid, and varnished or otherwise treated so as to admit of efficient cleansing without the necessity of frequent washing, any dampness in the air of a ward being injurious.

Separate baths should be provided for the sexes, the proportion being one bath for every 15 or 20 patients. It is convenient to have one at least of the baths mounted on wheels, so that it may be moved into a ward when necessary. If the baths are fixed, only one end should be against the wall, so that the attendants may have access to both sides.

Either earth-closets or water-closets may be employed, the latter being preferable. (For their construction, *vide* Earth-closet, *supra*, and Water-

closet, *infra*.) These conveniences should not ventilate directly into the wards or passages, but should be situated in a projecting building, detached from the ward by a well-lighted and ventilated passage, and having themselves an independent cross ventilation. In the wards close-stools should be used, and these should always be supplied with a quantity of a disinfectant. In the outbuildings separate closets should be provided for the male and female convalescents.

Where an efficient and well-constructed system of drainage exists, the sewage of the hospital may be passed into the public sewers. But where a drainage system is wanting or is of an inferior character, the discharges from the water-closets, sinks, and wash-house should be conducted to a cesspool within the grounds, properly constructed and suitably ventilated (*vide* Cesspool, *supra*). The cesspool should be emptied every three months, and the contents dug into the soil, care being taken to avoid the hottest months for the operation. In no circumstances should the sewage from the hospital pass into an open ditch or field-drain. All hospital drains must be constructed on the best principles, and supplied with efficient traps and means of ventilation.

Where the water supply is hard, the roof water may be collected for washing purposes. When not thus utilised, it may pass into any drain or water-course.

The Board have prepared a plan of a hospital containing 20 beds. L.A.'s will be supplied with copies of it on application.

Useful information and plans will be found in a Memorandum issued in March 1888 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, 1887, App., p. 199. It may be obtained from the Stationery Office publishers, either directly or through any bookseller, price 2d. More detailed information will be found in Dr Thorne's Report "On the Use and Influence of Hospitals for Infectious Diseases," issued by the Local Government Board in 1882.

Privy.—Mr M'Neill, inspecting officer of the Board, gives the following description of the essentials of a proper privy:—"The *Privy*, to economise building, may be part of the same structure [as the ashpit]; but there should be no opening towards the ashpit; at one end of the wooden seat there should be an opening, closed by a door, to admit a galvanised pan, fitted as nearly as may be to the cavity which contains it; this pan should be emptied, when necessary, by the scavengers, and the transfer of its contents to the ashpit should be interdicted, but the whole may be mixed in the scavenger's cart; the privy should be well ventilated, and should be regularly cleansed by the tenants using it." A plan and sections of a privy such as is here described will be found in the Board's Report for 1886, App., p. 36.

The privy should be at least 6 feet from any dwelling-house, and should be so placed that the effluvia cannot pollute any water supply, or be readily carried into any dwelling. Decency and privacy must also be looked to in selecting a site. In every privy there should be abundance of light and suitable openings for ventilation. The walls should be of stone or brick with a smooth inner surface, and they should be periodically lime-washed. The floor should be above the level of the surrounding ground, should be paved with smooth non-absorbent material, and should slope slightly towards the door. A double set of pails is required. Their capacity should not be more than 2 cubic feet, a receptacle of larger size being

difficult to handle when filled. The pail should be removed weekly, and a clean one substituted. The objectionable practice of allowing the excreta to accumulate for months in the space under the seat should not be permitted, save in the case of properly conducted earth-closets.

Regulations as to privies will be found in the Model Byelaws for New Streets and Buildings (Nos. 73-79) issued by the Local Government Board (England). See their Report, 1878, App., p. 107; also Knight's 'Annotated Bye-laws,' p. 131.

Removal of contents of ashpits and privies.—In scattered communities it is impracticable for the local authority to take charge of such matters, and they must be left in great measure to the inhabitants themselves. But in towns and villages all experience tends to show that the removal of refuse and excreta, when left to householders, is very inefficiently attended to. In localities where the houses have no sufficient area of ground attached to them, the local authority should arrange for the removal of domestic refuse and the contents of ashpits. A week is the longest period that refuse should be allowed to accumulate in the neighbourhood of dwellings. Where large masses exist, the evolution of deleterious gases takes place, and when the heaps are disturbed in the process of removal sickening odours are emitted. In towns where the refuse has to be kept within the houses, removal should be effected daily. The practice of contracting with farmers for the removal of refuse is unsatisfactory, the work being frequently very inefficiently and irregularly performed. Local authorities should themselves undertake the duty.

Where water-closets are not in use, the local authority ought also to undertake the removal of the contents of privies and earth-closets. A week is the longest period that excreta can remain in the vicinity of dwellings without nuisance, unless it is mixed with dry earth or other deodorant. Where an efficient system of sewerage and water supply exists, and the houses are provided with water-closets, the local authority may properly discourage the use of privies by throwing on the householders the burden of cleansing them and removing their contents. Public privies and water-closets must in all cases be attended to by the local authority. In towns where the water supply and sewerage system is complete, public water-closets are frequently constructed on the trough system, flushing being periodically effected either by automatic means, or by the servants of the local authority.

Model Byelaws for the removal of house refuse, &c., have been issued by the Local Government Board (England). See their Report, 1878, p. 71; also Knight's 'Annotated Bye-laws,' p. 19.

Slaughter-houses.—No slaughter-house should be situated within 100 feet of a dwelling-house. The site should be airy and open, and should afford facilities for drainage. The building should be of substantial construction, and of suitable dimensions, and no room or loft should be constructed over it. It should be well lighted and provided with means of thorough ventilation. The pens where the animals are kept previous to being slaughtered should be separate from the slaughter-house itself. The floor should not in any part be below the level of the adjoining ground. The best flooring is a hard, even, jointless paving of concrete or other impervious material, capable of being easily and thoroughly cleansed, but sufficiently rough to afford a foothold. The floor should slope towards a channel, which should empty into the open air over a grating leading to a drain. The inside wall should be covered to a height of about six feet with cement, slabs of slate,

or other smooth and impervious material easily cleansed. The upper part of the walls should be lime-washed, and any wood-work should be painted. An abundant water supply is indispensable, and it should be supplied under pressure sufficient to allow of the use of a hose for flushing the walls to a height of six feet. No water-closet, privy, or cesspool, and no direct communication with a drain, should be allowed within a slaughter-house. No dung-pit should be permitted. All offal, dung, and garbage should be at once removed in covered receptacles of non-absorbent material. As soon as slaughtering is completed, the whole floor, and the walls to the height of six feet, should be thoroughly washed and flushed with water.

See Dr Ballard's Report on Effluvium Nuisances in the Report of the Medical Officer of the Local Government Board, England, 1876, p. 149.

Water-closet.—No water-closet should be placed in the centre of a house, but should be close to an external wall, so as to admit of free and constant ventilation, as well as to allow of the soil-pipe being carried outside the building. The best position for such conveniences is in a projecting building affording means of efficient cross-ventilation. The water-closet should have a separate cistern, and an efficient flushing apparatus, and the pan should be so shaped as to allow of all excreta falling free of the sides directly into the water. Some of the old-fashioned water-closets, with "containers" and inefficient traps, and having a direct connection with the water-main or the cistern for domestic supply, were constant sources of danger. There are now many patterns of safe and efficient water-closets.

Regulations as to water-closets are contained in the Model Byelaws for New Streets and Buildings (Nos. 67-69) issued by the Local Government Board, England; see their Report, 1878, App., p. 105; also Knight's 'Annotated Bye-laws,' p. 126.

P A R T II.

CIRCULARS OF THE BOARD OF SUPERVISION
WITH REFERENCE TO THE PUBLIC
HEALTH ACTS.

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PART II.

CIRCULARS OF THE BOARD OF SUPERVISION.¹

SCARLET FEVER.

BOARD OF SUPERVISION,
EDINBURGH, 3d December 1874.

SIR,—I am directed by the Board of Supervision to forward to you, for the information and guidance of the local authority, the following instructions and directions which have been prepared by Dr Littlejohn, the medical officer of the Board under the Public Health Act, and approved of by the Board:—

INSTRUCTIONS.

Removal of Nuisances.

In view of the presence of an epidemic of scarlatina in various parts of Scotland, the Board of Supervision would impress on local authorities the importance of strictly enforcing the provisions of the Public Health Act as to nuisances, including the accumulation of refuse of all descriptions, dirty water-courses, overcrowding, and impure water supply, as it has been ascertained that whatever renders a house and its surroundings unhealthy intensifies the illness of the inmates, and renders it more fatal.

Removal to Hospital.

All persons, children as well as adults, affected with scarlatina, should at once be removed to a hospital, unless the house accommodation is such as to allow of isolation and suitable treatment.

The removal should be effected, in the case of a child, by being carried, in the case of an adult, by the conveyance attached to the hospital. On no account (if possible) should any cab or other public conveyance be employed. (As to penalties, see §§ 48 & 49 of P.H. Act.) If it is, however, so used, it should be disinfected to the satisfaction of the medical officer

¹ The circulars as to the Contagious Diseases (Animals) Acts, 1878-1886, the Local Government (Scotland) Act, 1889, and the Infectious Disease (Notification) Act, 1889, are printed in Part IV. along with the Acts.

before being again employed by any other person. Should a cart be used, it must afterwards be well washed with a solution of carbolic acid, made by adding two wine-glassfuls of carbolic acid to one gallon of water.

Until removal to a hospital is accomplished, the attention of the sanitary inspector should be directed—

1st, To the suitable disinfection of the clothes, bedding, &c., &c.; and

2d, To the isolation of the patient until all risk of infection has passed.

(a) *As to Disinfection.*—The bodyclothes and bedclothes should be steeped for a night in water to which Condry's fluid has been added, in the proportion of one wine-glassful to a gallon of water, and thereafter thoroughly washed and freely exposed to the air.

The bedding, on the termination of the illness, or when it can be changed, should be suspended in a vacant apartment at a little distance from the floor, and exposed to the fumes of sulphur. From two to four table-spoonfuls of ordinary flower of sulphur (according to the size of the apartment) should be placed on an iron shovel, along with some live coal or peat. While the sulphur is burning, the door and window of the apartment should be kept shut for at least two hours. By this means, if the patient is removed, the apartment itself, as well as the suspended bedding, may be disinfected.

(b) *As to Isolation.*—So long as the patient is confined to bed, the risk of infection is comparatively limited. It is otherwise when convalescence is established, and the patient is able to go about. The skin peels off and is removed, and so long as this process is in operation the disease is communicated with great facility. It is of importance during this stage of the recovery that the patient should be preserved from cold, and prevented from mixing with his fellows at school, or in the workshop. This is effected by keeping the patient strictly within doors for a fortnight or three weeks after apparent recovery. At the same time, he should on two occasions, or oftener if possible, be washed from head to foot with carbolic soap, and he should not return to school, or work, until the medical officer certifies that he can do so without risk of spreading the disease. When a case of scarlatina occurs in a family in which there are children, these children should be kept from school until a medical certificate is given that there is no danger of infection. As the disease is highly infectious, and has been frequently carried by articles of food and dress, it is of importance that parties selling or delivering milk, groceries, &c., should not be allowed to come into contact with the sick or convalescent, and that all articles of dress should be well fumigated before being taken from an infected house.

(c) *Duty of Sanitary Inspector in case of death.*—In the event of a case of death from scarlatina coming to the knowledge of the sanitary inspector, he should make particular inquiries as to the disposal of the body and bed clothes of the deceased, should see that these, as well as the bedding, are thoroughly disinfected as above directed, and also that the sink, privy, ashpit, or water-course, on or into which the washings of the body have been deposited, is disinfected with a solution of carbolic acid (made as formerly directed), which should be passed down the drain or water-course, or freely sprinkled over the midden or ashpit.

The Board have been informed by the local authority of Glasgow that their Committee of Health have conferred with the school board, and arranged a system of mutual information which has proved very useful. The medical officer remarks: "The officers of the school board send me notice of all cases of infectious disease discovered in their official work, while my officers note the schools to which children of infected families

are going, and every night despatch simultaneous notices to school board and to teachers. We do so in the case of *all* schools. When by recovery and disinfection, &c., &c., the house is free of infection, we despatch a notice in the same way. Until such a notice is received from us, the teachers do not admit the children, and the board regards their attendance as excused. This will in future be a routine part of the business of the department in respect of all infectious diseases."

The Board of Supervision entirely approve of the very sensible and practicable system adopted in Glasgow.

You will submit this communication to an early meeting of the local authority, and give it as much publicity as you can within your district. Copies of it may be obtained at the office of the Board of Supervision.—I am, &c.,

JOHN SKELTON, *Secretary.*

SMALL-POX.

BOARD OF SUPERVISION,
EDINBURGH, 18th February 1888.

SIR,—I am directed by the Board of Supervision, in view of the danger at present existing of the disease of small-pox becoming epidemic (severe outbreaks having recently occurred at Sheffield and elsewhere), to direct the special and immediate attention of local authorities to the powers and duties intrusted to them by the Public Health Act, by means of which the disease may be mitigated and checked.

When the introduction and spread of a deadly disorder like small-pox appears to be imminent, common prudence and foresight require the local authorities of Scotland to take prompt and decisive measures for the protection of the population.

There are four precautionary and preventive measures to which every local authority should at once direct their attention.

I. *Vaccination and Revaccination.*

By the 57th section of the Public Health Act, the local authority are authorised to defray the cost of vaccinating all persons other than paupers, or the children of paupers, or defaulters under section 18 of the Vaccination Act. The obligation to vaccinate paupers, children of paupers, and defaulters, rests upon the parochial board; but that board cannot legally defray out of the poor-rates the cost of vaccinating any other persons. The local authority under the Public Health Act, however, are empowered to defray, out of the assessment levied in terms of that Act, the cost of vaccinating all persons (except those whom the parochial board are bound to vaccinate) to whom it is expedient to apply the provisions of the enactment referred to.

Existing circumstances render it very advisable that the local authority should lose no time in ascertaining whether, in the district within their jurisdiction, there are persons who are either unvaccinated or imperfectly protected by vaccination, and in whose cases the provisions of the 57th section of the Act should be put in force.

Dr Husband, the superintendent of the Central Vaccine Institution

for Scotland, made the following suggestions in 1871, in which the Board concur:—

"1. Every one should make sure that he is not mistaken in supposing himself to have been well vaccinated in infancy.

"2. The unvaccinated should be searched for, especially among the unsettled and migratory portion of the population, among whom chiefly the disease is likely to appear in the first instance.

"3. Persons who desire absolute security should get themselves re-vaccinated.

"4. Infants should be vaccinated a few weeks, or even months, earlier than usual."

In order to effect these objects, it will be necessary for the local authorities to employ the medical officers and other medical practitioners in their districts to make the requisite inquiries *by house to house visitation*, to perform such vaccinations or revaccinations as may be expedient, and to keep a record of the persons so vaccinated or revaccinated. Medical students and other suitable persons should be employed for the above purposes where the number of the population is too large to be overtaken by the regular medical staff. The utmost publicity should be given to the fact of opportunities being afforded for gratuitous vaccination and revaccination in the district, personal endeavours should be made to induce those who are either unvaccinated or are imperfectly protected by vaccination to permit the operation to be performed, and every member of the local authority should use his individual influence to promote so desirable an end as the general protection of the population from attacks of small-pox.

Supplies of vaccine lymph may be obtained at 6d. per tube by applying to Dr Husband, Central Vaccine Institution for Scotland, 4 Royal Circus, Edinburgh.

II. *Removal of Nuisances.*

The local authority should at once cause a special survey to be made within their district, with a view to the detection and removal of all nuisances and insanitary agents, whether as regards drainage, water supply, streets, closes, dwelling-houses, or accumulations of offensive matter. Disinfectants and lime-washing should be freely resorted to where found requisite.

III. *Notice of Cases.*

All the medical practitioners in the district should be urgently requested to furnish the local authority with immediate information as to any cases of small-pox or suspected small-pox occurring in their practice. A reasonable fee should be allowed for information so furnished.

IV. *Hospitals and Isolation of the Sick.*

Every local authority not already provided with a contagious and infectious disease hospital should at once make arrangements by which suitable accommodation would be obtainable at a moment's notice for the isolation and separate treatment of the first case or cases of small-pox that may appear. Arrangements should also be made by which the medical officer would have it in his power to remove from the room or house occupied by a sick person all others not in attendance upon him. The complete isolation of the sick should not be confined to the actual period of illness, but should be as rigorously maintained during convalescence.

The measures therefore of primary importance requiring the attention of local authorities in their endeavours to check or stamp out the disease when it makes its appearance, are these:—

(1) *The general vaccination and revaccination of the population, by which means the number of persons liable to be attacked will be diminished.*

(2) *The removal of all apparent or probable sources of insalubrity in the district, by which means the general health of the population will be promoted.*

(3 and 4) *The immediate discovery, and isolation, of the first cases that occur in the district, by which means the local authority may hope to prevent the disease being communicated to others, and becoming epidemic in the district.*

Precautionary and preventive measures, however, will be of little avail if they are only resorted to when the disease has actually appeared. If the local authority are not prepared beforehand, they will then have to encounter panic, confusion, and the impossibility of effecting immediate isolation. The true hope of safety lies in their being fully prepared, and in being able so to act, when the first case of the disease occurs, that it may not be disseminated throughout the population.—I am, &c.,

JOHN SKELTON, *Secretary.*

The Board require sanitary inspectors to report to them, without delay, all cases of small-pox or suspected small-pox which may come to their knowledge within their respective districts.

The Board will consider any culpable neglect to comply with this requirement as a grave offence.

SANITARY INSPECTORS' DUTIES IN CASES OF INFECTIOUS DISEASE.

BOARD OF SUPERVISION,
EDINBURGH, 26th April 1880.

SIR,—The Board having ascertained that in a recent case of fever, occurring in a Highland parish and under the charge of the local authority, the sanitary inspector had never entered the room in which the patient lay, and stated that he did not consider it his duty to do so, the Board called for a report on the subject from their medical officer, Dr Littlejohn.

A copy of that report is herewith transmitted for the information and guidance of the local authority ; and I am directed to state, that the Board are of opinion that any person holding the office of sanitary inspector must be prepared, in the due discharge of his duties, to enter the house or room in which cases of infectious disease exist, as pointed out by Dr Littlejohn.

The Board are aware that in some parts of the country an unreasonable and exaggerated dread of infection is entertained by the population, and it is especially necessary that, in places where such feeling exists, the sanitary inspector should know what his duties are, and should discharge these duties faithfully.—I am, &c.,

JOHN SKELTON, *Secretary.*

REPORT BY DR LITTLEJOHN.

The points raised in the papers submitted to me are of great importance, and as a medical officer of health engaged in the daily exercise of sanitary work, I feel that it would be impossible for me to discharge the duties of my position satisfactorily to the public were my inspectors to refuse to enter the houses of the poor affected with infectious diseases, and to assist in the removal of such patients to a hospital.

The grounds on which the sanitary inspector bases his refusal are two in number : 1st, The amount of personal risk to which he would be exposed were he to enter the rooms in which the sick poor are housed ; and 2d, The small amount of remuneration which is supposed to cover such highly important services.

First, All medical authorities are agreed that the risk attending the entering a room in which there are cases of infectious disease is infinitesimally small to the healthy individual, and that even where a person actually assists in removing a patient sick of an infectious disorder to another apartment or to a conveyance, while the risk is greater, it is in reality very small to the sound constitution.

As a rule, it is rare to find nurses affected who live for hours and days at a time in the same atmosphere with the sick, and who at the same time make use of the simplest precautions. It is still rarer to hear of medical men sickening of infectious diseases caught in their practice, and it is well known that medical men never or very rarely bring the infection of such diseases to their households.

For twenty-five years I have been engaged in active sanitary work, and have had, with very limited staffs, to cope with serious outbreaks of cholera, small-pox, fever, scarlatina, measles, and hooping-cough, and although I have during that period brought up a large family, I have never communicated any of these diseases to my children or dependants, nor am I aware that any of the numerous sanitary inspectors who have acted under me have ever contracted or communicated these diseases while in the public service.

The explanation of this is sufficiently easy. This immunity is due in the first instance to the absence of fear ; and, secondly, to the employment of simple sanitary precautions.

(a) There can be no doubt that some individuals, from constitutional timidity, are unfit to discharge satisfactorily the duties of sanitary inspector.

To live in the constant dread of infection is one of the surest methods of courting the risk of an attack. It is a popular, and I believe a true saying with regard to cholera, that the fear of it kills more than the scourge itself. This holds equally good of other forms of infection ; and the sanitary inspector, to be an efficient public servant, must be assured of this cardinal fact, that infectious germs of all kinds have no power of successfully attacking the healthy individual.

Let a medical man or an inspector, however, lead an irregular life, expose himself to great exhaustion, and thus lower his vital powers, then, I allow, he renders himself liable to suffer from most infectious diseases, unless he is protected by vaccination or previous attacks.

(b) To ensure immunity to the healthy individual the following rules must be attended to :—

1. Never to visit the houses of the sick—fasting.
2. To insist that the ventilation of the apartment to be entered is as free

as possible. For this purpose, during the visit, the window must be raised and the door kept open. Such a procedure exposes the patient to no risk, and at the same time the special poison of infection is so diluted as to be practically innocuous.

3. To remain in the presence of the sick no longer than is necessary.

4. Afterwards, free exposure to the open air sufficiently disinfects the clothing; but during epidemics, when there is a large amount of sickness, the clothes worn during the day should be exchanged for others before the inspector mixes freely with his family.

5. And in these circumstances, free ablution of the hands, aided by the use of such a disinfectant as Condly's fluid, is absolutely necessary.

When these rules are followed, I am clearly of opinion that little or no risk attaches to the discharge of the duties of sanitary inspector either in ordinary or extraordinary circumstances.

One of his important duties is, I hold, directly to ferret out cases of infectious disease, to ascertain their surroundings, and thus be able not only to certify the medical officer of health of their existence, but also of the probable source of infection, and while an epidemic is raging his duties become highly onerous. He must advertise the medical officer of health of the progress of the outbreak; direct that officer where to visit; accompany him in his rounds; receive his instructions on the spot, as to isolating the patient, the supply of disinfectants, &c.; and possibly he may have to see that the disinfectants are properly used. He must, from time to time, watch the progress of the case, and see that the general public is protected from infection by preventing the convalescent sick from exposing themselves too soon.

Second, I have always held that such important services, properly discharged, demand suitable acknowledgment from the local authority as representing the ratepayers, and I am aware that the Board of Supervision has always entertained the same opinion. Unfortunately, local authorities too often look upon the office as a kind of sinecure, and bestow it upon some person without due inquiry as to his fitness for the post, affixing to it a merely nominal salary, so small, that it can only be regarded as a hint that little or no service is expected in return.

An active intelligent inspector I regard as the centre of all sanitary work. He is the right hand of the medical officer of health, and at the same time he, along with that official, acts as the adviser of the local authority. He has frequently in emergencies to act upon his own responsibility, and even to incur expenses which, by their timeous and judicious disbursement, may help to keep down the rates and prevent a large subsequent outlay.

HENRY D. LITTLEJOHN, M.D.

POLICE AS SANITARY INSPECTORS.

Extract from Home Office Circular, dated 30th June 1874.

The circumstances of counties and of burghs (having separate police forces) require to be distinguished, in so far as while in the latter the sanitary and police authorities are the same, in the former sanitary and police arrangements are vested in different authorities, whose jurisdiction

extends over different areas. The following rules have been made by Mr Secretary Cross to meet these peculiarities, it being understood that both the employment and also the special remuneration (if any) of chief or other constables must be approved of by the sanctioning authority or authorities in each case:—

1. Any member of the police force of a burgh may be appointed to act as a sanitary inspector under the Public Health (Scotland) Act, within such burgh, provided the sanction of the Board of Supervision shall have been obtained to such appointment.

2. Any member of the police force of a county may be appointed to act as a sanitary inspector under the Public Health (Scotland) Act, in any parish or burgh (not having a separate police force) within such county, provided the sanction of the Board of Supervision and of the police committee of the county shall have been obtained to such appointment.

3. This order to take effect on and from the 1st January 1874.—I am, sir, your obedient servant,

ADOLPHUS F. O. LIDDELL.

UNWHOLESOME MEAT.

BOARD OF SUPERVISION,
EDINBURGH, 28th March 1881.

SIR,—I am directed by the Board of Supervision to transmit to you the accompanying Memorandum, which has been issued by the Local Government Board to the sanitary authorities in England and Wales, in consequence of the statements that have been made respecting the alleged existence of trichinæ in the flesh of swine; and which, on the suggestion of the Privy Council, the Board have directed to be circulated for the information of the various local authorities in Scotland.

The local authority are no doubt aware of the powers which they possess under section 26 of the Public Health (Scotland) Act, 1867, with regard to the sale of unwholesome meat.—I am, &c.,

JOHN SKELTON, *Secretary.*

TRICHINOUS DISEASE AND COOKING OF MEAT.

Some very serious diseases in man, of which the chief is named *trichiniasis*, result from eating the flesh of pigs that have become infested with minute parasitic worms.

It is upon the imported flesh of foreign pigs that suspicion of being thus infested has recently fallen; but it will be prudent to regard all pigs as liable to parasitic disease, and to remember that the influence of it upon the animal is not nearly so evident as when the disease attacks man.

Inasmuch as the meat infested with these worms cannot be recognised by any popular test, and the worms themselves can only be detected by careful microscopic examination, it becomes important to take precautions against harm to man in the case of meat from all pigs.

The only known means of avoiding disease in man from this dangerous quality of meat from pigs, is by very THOROUGH AND EFFICIENT COOKING.

If there is reason for thinking a particular sample of meat to contain the parasites, it ought not, on any account, to be eaten, no matter how it is cooked.

Hams, sausages, and like articles, whether or not they have been smoked or salted, should never be eaten in the raw state.

To be efficient for the required purpose, the cooking of pork, of hams, of bacon, and of other articles should be prolonged for about half as much time again as is customary. The smallest joint should be cooked for not less than an hour; and whatever be the size of the joint, it should have not less than half an hour's cooking for each pound of meat. No part of a joint that is seen to have an underdone portion in it should be eaten.

In boiling hams and pork, the meat should be put into cold or lukewarm water; and the period of cooking should be reckoned *from the time when the water boils*.

In boiling several joints of pork or several hams (as required at institutions and elsewhere), they should not be put together, in bulk, at the same time into the same cooking vessel. Each joint should be put into a separate vessel, and boiled with a good quantity of water.

Though the caution is not given for the avoidance of the particular diseases here in question, the present is a useful opportunity to mention that it is of much importance to health to see that larders, and places where cooked meat is stored, are kept always clean and free from the chance of foul air entering them. Serious outbreaks of disease are appearing with some probability to be related to neglect of this precaution.

GEORGE BUCHANAN, *Medical Officer*.

LOCAL GOVERNMENT BOARD,
February 28, 1881.

TUBERCULOSIS.

BOARD OF SUPERVISION,
EDINBURGH, *7th May 1888.*

SIR,—I am directed to transmit, for the information of the local authority, the annexed copy of a report by Dr Littlejohn, medical officer of the Board, dated 30th March, on the prevalence of tuberculosis in cattle, and the consequent danger to human beings. The local authority will observe that the disease in question depends largely on the insanitary conditions of byres or cowsheds. The necessity, in connection with this disease, of enforcing the Dairies, Cowsheds, and Milk-Shops Order is therefore apparent; and the Board desire to direct the special attention of the local authority to the importance of making a thorough inspection of all the byres or cowsheds within their district, with the view of seeing that the requirements of the Order are complied with.—I am, &c.,

JOHN SKELTON, *Secretary*.

REPORT TO THE BOARD OF SUPERVISION ON TUBERCULOSIS (BOVINE).

This disease of cattle has only of late years attracted much attention. Recently the discovery of a bacillus in the tuberculous matter in the organs of the cow, especially in the udder, and also its detection in the milk of

animals so affected, has led to fresh investigations. These have proved that this disease (similar to phthisis or consumption in the human subject), is communicable from cattle to some of the other animals, and presumably to man, although this has not been established.

Looking to the large annual mortality in man from phthisis and its allied tuberculous or scrofulous diseases, the question of the possibility of the communication of tuberculosis by the milk drawn from animals affected with this disease, becomes one of great national importance. As yet, however, no notice has been taken of this disease in any of the Acts of Parliament relating to maladies affecting the lower animals.

Bovine tuberculosis is essentially a *chronic* disorder, and it may, as in man, last for years before it proves fatal. It may also, as in man, undergo a spontaneous cure. No fact is more remarkable than that there is no disease which is apparently so curable as phthisis. I hardly ever open a body of a person dying from an injury or disease, but traces of the previous existence of tubercle in the lungs are found, and it is apparent that this disease has been arrested and a cure effected. Similar cases are seen in cattle, but more seldom, as in this country the animal is slaughtered for food before the process of cure can be completed.

Bovine tuberculosis thus differs widely from cattle-plague, pleuropneumonia, or swine fever—the diseases specially named in Acts of Parliament. These are of an *acute* character, run a rapid course, and admit of being early recognised, whereas it is often quite impossible to detect the first stages of tuberculosis, so insidious are its advances. The primary symptoms may also easily be mistaken for various other disorders. Ultimately, however, emaciation sets in. This alarms the farmer or dairyman, and the animal is hurried to the shambles before its leanness becomes so marked as to render its carcass unmarketable. In fact, the dairy inspector, in going his rounds, has his attention first of all directed to the affected cow by this emaciation, which leads him to suspect, but only to suspect, the presence of tubercle. There is, however, one part of the animal which unmistakably points to the presence of the disease, and that is the udder. In a certain number of cases, but not in all, the udder is affected, and when this occurs no doubt need be entertained as to the cause of the leanness. It is especially in these cases that the milk is affected, and that the bacillus of tubercle can be detected in it with the microscope.

It is true both of man and of animals that, in all *acute* diseases, the secretion of milk is sensibly diminished, and is ultimately entirely arrested. Unfortunately this is not the case with tuberculosis or phthisis; the patient, although emaciated, still continues to supply this secretion in a condition capable of communicating the disease, especially to the young.

It is rare, however, as we have said, that matters are allowed to proceed so far; the dealer or dairyman knows his interests better, and the animal is at once sent to be slaughtered for human food. When the carcass is examined, the usual evidence of the existence of tubercle in the lungs and other organs is amply afforded—the *flesh* of the animal being, however, in this early stage, rarely so affected as to attract the notice of unskilled persons. It is thus possible by means of trickery—removing the diseased organs, and then forwarding the carcass to a saleroom or market—to attempt (too often successfully) to sell the animal as fit for human food. In all parts of the country where the inspection is not strict, and especially where there are no public slaughter-houses, this diseased meat is sold with impunity, and with great risk to the public.

Some parts of Scotland appear to be more affected than others. Thus, in the west, Paisley has taken the lead in agitating the question of the

prevention of this disease, and has been followed by Glasgow and Edinburgh. During the month of January of this year I observed, in my official capacity, that no fewer than seventeen carcasses had been condemned and destroyed as affected with tuberculosis at our Edinburgh abattoirs; and there can be little doubt but that these would have been sold for human food had there been no strict inspection in the city.

Cattle inspectors, unfortunately, have at present no power to seize for inspection any animals exposed for sale in a public market, although their condition may be such as at once to suggest the presence of tubercle. The owners, finding their chances of a sale thus endangered in such a city as Edinburgh, move on their infected animals with impunity to some other market where the inspection is not so stringent, and thus the disease is disseminated over the country.

It has been proposed, in order to prevent this, to include tuberculosis among those diseases in the Contagious Diseases (Animals) Act for which *compensation* may be granted for timeous notification, and it is hoped by this means to induce farmers and others to bring their cattle earlier to market for the purpose of being slaughtered; but as has been stated, this disease, differing widely from those acute diseases already mentioned, is, in its first stages, not readily diagnosed, and heavy expense would, in my opinion, be incurred by the indiscriminate slaughter that would result. And there is an important fact which must not be overlooked, and which is true of this disease, whether *bovine* or *human*, and that is, that it is largely dependent on insanitary conditions for its development and spread. It has been ascertained with regard to phthisis in man, that by means of drainage of the soil, thus producing a drier atmosphere, and by improvement of dwellings generally, this disease has been greatly lessened in amount over considerable districts of the country; and in the same manner it is believed that, were byres and cowhouses properly supervised by local authorities, and existing powers fully exercised as to *structure, ventilation, drainage, and water supply*, this bovine scourge would be greatly diminished, and might ultimately be almost eradicated.

The two questions connected with this disease which have assumed national importance are (1) the limitation of the food supply from the prevalence of tuberculosis among our herds and dairy stocks; and (2) the risk attending the sale of milk from tuberculous cows.

First. So far as my own experience goes in my bi-weekly examinations at the Edinburgh abattoirs, the disease is largely on the increase, and similar reports come from all parts of the country, and there can be no doubt that in all classes of cattle, tuberculosis is now universally prevalent. In all cases except those exhibiting the earliest appearance of the disease, it is the practice of our abattoir inspectors to condemn the animal. But these, brought openly to the abattoir, constitute a small proportion of affected animals. The present state of the law is unfortunately so defective that our inspectors have no power to deal with animals in byres or exposed for sale in our public markets, and reasonably suspected to be labouring under this disease. The remedy proposed is to include tuberculosis in the list of diseases specially mentioned in the Contagious Diseases (Animals) Act, 1878. The Privy Council undoubtedly have the power to add the name of any disease affecting live stock (see Appendix No. 1); but if that would involve compensation to the owner of the animal and a heavy tax on the ratepayer, it cannot be recommended, as this disease is known to depend largely on insanitary conditions of the byre or cowshed, for which the tenant and proprietor are directly responsible. Again, the Legislature, by various Acts of Parliament, culminating in the "Dairies,

Cowsheds, and Milk-Shops Order of 1885," has placed ample powers in the hands of the local authorities of the country for so regulating the sanitary state of dairies and cowsheds, as practically to abolish the conditions known to favour the origin and spread of the disease (see Appendix No. 4). What in my opinion is wanted in Scotland is either—

(a) An extension of the "Nuisances Removal (England) Act Amendment with respect to the Seizure of Diseased and Unwholesome Meat, 1863" (see Appendix No. 2), in which any animal exposed for sale or for preparation for sale may be examined by the medical officer of health or inspector of nuisances; and if the animal appear to be diseased, unsound, unwholesome, or unfit for the food of man, the medical officer of health, &c., may seize the animal, and have it carried away to be summarily dealt with by a justice. This Act when passed only applied to England, but was extended in 1869 to Ireland; or,

(b) The insertion in the Burgh Police Bill at present passing through Parliament of a clause similar to that which since 1877 has been in force in Greenock (see Appendix No. 3). In this local Police Act it is provided, that any cattle affected with, or labouring under any infectious or contagious disease, exposed or offered for sale or attempted to be brought through any street or into any market or fair, may be seized by any inspector or constable, examined by a veterinary surgeon, and the seizure reported to a magistrate, &c.

Either of these enactments, if extended to the whole of Scotland, would enable local authorities to deal promptly with this disease in circumstances where at present they are helpless. Dairy cows, which are special sufferers, are exposed in our markets in large numbers. These would be effectually dealt with under these clauses, and the dairymen would at once find it to be their interest so to improve the sanitary surroundings of their stock as to prevent the inroad and spread of disease.

As to the *second question*, there can be no doubt as to the risk run by the community by the sale of milk from a dairy containing a single affected animal. Lately, the presence of the bacillus of tuberculosis has been proved to exist in the milk of affected cows, and such milk has been produced in open court. I am informed by our dairy inspectors, and I am otherwise aware of the fact, that they have no power under any existing Act to interfere and prevent the milk of the suspected animal being sold for human food, much less to order the removal of the animal for examination, and, if necessary, for slaughter. Our *local Acts* are all undoubtedly defective in this respect, but this is hardly to be wondered at, when we remember that it is only of late that science has discovered the peculiar bacillus of tuberculosis, and has shown us that it exists in the milk of affected cows.

The latest *Government Act* is also defective (see Appendix No. 4); for while it is provided in the "Dairies, Cowsheds, and Milk-Shops Order, 1885," that if disease exists in a dairy among the stock, the milk of a diseased cow is not to be mixed with other milk or sold for human food, the word "disease" unfortunately is "to have the same meaning as in the Contagious Diseases (Animals) Act, 1878," which, as I have already pointed out, does not include tuberculosis (see Appendix No. 1).

I have therefore to urge upon the Board (1) the importance of such an enlargement of the definition of the term "disease" in the Contagious Diseases (Animals) Act, as to include tuberculosis; (2) the extension to Scotland of the short "Amendment Act" relating to the seizure of diseased animals in open markets, and in byres or cowsheds, which at present only applies to England and Ireland (see Appendix No. 2); and (3) the per-

emptory enforcement of the provisions of the Dairies, Cowsheds, and Milk-Shops Order, 1885, with a view to stamping out, by means of improved sanitation, this infectious disease.

HENRY D. LITTLEJOHN, M.D.

EDINBURGH, 30th March 1888.

APPENDIX No. 1.

CONTAGIOUS DISEASES (ANIMALS) ACT, 1878, § 32.

"The Privy Council may from time to time make such general or special orders as they think fit . . . for the following purposes." . . .

(xxxiii.) "For extending for all or any of the purposes of this Act, the definition of disease in this Act, so that the same shall for those purposes comprise any disease of animals in addition to the diseases mentioned in this Act," which are as follows: cattle-plague, pleuro-pneumonia, foot-and-mouth disease, sheep-pox, or sheep-scab.

In Animals Order of 1886—Glanders, farcy, swine fever, and anthrax.

APPENDIX No. 2.

AN ACT TO AMEND THE NUISANCES REMOVAL ACT FOR ENGLAND, 1855, WITH RESPECT TO THE SEIZURE OF DISEASED AND UNWHOLESOME MEAT, 28TH JULY 1863 (26 & 27 VICT. c. 117, § 2).

EXTENDED TO IRELAND, 11TH AUGUST 1869 (32 & 33 VICT. c. 108).

Inspection and Seizure.

"The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal . . . exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, . . . and in case any such animal . . . appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health, or inspector of nuisances, to seize, take, and carry away the same . . . in order to have the same dealt with by a justice; and if it shall appear to the justice that any such animal . . . is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed," &c., &c.

APPENDIX No. 3.

GREENOCK POLICE ACT, 1877, CLAUSE 230.

Power to seize Diseased Cattle.

"In case any cattle infected with or labouring under any infectious or contagious disease¹ be exposed or offered for sale, or be brought or attempted to be brought through any street or into any market or fair, any inspector, collector, or constable may seize any such cattle, and cause the same to be inspected by a veterinary surgeon, and may report such seizure to any magistrate; and such magistrate may, after hearing the evidence, either order such cattle to be restored, or direct the same to be forthwith destroyed, or otherwise disposed of." Penalties follow.

APPENDIX 3A.

The Dundee Police and Improvement Consolidation Act, 1882, § 258, contains a similar clause to that given in Appendix 3, as taken from the Greenock Local

¹ No definition in the Act of what are infectious or contagious diseases.

Act, with this important alteration, that the disease from which the cattle are suffering is stated to be "within the meaning of the Contagious Diseases (Animals) Act, 1878," and thus tuberculosis is excluded.

Prohibition of Infected Milk.

Section 244 gives power to the sheriff, on certificate from the medical officer, to prohibit the sale of milk where "infectious disease" exists in a dairy.

But in the interpretation clauses "infectious disease" is held to mean "small-pox, cholera, typhus, typhoid, scarlet, relapsing, continued and puerperal fever, diphtheria, and such other disease as the Commissioners may from time to time declare to be infectious."

APPENDIX No. 4.

THE DAIRIES, COWSHEDS, AND MILK-SHOPS ORDER OF 1885.

Existence of Disease among Cattle.

"15. If at any time disease exists among the cattle in a dairy, or cowshed, or other building or place, the milk of a diseased cow therein

- a. shall not be mixed with other milk, and
- b. shall not be sold or used for human food, and
- c. shall not be sold or used for food of swine or other animals, unless and until it has been boiled."

In this Order terms have the same meaning as in the Contagious Diseases (Animals) Act of 1878, which bears, "'Disease' means cattle-plague (that is to say, rinderpest, or the disease commonly called cattle-plague), contagious pleuro-pneumonia of cattle (in this Act called pleuro-pneumonia), foot-and-mouth disease, sheep-pox, or sheep-scab."

PART III.

RULES AND BYELAWS PREPARED BY THE
BOARD OF SUPERVISION.

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PART III.

RULES AND BYELAWS PREPARED BY THE BOARD OF SUPERVISION.

EXTRACT FROM THE BOARD'S CIRCULAR
OF 10TH MAY 1890.

THE Regulations (marked No. 1) are framed in terms of section 53 (1) of the Local Government Act, and are therefore *obligatory*. They will apply to every medical officer and sanitary inspector of a district of a county, and will take effect without any minute or resolution of the district committee.

The Byelaws (Nos. 2 and 3) may be regarded as model sets of the byelaws authorised by section 8 of the Public Health Act. Those marked No. 2 are applicable to the sanitary officers to be appointed by the county council under the Local Government Act; those marked No. 3 are applicable to the sanitary officers of local authorities generally.

These byelaws are not obligatory. They do not come into force until they have been adopted by the county council or the local authority (as the case may be) and approved by the Board. But it is desirable that the duties and obligations of sanitary officers should be distinctly defined, and the Board believe that the general adoption of these or similar byelaws would greatly facilitate the efficient administration of the Public Health Acts throughout the country.

Their application, however, will depend to some extent upon the arrangements made by county councils and district committees for the appointment of joint officers for the county and district in terms of section 52 (2) of the Local Government Act; but each set has been made as comprehensive as

possible, so as to embrace all the duties that, under any arrangement, either county or district officers may be called upon to discharge.

No. I.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1889, SECTION 53 (1).

MEDICAL OFFICERS OF DISTRICTS OF COUNTIES.

REGULATIONS OF THE BOARD OF SUPERVISION.

The Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), § 53 (1), provides: "Every medical officer and sanitary inspector under the Public Health Acts for a district in any county shall send to the county council a copy of every report of which a copy is for the time being required by the Regulations of the Board of Supervision (which they are hereby authorised to make) to be sent to that Board."

By virtue of the authority conferred by the foregoing enactment, the Board of Supervision hereby make the following Regulations, and require every medical officer under the Public Health Acts for a district in any county in Scotland to conform thereto.

I. Every such medical officer shall annually prepare a report with regard to his district for the year ending 31st December, which report shall contain:—

1. A general account of the sanitary state of the district, and the measures which in his opinion should be adopted for its improvement.
2. A statement of the general inquiries he has made during the year, and of any special inquiries as to sanitary matters.
3. A general statement of any matters as to which he has given advice or granted certificates, including any action as to offensive trades and the sanitary condition of factories and workshops.
4. An account of his inspections of the bakehouses in the district, and of any proceedings taken with regard to them.
5. An account of the supervision exercised by him over the hospitals belonging to the local authority, or to which the local authority are entitled to send patients.
6. A summary of the action taken to prevent the outbreak and spread of infectious disease.
7. A statement as to the causes, origin, and distribution of diseases within the district, and the extent to which the same have depended on or been influenced by conditions capable of removal or mitigation.
8. A tabular statement (in such form as the Board of Supervision may from time to time direct) of the sickness and mortality within the district.

II. He shall transmit a copy of the aforesaid report to the Board of Supervision and the county council not later than the 31st January immediately following the year to which such report refers.

III. When in his opinion any disease of an infectious or contagious kind

threatens to become dangerous or epidemic within the district, he shall forthwith report the same to the Board of Supervision and to the county council, stating the extent of the outbreak, its supposed origin, and the measures adopted for the prevention of the spread of the disease, and for the isolation and treatment of those affected.

IV. He shall report to the Board of Supervision and to the county council every case of small-pox in the district, as soon as it comes to his knowledge.

Certified by me,

JOHN SKELTON, *Secretary.*

BOARD OF SUPERVISION,
EDINBURGH, 1st May 1890.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1889,
SECTION 53 (1).

SANITARY INSPECTORS OF DISTRICTS OF COUNTIES.

REGULATIONS OF THE BOARD OF SUPERVISION.

The Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), § 53 (1), provides: "Every medical officer and sanitary inspector under the Public Health Acts for a district in any county shall send to the county council a copy of every report of which a copy is for the time being required by the Regulations of the Board of Supervision (which they are hereby authorised to make) to be sent to that Board."

By virtue of the authority conferred by the foregoing enactment, the Board of Supervision hereby make the following Regulations, and require every sanitary inspector under the Public Health Acts for a district in any county in Scotland to conform thereto.

I. Every such sanitary inspector shall annually prepare a report with regard to his district for the year ending 31st December, which report shall contain:—

1. A general account of the sanitary state of the district, as regards drainage, water supply, nuisances, &c., together with any suggestions for its improvement.

2. An account of his general inspections, and of any special inspections or inquiries.

3. An account of the character of the house accommodation of the labouring classes.

4. An account of the condition of the common lodging houses.

5. An account of the condition of the dairies, cowsheds, and milk-shops.

6. An account of the condition of the burial-grounds.

7. An account of the means of disposal of household refuse, contents of ashpits, privies, cesspools, &c.

8. An account of the means of isolation of persons suffering from infectious disease.

9. A statement in the form hereto annexed (or in such other form as the Board of Supervision may from time to time direct) of the proceedings under the Public Health Acts during the year.

II. He shall transmit a copy of the aforesaid report to the Board of Supervision and the county council not later than the 31st January immediately following the year to which such report refers.

III. When the Infectious Disease (Notification) Act, 1889, has been adopted in the district, he shall transmit to the Board of Supervision and the county council a copy of the report and relative tabular statement required by the additional byelaws prepared by the Board.

Certified by me,

JOHN SKELTON, *Secretary.*

BOARD OF SUPERVISION,
EDINBURGH, 1st May 1890.

COUNTY

DISTRICT

STATEMENT BY SANITARY INSPECTOR OF PROCEEDINGS UNDER THE PUBLIC
HEALTH ACTS DURING .

I. *Inspections.*

Total inspections under Public Health Acts	Number.
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II. *Nuisances.*

Nuisances dealt with
Intimations to authors of nuisances
Nuisances abated by authors thereof
Nuisances abated by local authority	.	.	.	.	.
Scavengers, &c., employed by local authority	.	.	.	.	.

III. *Slaughter-houses and Offensive Trades.*

Inspections of premises
Applications for consent under § 30	.	.	.	.	.
Applications granted	.	.	.	.	.
Applications refused	.	.	.	.	.

IV. *Common Lodging Houses.*

On register at 1st January	.	.	.	.	.
Registered during year	.	.	.	.	.
Inspections between 8 A.M. and 10 P.M.	.	.	.	.	.
Inspections between 10 P.M. and 8 A.M.	.	.	.	.	.
Intimations of irregularities sent to keepers	.	.	.	.	.
Unregistered premises dealt with	.	.	.	.	.

V. *Infectious Diseases.*

Cases ascertained	.	.	.	.	.
Visits of inquiry, &c.	.	.	.	.	.
Patients removed to hospital	.	.	.	.	.
Notices to school boards and teachers	.	.	.	.	.
Houses or premises disinfected	.	.	.	.	.
Sets of clothing, bedding, &c., disinfected or destroyed	.	.	.	.	.

VI. *Burials.*

Burials undertaken in terms of § 43
-------------------------------------	---	---	---	---	---

VII. *Dairies, &c.*

On register at 1st January	.	.	.	.	.
Registered during year	.	.	.	.	.
Inspections	.	.	.	.	.
Contraventions of orders or regulations dealt with	.	.	.	.	.

VIII. *Unwholesome Food.*

Inspections under § 26	.	.	.	.	.
Seizures of unwholesome food	.	.	.	.	.

IX. *Special Districts.*

Special drainage districts at 1st January	.	.	.	.	.
Formed during year	.	.	.	.	.
Special water supply districts at 1st January	.	.	.	.	.
Formed during year	.	.	.	.	.

X. *Legal Proceedings.*

Cases in which local authority have taken legal proceedings . . .
 Date . . . , *Sanitary Inspector.*

No. II.

BYELAWS RECOMMENDED BY THE BOARD OF SUPERVISION
 FOR REGULATING THE DUTIES OF MEDICAL OFFICERS OF
 COUNTIES.

1. The medical officer shall by inspection of the county, and by such other means as are at his disposal, keep himself informed respecting all influences affecting or threatening to affect injuriously the public health within the county.

2. The medical officer shall inquire into and ascertain, as far as practicable, the causes, origin, and distribution of diseases within the county; and ascertain to what extent the same have resulted from or may depend on insanitary conditions capable of removal or mitigation.

3. The medical officer shall advise the county council with respect to all matters affecting the health and sanitary condition of the county, and the execution of the Public Health Acts therein.

4. The medical officer shall advise the county council with regard to the carrying out of the Sale of Food and Drugs Act, the Rivers Pollution Prevention Act, and any other Acts in regard to which his advice may be required.

5. The medical officer shall, when applied to by the sanitary inspector of the county, or by the district committee or the medical officer or sanitary inspector of any district in the county, give advice and render assistance in any matter connected with the public health.

6. On receiving information that any disease has become or threatens to become epidemic in the county or in any part thereof, the medical officer shall co-operate with the district committee and their medical officer in taking measures for its prevention or mitigation.

7. The medical officer shall make such reports and returns as may be called for by the county council or the Board of Supervision; and shall observe and execute all lawful orders and instructions of the county council or the Board of Supervision applicable to his office.

8. The medical officer shall report to the county council whenever it appears to him that the Public Health Acts have not been properly put in force within any district, or that any other matter affecting the public health of the district requires to be remedied, in order that the county council may be enabled to decide whether a representation should be made to the Board of Supervision on the matter in terms of § 53 (2) of the Local Government Act.

9. The medical officer shall report to the county council as to the advisability of making byelaws for the prevention and suppression of

nuisances not already punishable in a summary manner, in terms of § 57 of the Local Government Act.

10. The medical officer shall keep a journal, in a form to be approved by the county council, in which he shall enter his visits, inspections, and other proceedings, with notes of his observations, and of any instructions he may give. He shall submit his journal to every meeting of the county council, and shall produce it when required by the Board of Supervision or their inspecting officer.

11. The medical officer shall annually prepare a report for the year ending the 31st December, which report shall contain—

- (a) A general account of the sanitary state of the county, and the measures which in his opinion should be adopted for its improvement.
- (b) A statement of his inquiries and proceedings, and of the matters in regard to which he has given advice or taken action during the year.
- (c) A statement of the causes, origin, and distribution of diseases in the county, and the extent to which the same have depended on or been influenced by conditions capable of removal or mitigation.
- (d) A summary of the action taken to prevent the outbreak and spread of infectious disease, and an account of the hospitals or other means of isolation existing within the county.
- (e) A tabular statement of the sickness and mortality within the county, embodying the information contained in the reports which the medical officers of districts or parts of districts are required to send to the county council.

He shall transmit a copy of such report to the Board of Supervision and the county council not later than the 31st day of March of the year immediately following that to which the report refers.

BYELAWS RECOMMENDED BY THE BOARD OF SUPERVISION FOR REGULATING THE DUTIES OF SANITARY INSPECTORS OF COUNTIES.

1. The sanitary inspector shall by inspection of the county, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the sanitary condition thereof, particularly as regards drainage, water supply, and the existence of nuisances.

2. The sanitary inspector shall afford the county council information and advice on all matters affecting the sanitary condition of the county; and shall see that all lawful instructions of the county council and their medical officer are duly carried out.

3. The sanitary inspector shall, when applied to by the medical officer of the county, or by the district committee or medical officer or sanitary inspector of any district in the county, give advice and render assistance in any matter connected with the public health.

4. On receiving information that any disease has become or threatens to become epidemic in the county or in any part thereof, the sanitary inspector shall co-operate with the district committee and their sanitary inspector in carrying out the measures requisite for preventing the spread of the disease.

5. The sanitary inspector shall, when required by the county council or by any district committee in the county, advise proprietors and others as to the sanitary condition of their premises, and as to any improvements which may be required therein.

6. The sanitary inspector shall, when required, report as to any appeal to the county council from proceedings or orders of a district committee.

7. The sanitary inspector shall, when required, report on any capital works under the Public Health Acts to which the consent of the standing joint committee is required under § 18 (6) of the Local Government Act.

8. The sanitary inspector shall make such reports and returns as may be called for by the county council or the Board of Supervision; and shall observe and execute all lawful orders and instructions of the county council or the Board of Supervision applicable to his office.

9. The sanitary inspector shall report to the county council whenever it appears to him that the Public Health Acts have not been properly put in force within any district, or that any other matter affecting the public health of the district requires to be remedied, in order that the county council may be enabled to decide whether a representation should be made to the Board of Supervision on the matter in terms of § 53 (2) of the Local Government Act.

10. The sanitary inspector shall keep a journal, in a form to be approved by the county council, in which he shall enter his visits, inspections, and other proceedings, with notes of his observations, and of any instructions he may give. He shall submit his journal to every meeting of the county council, and shall produce it when required by the Board of Supervision or their inspecting officer.

11. The sanitary inspector shall report to the county council whenever it appears to him that it would be advisable that byelaws should be made under § 57 of the Local Government Act for the prevention and suppression of nuisances not already punishable in a summary manner.

12. The sanitary inspector shall annually prepare a report for the year ending the 31st December, which report shall contain—

- (a) A general account of the sanitary condition of the county, and the execution of the Public Health Acts therein.
- (b) A statement of any sanitary measures he may consider advisable.
- (c) A summary of his proceedings during the year, and of the cases in which he has given advice or taken action.
- (d) An account of the sanitary condition of all premises belonging to or under the control of the county council, and of the condition and efficiency of all water supply and drainage works, and other works constructed under the Public Health Acts within the county.
- (e) A statement embodying the information contained in the reports which the sanitary inspectors of districts or parts of districts are required to send to the county council.

He shall transmit a copy of such report to the Board of Supervision and the county council not later than the 31st day of March of the year immediately following that to which the report refers.

No. III.

AMENDED BYELAWS RECOMMENDED BY THE BOARD OF SUPERVISION FOR REGULATING THE DUTIES OF MEDICAL OFFICERS (OTHER THAN MEDICAL OFFICERS OF COUNTIES).

1. The medical officer shall inform himself, as far as practicable, respecting all influences affecting or threatening to affect injuriously the public health within the district of which he is medical officer.

2. The medical officer shall inquire into and ascertain, by such means as are at his disposal, the causes, origin, and distribution of diseases within the district; and ascertain to what extent the same have resulted from or may depend on insanitary conditions capable of removal or mitigation.

3. The medical officer shall, by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

4. The medical officer shall be prepared to advise the local authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the local authority; and, in cases requiring it, he shall certify, for the guidance of the local authority, or of the sheriff, or any magistrate or justice, as to any matter in respect of which the certificate of a medical officer or a medical practitioner is required as the basis or in aid of sanitary action.

5. On receiving information of the occurrence of any contagious, infectious, or epidemic disease within the district, the medical officer shall visit the spot without delay, and inquire into the causes and circumstances thereof, and advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be able, assist in the execution of the same.

6. On receiving information from the sanitary inspector, that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, the medical officer shall, as early as practicable, take such steps authorised by the statute in that behalf as the circumstances of the case may justify and require.

7. The medical officer shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

8. The medical officer shall make the necessary inspections and otherwise perform the duties devolving on him under the Factory and Workshop Act, 1883, in regard to bakehouses.

9. The medical officer shall from time to time, and once at least in every year, visit and inspect every hospital belonging to the local authority or to which the local authority are entitled to send patients, and shall forthwith report to the local authority any circumstance which may impair the fitness of such hospital for the reception and treatment of infectious disease.

10. The medical officer shall perform all the duties imposed upon him by any byelaws and regulations of the local authority duly approved in respect of any matter affecting the public health, and he shall further observe and execute, so far as the circumstances of the district may require, the instructions of the Board of Supervision and all the lawful orders and directions of the local authority applicable to his office.

11. The medical officer shall attend at the office of the local authority, or at some other appointed place, at such stated times as they may direct.

12. The medical officer shall keep a book or books, to be provided by the local authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of any action taken on previous reports; and shall produce such book or books whenever required to the local authority, the Board of Supervision, and the inspecting officer of the Board.

13. The medical officer shall from time to time make such special reports

and returns as may be called for by the local authority or the Board of Supervision.

14. The medical officer shall at all reasonable times afford assistance and furnish information to the county council and the officers appointed by them; and, when he deems it necessary, or when so instructed by the local authority, he shall take the advice of the medical officer of the county.

[The above byelaws, with the necessary verbal alterations, may be adopted by the local authorities of burghs.]

AMENDED BYELAWS RECOMMENDED BY THE BOARD OF SUPERVISION FOR REGULATING THE DUTIES OF SANITARY INSPECTORS (OTHER THAN SANITARY INSPECTORS OF COUNTIES.)

1. The sanitary inspector shall attend, if required, meetings of the local authority, and committees thereof.

2. The sanitary inspector shall insert in a book, to be kept for the purpose (see Form No. 1), to be called the 'Sanitary Inspector's Journal and Report-Book,' and to be provided by the local authority, notes of all his investigations and proceedings in the execution of his duty, and submit the same to every meeting of the local authority, or committee thereof.

3. The sanitary inspector shall perform all the statutory duties imposed upon sanitary inspectors; he shall also receive and without delay inquire into any complaints, whether written or verbal, made to him or to the local authority with regard to the sanitary condition of the district, and shall record the facts and the results in his journal.

4. The sanitary inspector shall personally, or by an assistant to be appointed by the local authority, visit and inquire as to the sanitary state of all parts of the district to which he has been appointed, at least once in *three months*, or oftener if required by the local authority, and report the result to the local authority.

5. The sanitary inspector shall personally, or by an assistant to be appointed by the local authority, visit and inquire as to the condition of each common lodging house within the district to which he has been appointed, at least once every *calendar month*, or oftener if required by the local authority, and enter in his journal a report of the result; he shall also report in writing to the local authority all unregistered common lodging-houses.

6. In addition to the stated periodical visits and inspections required by these byelaws, the sanitary inspector shall make such investigations and visits as may be requisite, in order to keep himself informed of the actual sanitary condition of all places or premises within his district, and the existence of nuisances therein, and shall record the fact and the result in his journal.

7. In addition to the investigations and reports required by these byelaws, the sanitary inspector shall make such special investigations and reports with regard to the sanitary condition of his district, and the execution of the Public Healths Act therein, as may from time to time be required of him by the local authority or the Board of Supervision.

8. Whenever it shall come to the knowledge of the sanitary inspector, whether by written complaint or otherwise, that a nuisance under the Public Health Act, from whatever cause arising, exists, or that any irregularity or violation of the rules and regulations in a common lodging house has occurred, he shall intimate the same within twenty-four hours

thereafter, to the author of the nuisance, or to the keeper of the common lodging house as the case may be (see Forms Nos. 2 and 3), and on the expiry of the time allowed in the aforesaid intimation, he shall ascertain and report the result in writing to the local authority, and act in accordance with such instructions as he may receive.

9. Whenever the sanitary inspector has reason to believe or to suspect that a contravention of any of the enactments of the Public Health Act (other than those referred to in the immediately preceding byelaw) has taken place, he shall immediately make inquiry, and report the result in writing to the local authority.

10. In every case in which it shall be reported or otherwise become known to him that any person in a common lodging house is suffering from any infectious or contagious disease, the sanitary inspector shall forthwith report the same to the medical officer, and act under his instructions. If the medical officer be absent, he shall, on his own responsibility, adopt such measures for the isolation and proper treatment of the patient as may be requisite, taking, if necessary, the advice of a medical man, and reporting without delay to the local authority and the medical officer.

11. The sanitary inspector shall carry out any process of disinfection or any other measures that may be required for preventing the spread of infectious or contagious disease.

12. The sanitary inspector shall from time to time inspect and report as to all buildings and works belonging to or under the control of the local authority, and shall see that all such are maintained in proper repair and in a fit and serviceable condition.

13. The sanitary inspector shall, if directed by the local authority to do so, superintend and see to the due execution of any works which may be undertaken at their instance for the suppression and removal of nuisances within the district.

14. Where no inspector of dairies has been appointed, the sanitary inspector shall from time to time, and once at least in every three months, visit all dairies, cowsheds, and milk-shops within the district, and report the result to the local authority. He shall also forthwith inform the local authority of any infringement of the orders or regulations applicable to such premises.

15. The sanitary inspector shall be bound to observe and execute all lawful orders and instructions of the local authority and the Board of Supervision, applicable to his office; and, if required, he shall attend upon the inspecting officer of the Board of Supervision, and afford him all information relating to the execution of the Public Health Act.

16. The sanitary inspector shall, if necessary, call upon the police to aid him in the execution of his duty.

17. The sanitary inspector shall at all reasonable times afford assistance and furnish information to the county council and the officers appointed by them; and, when he deems it necessary, or when so instructed by the local authority, he shall take the advice of the sanitary inspector for the county.

[The above byelaws, with the necessary verbal alterations, may be adopted by the local authorities of burghs.]

FORM No. 2.

PUBLIC HEALTH (SCOTLAND) ACT.

Intimation is hereby given to.....

 residing at.....
 in the district of.....
 that a nuisance exists at.....

 in respect that.....

 and intimation is also hereby given, that unless the aforesaid nuisance be removed
 or abated within days from this date, proceedings will be taken
 to remove or abate the same at the expense of the author of the aforesaid
 nuisance.
 Given by me on the day of 18 ..
 , *Sanitary Inspector.*

FORM No. 3.

PUBLIC HEALTH (SCOTLAND) ACT.

Intimation is hereby given to.....

 keeper of the common lodging house situated at
 that an irregularity
 has occurred in the said lodging-house in respect that.....

 and intimation is also hereby given, that unless said irregularity be stopped
 forthwith, or within days at farthest, proceedings will be taken
 against the keeper of the aforesaid lodging house, in accordance with law.
 Given by me on the day of 18 ..
 , *Sanitary Inspector and Inspector of
 Common Lodging Houses.*

No. IV.

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

(See the Act and relative Circular, Part IV., *infra*.)

ADDITIONAL BYELAWS RECOMMENDED BY THE BOARD OF SUPERVISION FOR MEDICAL OFFICERS AND SANITARY INSPECTORS OF THOSE DISTRICTS WHERE THE LOCAL AUTHORITY HAVE ADOPTED THE INFECTIOUS DISEASE (NOTIFICATION) ACT.

1. When a certificate has been received from a medical practitioner in terms of section 3 (1) (b) of the Infectious Disease (Notification) Act, the medical officer shall forthwith send or hand such certificate to the sanitary inspector, and shall instruct him to make the necessary inquiries, and to attend without delay to the instructions given in these byelaws (see Form No. 4).

2. When notice has been received from a householder (head of a family, occupier, or any of the other persons defined in sections 3 (1) (a) and 16 of the aforesaid Act) the medical officer shall ascertain whether a medical practitioner's certificate has also been received, and if so shall deal with the case in terms of byelaw I. Where *no* certificate has been received, it shall be the duty of the medical officer to ascertain whether the case has been correctly notified, and to see that the necessary precautions are taken by the person notifying accordingly.¹

3. It shall be the duty of the sanitary inspector to enter both the certificates and the notices in a book to be provided by the local authority and to be called the 'Register of Notifications,' which shall be kept in the office of the local authority for that purpose (see Form No. 5).

4. The sanitary inspector shall also keep any other books or forms in connection with the Act which the Board of Supervision or the local authority may from time to time consider necessary.

5. Where there is a hospital which belongs to the local authority, or to which the local authority are entitled to send patients, the sanitary inspector shall inform the medical practitioner in attendance on the patient that the local authority are prepared by removing the patient or otherwise to co-operate with him to secure isolation and disinfection.

6. Where the patient has been removed to a hospital, the sanitary inspector shall at once proceed to examine the sanitary arrangements of the house from which the patient has been removed, and carry out any process of disinfection that may be required to prevent the spread of the disease, communicating, if necessary, with the medical officer with the view of securing his assistance.

7. Where the patient has *not* been removed to a hospital, the sanitary inspector shall forthwith visit the house in which the patient resides, so that he may co-operate, if necessary, with the medical practitioner in attendance in securing isolation, disinfection, &c. He shall ascertain from the medical practitioner when the thorough examination of the sanitary

¹ The latter contingency, however, is only likely to happen in the case of a mild attack of scarlet fever or scarlatina, or where a local authority have added, say, measles and whooping-cough to the statutory list. In many such instances no medical practitioner is called in, and thus no certificate is received.

arrangements of the house can with safety to the patient be carried out, and shall then proceed as in byelaw 6.¹

8. Where the patient is a pauper the sanitary inspector shall without delay communicate with the inspector of poor.

9. In the case of infectious disease occurring in any house (or other structure as defined by section 13 of the Act) in which there are children of school age, the sanitary inspector shall give intimation to the clerk to the school board, or where the children attend a private school, to the head master or mistress thereof.

10. In the event of a death occurring the sanitary inspector shall see that proper precautions are taken by speedy interment to prevent the spread of infection.

11. The sanitary inspector shall tabulate weekly the notifications received, and shall report yearly to the Board of Supervision, giving a summary of the action taken by the local authority for preventing the spread of infectious disease. He shall also supply the information required in the annexed tabular statement on forms to be supplied by the Board of Supervision (see Form No. 6). Where a district committee is the local authority, a copy of the sanitary inspector's report and of the tabular statement shall be transmitted to the county council in terms of section 53 of the Local Government Act.

¹ In populous centres where the notifications are necessarily heavy, this provision might be most conveniently carried out by the use of a "reply postcard" or two-leaved circular, the return half of which the medical practitioner shall simply date, sign, and retransmit by post to the sanitary inspector as soon as he considers that the examination may take place.

FORMS UNDER THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

FORM No. 1.

[This notice to be given to members of the local authority fourteen clear days at least before the meeting.]

.....189....

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

SIR,—In terms of section 5 of the above Act, I hereby give you special notice that a resolution to adopt the Infectious Disease (Notification) Act, 1889, within the bounds of the local authority of....., will be proposed at a meeting of the said local authority, to be held on theday of.....189.....—I am, &c.,

.....
Clerk to the Local Authority.

FORM No. 2.

Form of Resolution.¹

.....That special notice of this meeting and of the intention to propose this resolution having been duly given, the *

* Insert district committee, police commissioners, or otherwise,
¹ Note.—In transmitting to the Board of Supervision a copy of the resolution in terms of section 5 (3) the Board request local authorities to transmit at the same time a copy of the "fourteen days' notice" (Form 1), and of the "advertisement in a local newspaper" (Form 3).

as local authority under the Public Health (Scotland) Act, 1867, within the bounds of the †..... hereby adopt the Infectious Disease (Notification) Act, 1889; and that this resolution come into force on theday of.....189.....

as the case may be.

† Insert district of

..... or burgh of

..... as the case may be.

FORM No. 3.

Publication of the Resolution.

[The resolution of the local authority to adopt the Act must be published not less than one calendar month before the Act comes into operation.]

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

*

* Insert the name of local authority.

NOTICE.

NOTICE IS HEREBY GIVEN that on the.....day of.....189..., the †.....passed the following resolution:—
“That special notice of this meeting and of the intention to propose this resolution having been duly given, the ‡....., as local authority under the Public Health (Scotland) Act, 1867, within the bounds of the §.....hereby adopt the INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889, and that this resolution come into force on the.....day of.....189.....”

† Insert name of local authority.

‡ Insert district committee, police commissioners, or otherwise, as the case may be.

Attention is hereby directed to the following provisions of the Act:—

I. Notification by Private Persons.

Where an inmate of any building, ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, is suffering from an infectious disease, namely—

§ Insert district of or burgh of as the case may be.

SMALL-POX,
CHOLERA,
DIPHTHERIA,
MEMBRANOUS CROUP,
ERYSIPELAS,

SCARLATINA, or
SCARLET FEVER,
And the fevers known
as TYPHUS,

TYPHOID or ENTERIC,
RELAPSING,
CONTINUED, or
PUERPERAL, ||

|| Here add any other infectious disease which may have been included by resolution of the local authority and approved by the Board of Supervision.

then, unless such building is a hospital in which persons suffering from an infectious disease is received, the HEAD OF THE FAMILY to which the patient belongs, and in his default the NEAREST RELATIVES of the patient present in the building or being in attendance on the patient, and in default of such relatives EVERY PERSON IN CHARGE OF OR IN ATTENDANCE ON THE PATIENT, and in default of any such person THE OCCUPIER OF THE BUILDING, shall, as soon as he becomes aware that the patient is suffering from any infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district.

The expression “occupier” includes a person having the charge, management, or control of a building, or of the part of a building in which the patient is, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers, either as his own account or as the agent of another person, and in the case of a ship, vessel, or boat, the master or other person in charge thereof.

II. *Notification by Medical Practitioners.*

Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate, stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering.

III. *Penalties.*

Every person required to give a notice or certificate who fails to give the same, shall be liable, on summary conviction, in manner provided by the Summary Jurisdiction Acts, to a fine not exceeding forty shillings.

* Insert name and address in full.

The medical officer of the local authority is *.....
to whom the notices and certificates above mentioned are to be sent.
By order of the local authority,
.....Clerk.

* Name of local authority.

† Name in full of person suffering from disease.

‡ No. or name of the house, and name of the street or road, and parish or place, where person is resident. In the case of a ship, boat, tent, van, shed, or other similar structure, the name or description of the dwelling, and the name of the place where it is situated, should be given.

§ Name of disease.

|| State whether in private practice or in practice as M.O. to public body or institution.

¶ The local authority may here print the name and address of the M.O.

FORM No. 4.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

CERTIFICATE OF MEDICAL PRACTITIONER.

*

To the medical officer of the local authority under the Public Health Act.

I hereby certify and declare, that in my opinion †
an inmate of ‡
is suffering from §
and that the above is a case occurring in my ||

Dated the day of, 18...

(Signed)

Medical Practitioner.

(Address)

N.B.—This certificate must (under a penalty not exceeding forty shillings) be sent to the medical officer of the local authority forthwith, on the medical practitioner attending on or called in to visit the patient becoming aware that the patient is suffering from an infectious disease to which the Act applies—namely, any of the following diseases: Small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names: typhus, typhoid, enteric, relapsing, continued or puerperal, and also any infectious disease to which the Act has been applied by the local authority in manner provided by the Act.

¶

The above is the FORM FOR CERTIFICATE under section 4 of the Infectious Disease (Notification) Act, 1889 (52 & 53 Vict. c. 72), prescribed by the Board of Supervision. It is thus a statutory form, and cannot be altered except by the Board. A local authority may, however, in a footnote give any further information that will in their opinion facilitate the working of the Act.

JOHN SKELTON, *Secretary.*

FORM No. 6.

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

TABULAR STATEMENT for the Year ending 31st December 189..., to be filled up by the Sanitary Inspector.

Local authority of the *..... County of.....

TABLE I.

DISEASES.	Total Cases.			Cases treated Privately.			Cases removed to Hospital.		
	Cases Notified.	Deaths.	Percentage of Deaths to Notifications.	Cases Notified.	Deaths.	Percentage of Deaths to Notifications.	Cases Notified.	Deaths.	Percentage of Deaths to Notifications.
Small-pox . . .									
Cholera . . .									
Diphtheria . . .									
Membranous croup . . .									
Erysipelas . . .									
Scarlatina or scarlet fever . . .									
Typhus fever . . .									
Typhoid or enteric fever . . .									
Relapsing fever . . .									
Continued fever . . .									
Puerperal fever . . .									
†									
Grand total . . .									

TABLE II.

Number of Medical Practitioners' Certificates.	£	s.	d.
..... cases in private practice @ 2/6 . . .			
..... cases in public institutions @ 1/- . . .			
..... cases. Total cost in fees . . .			

3. Number of notifications by head of family, occupier, &c.....

4. Number of cases omitted either by medical practitioners or heads of families, &c.....

5. Number of prosecutions, in terms of section 3 (2) consequent on such omissions.....

6. Number of convictions consequent on such prosecutions.....

Date..... Signature of sanitary inspector.....

* Insert burgh of.....or district of.....as the case may be.

† Insert any other diseases to which, in terms of section 7, the Act may have been extended.

No. V.

RULES AND REGULATIONS FOR COMMON LODGING HOUSES.

The definition of the expression "common lodging house" is given in section 3 of the Public Health (Scotland) Act, 1867.

The statutory provisions as to common lodging houses are contained in sections 59 to 70 inclusive.

Power to make rules and regulations for common lodging houses is given to local authorities by section 62.

RECOMMENDATIONS TO LOCAL AUTHORITIES IN REGISTERING
PREMISES AS COMMON LODGING HOUSES.

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.*—The site should be dry and healthy, the structure substantial, the walls, roof, and floors in good repair, and the internal arrangements suitable.

2. *Drainage.*—All drains should be properly laid, and adequately trapped and ventilated; the connections should be efficiently made; and the whole should be in good repair.

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, by procuring a chemical analysis, 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, 300 cubic feet for each person may be an 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, and of proper construction; they should have external ventilation, and all their fittings and appurtenances should be in good order.

7. *Washing Accommodation.*—Where practicable, it is advisable that washing accommodation should be provided in a special place, and not in the bedrooms.

8. *Kitchen*.—No kitchen or apartment used as such should be registered as a sleeping apartment.

RULES AND REGULATIONS FOR COMMON LODGING HOUSES,
RECOMMENDED BY THE BOARD OF SUPERVISION.

1. No house shall be used as a common lodging house unless such house shall have been inspected and approved for that purpose by the inspector of common lodging houses, and shall have been registered by the local authority.

2. All applications to have a house registered as a common lodging house shall be in writing, and shall truly set forth the name and residence of the applicant, the situation of the house, the number of rooms, the number of lodgers proposed to be accommodated, and the number of applicant's family, and shall be accompanied by a certificate of character, in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively assessed for the relief of the poor.

3. If the local authority are satisfied with the character of the applicant, and with the fitness of the premises, they may register accordingly, and shall furnish the keeper with a register ticket for each room of such common lodging house, setting forth the number of lodgers to be accommodated in such room; and every keeper of a common lodging house shall keep hung up in some conspicuous place in each room the register ticket for such room, along with a copy of these rules and regulations, and shall not wilfully deface or destroy the same, or permit them to be defaced or destroyed.

4. No keeper of a common lodging house shall permit any room in such house to be occupied by a greater number of persons than the number specified in the register ticket, which shall be in the proportion of not more than one person for every three hundred cubic feet of space contained in such room. Two children under ten years of age may be counted as one person.

5. No keeper of a common lodging-house shall permit males and females above ten years of age to occupy the same sleeping apartment, except in the case of husband and wife.

6. Every keeper of a common lodging house shall enter in a book to be kept by him the name and designation, and the dates of arrival and departure, of each lodger.

7. All rooms, lobbies, passages, and stairs in every common lodging house shall be properly ventilated to the satisfaction of the local authority. A window of every room shall be made so as to open, and shall be kept open for two hours in the morning and two hours in the afternoon of every day, unless prevented by bad weather or the illness of any lodger; and during the hours when the windows are open, the bedclothes of every bed shall be turned down and exposed to the air.

8. Every keeper of a common lodging house shall provide sufficient bedsteads and bedding, a proper supply of pure and wholesome water, and suitable accommodation for cooking and washing, together with towels and all necessary utensils for the requirements of the lodgers, all to the satisfaction of the local authority.

9. Every keeper of a common lodging house shall cause all bedclothes and bedding, and all articles and utensils in such house, to be kept in a thoroughly clean and wholesome condition.

10. Every keeper of a common lodging house shall cause the floors of every apartment, and of every lobby, closet, passage, and stair in such

house, and also the common stairs and lobbies by which access is obtained thereto, to be thoroughly swept every day, before the hour of ten in the forenoon, and to be thoroughly washed once in every week; he shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, ashpits, cesspools, and drains thereof to the satisfaction of the inspector, and so often as shall be required by, and in accordance with, any regulation 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.

11. Every keeper of a common lodging house shall cause all ashes and night-soil, and all solid and liquid filth or refuse, and all offensive matter or thing, to be removed from such house every day before the hour of ten in the forenoon; shall not allow any dangerous or offensive animal, or any poultry, to be kept or fed in such house; shall cause all water-closets, privies, and ashpits belonging to such house to be maintained in good order and in a wholesome condition; and shall cause any yard, area, or court in connection with such house to be regularly swept, and kept in a clean and wholesome condition.

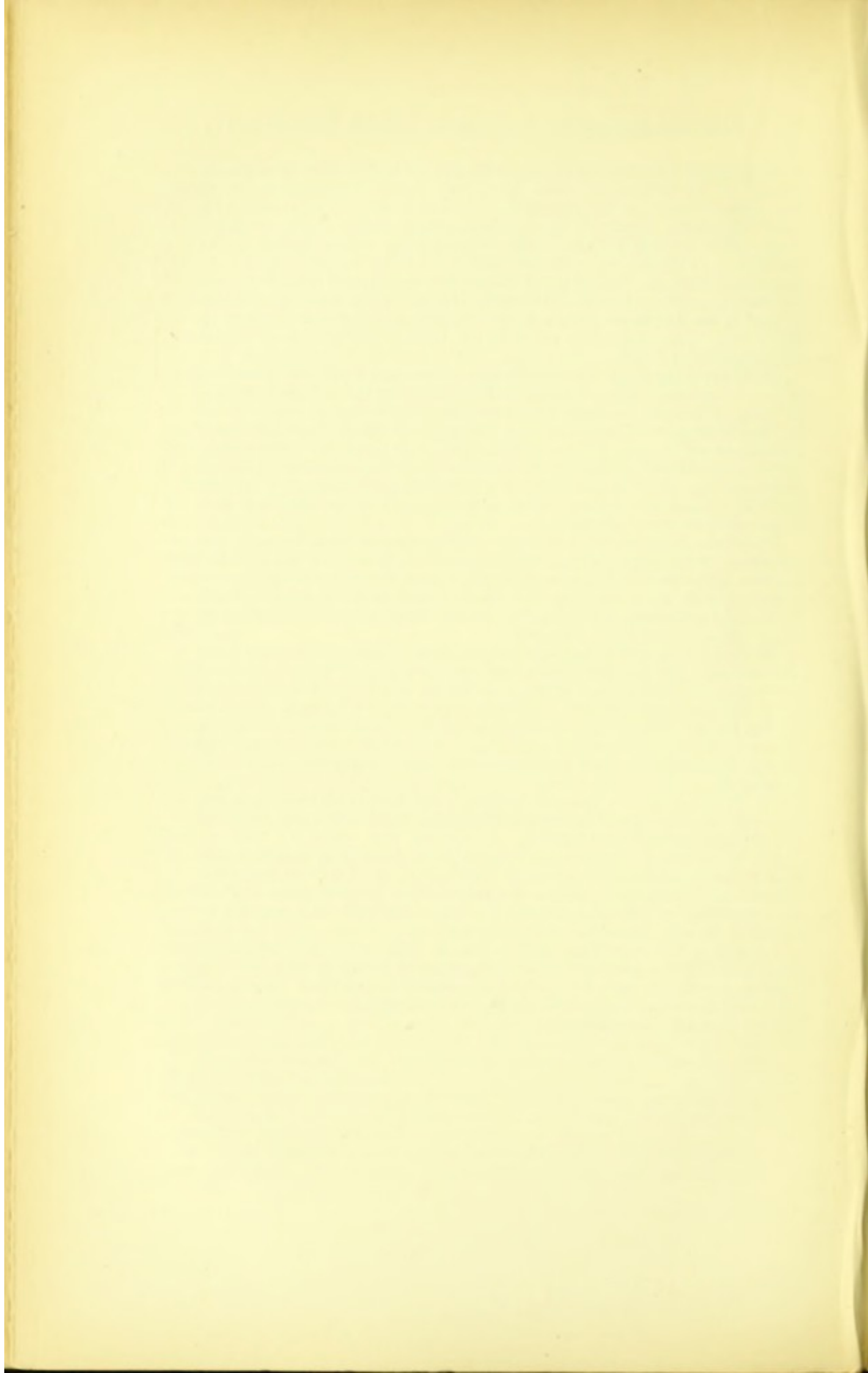
12. When any person in a common lodging house is ill of fever or any infectious or contagious disease, the keeper of such house shall give immediate notice thereof to the medical officer, or to the inspector of common lodging houses, or to the inspector of poor, and shall act in accordance with any instructions which he may receive from the medical officer or other officer of the local authority.

13. Every keeper of a common lodging house shall, immediately after the removal, recovery, or death of any person who may have been ill of fever or any infectious or contagious disease within such house, cause every part of the room which may have been occupied by such person to be thoroughly cleansed and disinfected, and shall also cause all clothes, bedding, and other articles in such room to be thoroughly cleansed and disinfected, unless the local authority shall have ordered the same to be destroyed.

14. Every keeper of a common lodging house shall at all times give free access to such house, and to every part thereof, to all officers of the local authority and all officers of police.

15. Every keeper of a common lodging house shall refuse to admit into such house any person in a state of intoxication, or of known bad character; shall maintain and see to the enforcement of good order and decorum within such house; and shall prevent any persons occupying or resorting to such house for immoral purposes.

16. Any person offending against any of these rules and regulations shall be liable in a penalty not exceeding the sum of five pounds for each offence, and in the case of a continuing offence, in a further penalty not exceeding the sum of forty shillings for each day after written notice of the offence from the local authority.



PART IV.

STATUTES RELATING TO OR AFFECTING THE
PUBLIC HEALTH.

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PART IV.

STATUTES RELATING TO OR AFFECTING THE PUBLIC HEALTH.

I. THE LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.

(52 & 53 VICT. c. 50.)

PROVISIONS AFFECTING THE ADMINISTRATION OF THE PUBLIC HEALTH ACTS.¹

Transfer to County Council of Powers of Local Authorities, &c.

11. Subject to the provisions of this Act there shall be transferred to and vested in the council of each county, on and after the appointed day, or at such times as are in this Act in that behalf respectively specified:—

(4.) The whole powers and duties of the local authorities under the Public Health Acts of parishes so far as within the county (excluding burghs and police burghs);

Parochial boards are no longer local authorities under the P.H. Act, their powers being transferred to the county councils and district committees. To facilitate the transference, the Board recalled their determinations under § 5 of

¹ For a more complete exposition of the sanitary provisions of the Local Government Act the reader is referred to "The Local Government Act in relation to Public Health" (Blackwood, 1890) by the Author of this work.

the P.H. Act and § 5 of the Nuisances Removal Act. See P.H. Act, § 5, and notes.

The sanitary administration of burghs is not transferred to the county council. Royal, parliamentary, and police-burghs are alone mentioned in the Act; but burghs of barony appear to be in the same position. See opinion obtained by the Secretary for Scotland in note to P.H. Act, § 5.

The provisions of any Act of Parliament conferring, imposing, or regulating the powers and duties by this Act transferred or regulating the proceedings under any such Act shall remain in full force and effect, except in so far as they are repealed by or are inconsistent with the provisions of this Act.

Transfer of Powers of Parochial Boards under Public Health Acts.

17. With respect to the transference to the county council of the powers and duties of certain local authorities under the Public Health Acts, the following provisions shall have effect:

- (1.) For the purposes of the administration of the laws relating to public health, the county shall, except as hereinafter provided, be divided into districts, in the manner provided in this Act, and there shall be a district committee for each such district constituted as provided in this Act.
- (2.) A district committee shall, subject to the provisions of this Act, be the local authority under the Public Health Acts, and as such shall have and may exercise within its district all the powers and duties and be subject to all the liabilities by this Act transferred to or conferred on the county council with respect to the administration of the laws relating to public health, except those relating to medical officers or sanitary inspectors for the county, and subject to the provisions following:
 - (a.) A district committee shall have no power of raising money by rate or loan:
 - (b.) The county council shall make general regulations for the government of a district committee, and such committee shall conform to those regulations:
 - (c.) 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; and such proceedings or order shall be stayed pending the appeal, but the power of appeal hereby given shall not apply to any proceedings for the removal of a nuisance; and nothing in this Act contained shall affect or prejudice any proceedings to enforce the provisions of

the Public Health Acts, save only that when necessary such proceedings shall be taken by or against the district committee instead of against the parochial board as local authority under the said Acts. The medical officer or the sanitary inspector of the county or district may appeal to the county council, and the county council may on such appeal make an order under the Public Health Acts.

- (3.) The power of appointing officers under the Public Health Acts is hereby varied, so that it shall be lawful to appoint such officers either for the whole district or for any part thereof or parish therein as shall be deemed expedient. The officers so appointed shall have, as nearly as may be, within the areas respectively assigned to them the same powers, duties, rights, and tenure (if any) as the officers, as the case may be, of the existing local authority have within the area of the parish.
- (4.) The sums necessary to meet any deficiency in respect of the expenditure under the Public Health Acts within any district shall be levied by the county council by a rate imposed on all lands and heritages within such district, or within any special drainage or water supply district within the meaning and subject to the provisions of the Public Health Acts.

Districts and district committees.—See *infra*, §§ 77, 78; also P.H. Act, § 5, and notes.

M.O. and S.I. for county.—See *infra*, § 52.

Appeal by ratepayers.—See note to § 76 of P.H. Act.

P.H. assessments.—See P.H. Act, §§ 93-95, and notes.

Proceedings against district committees.—See P.H. Act, §§ 96, 97, 98.

Tenure of medical officers and sanitary inspectors.—The provisional councils of Stirling, Clackmannan, Lanarkshire, &c., having requested the Board of Supervision to remove, or sanction the removal, before 15th May, of all the sanitary officers appointed by parochial boards acting as local authorities under the Public Health Act, the Board declined to comply with the request. The following letters, in explanation of the Board's action, were addressed to the county clerk of Stirling:—

BOARD OF SUPERVISION,
EDINBURGH, 26th April 1890.

SIR,—I have to acknowledge the receipt of your letter dated the 24th instant, in which you request, on behalf of the provisional council, that the Board will give such consent as is necessary for the removal of the present parochial sanitary officers prior to the appointed day, which I have submitted to the Board.

The question raised by the request of the provisional council is a large and important one, and involves a careful inquiry into the scope and specific provisions of the Local Government Act.

The Board may state, in the first place, that when vacancies in the office of sanitary inspector have occurred since the passing of the Act they have refrained from requiring parochial boards to make new appointments. They have thus to a certain extent limited the number of sanitary inspectors at present in office.

The only offices recognised by the Public Health Act to which the request of the provisional council applies are those of sanitary inspector and medical officer.

The provisional council are probably aware that in so far as the tenure of office is concerned the status of the sanitary inspector differs from that of the medical officer.

The sanitary inspector under the Public Health Act is appointed by the local authority, but he can be removed only by the Board of Supervision. The Board have held that this amounts to an appointment *ad vitam aut culpam*, and they have only exercised the power conferred upon them by the statute when it has been established to their satisfaction that a sanitary inspector was unfit or incompetent, or had failed to discharge the duties of his office.

The medical officer is appointed annually. If due notice, however, that his services are to be dispensed with is not given to him by his employers, he continues to hold office year after year by tacit relocation. If he is dismissed without sufficient cause during the currency of his engagement he may proceed against the local authority for the damage he has sustained by action in a court of law. This rule applies to medical officers appointed under either the Poor Law or Public Health Act.

The general provisions of the Local Government Act affecting existing officers are to be found in sections 83, 118, 119, and 120. These officers become on the appointed day the officers of the county council; they continue to hold office by the same tenure and upon the same terms and conditions as if the Act had not passed; and they can only be removed with the consent of the body whose consent is presently required. On the other hand, the council may distribute the business among existing officers as they think just, or abolish any office which they deem unnecessary, the officer receiving the usual compensation.

It is doubtful how far these general provisions of the Act apply to the officers who have been appointed under the Public Health Act. At least, they must be read along with, and they are controlled by, the specific provisions which apply to sanitary officers.

In the first place, it would rather appear that the sanitary officers become the officers of the district committees, and not of the county council. Except in certain matters, the district committees exercise all the powers and duties and are subject to all the liabilities of the existing local authorities. The sanitary inspector and the medical officer appointed under the Public Health Act simply cease to be the officers of the parochial board to become the officers of the district committee. It would appear that the district committee have power to make their services available over any part of the area of the district, but this is the only change, in so far at least as sanitary inspectors are concerned, effected by the Act.

In the second place, it is provided by section 54 that "every medical officer and every sanitary inspector appointed under this Act or under the Public Health Acts shall be removable from office only with the sanction of the Board of Supervision." The practical effect of this provision is that the tenure of office by medical officers is made more secure. They cannot now be removed either by the county council or by the district committee without the consent of the central Board; and it is nowhere provided that the central Board can grant consent for the removal either of the sanitary inspector or the medical officer on the ground that his office has become unnecessary. There may be a redistribution of areas among the officers appointed or to be appointed; but the maintenance, so far, of the existing area is not inconsistent with the provisions of the Act. It is, on the contrary, lawful for the district committee to appoint officers "for any part of the district or parish therein as shall be deemed expedient."

The Board, therefore, do not consider that they can comply in the meantime with the request of the provisional council. They are not satisfied that there is any provision in the Act which empowers them to remove existing officers except on the ground that they are unfit or incompetent. It may become their duty to consider hereafter, when the districts have been defined and the committees appointed, whether the services of any existing officer can be dispensed with

as unnecessary, and whether, on the fact being established to their satisfaction, they have power under the Act either to remove him or to consent to his removal.—I am, &c.,

JOHN SKELTON, *Secretary.*

PATRICK WELSH, Esq., County Clerk, Stirling.

BOARD OF SUPERVISION,
EDINBURGH, 9th May 1890.

SIR,—With reference to my letter of 26th ult., in which I intimated that the Board were not prepared to comply with the request of the provisional council that the Board should dismiss the medical officers and sanitary inspectors within the county of Stirling appointed by parochial boards acting as local authorities under the Public Health Act, I am now to inform you that the Board have been informed by the Lord Advocate that he concurs in the view taken by the Board. His Lordship observes:—

“I entirely agree in the view taken by the Board of the proposed dismissal of sanitary inspectors and medical officers. I think it impossible to sanction such a proceeding. The dismissals proposed would not rest on any ascertained unfitness on the part of the officials, but on a general anxiety on the part of their employers to avoid compensation. This does not seem to me a legitimate exercise of the existing powers of removal.”—I am, &c.,

JOHN SKELTON, *Secretary.*

PATRICK WELSH, Esq., County Clerk, Stirling.

18.—(6.) No works involving capital expenditure (in this Act referred to as capital works) shall be undertaken in any county, or any district thereof, under or in pursuance of powers transferred or conferred by this Act, or any other Act, without the consent in writing of the standing joint committee appointed in terms of this section.

(7.) Capital works shall include the erection, rebuilding, or enlargement of buildings, the construction, re-construction, or widening of roads and bridges, the construction or extension of drainage or water supply works, and shall also include the acquisition of land or of any right or interest or servitude in or over land or water for the purposes of any capital work.

See P.H. Act, §§ 39, 73, 76, 89, 90.

Transfer of County Property and Liabilities.

25.—(1.) On and after the appointed day all such property as belongs or would, but for the passing of this Act, belong to or be vested in or held in trust for any authority whose powers and duties are by or in pursuance of this Act transferred to the county council of a county, shall pass to and vest in and be held in trust for such council, subject to all debts and liabilities affecting the same, and shall be held by the county council for the purposes for which such property is or would have been held, so far as such purposes are not modified by this Act; and if any question shall arise as to the heritable or moveable property of any parochial board as the local authority under the Public Health Acts, transferred by this Act, the same, failing

agreement, may be determined by the Secretary for Scotland, but such determination shall have effect only until an adjustment by the Boundary Commission under or in pursuance of this Act.

Property, Funds, and Expenses of County Council.

26.—(1.) On and after the appointed day all debts and liabilities of any authority whose powers and duties are transferred by or in pursuance of this Act to the county council of a county shall become debts and liabilities of such council, and shall, subject to the provisions of this Act, be defrayed by them out of the like funds out of which they would have been defrayed if this Act had not passed.

27.—(3.) The consolidated rates shall be imposed upon lands and heritages according to the annual value thereof as appearing on the valuation roll, but subject always to the provisions of the Public Health (Scotland) Act, 1867, in regard to all assessments leviable under that Act.

(5.) An outgoing occupier removing from any lands or heritages during the currency of a year for which a rate has been imposed shall have a right of relief against the incoming occupier for the proportion of the rate applicable to the period of the year remaining unexpired at his removal.

See P.H. Act §§ 93-95, and notes.

Boundaries of Burghs.

44. For the purposes and subject to the provisions of this Act, and except so far as varied by an order made under this Act, as hereinafter mentioned the following provisions shall have effect:—

(b.) The boundaries of burghs for the purposes of this Act shall be held to be the boundaries thereof as the same are or may be ascertained, fixed, or determined for police purposes under the provisions contained in any general or local Act of Parliament, or when no police assessment is levied as the same are or may be ascertained, fixed, or determined for municipal purposes:

Adjustment of Property and Liabilities.

50.—(1.) Any councils and other authorities affected by this Act, or by any order, or other thing made or done in pursuance

of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, of the parties to the agreement, so far as affected by this Act, or such order, or thing, and the agreement, and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint use, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum or of an annual payment.

(2.) In default of an agreement as to any matter requiring adjustment for the purposes of this Act, then, if no other mode of making such adjustment is provided by this Act, such adjustment may be made or determined by the Commissioners.

*Power to appoint Medical Officer and Sanitary Inspector
for County.*

52.—(1.) The council of every county shall appoint and pay a medical officer or medical officers and a sanitary inspector or sanitary inspectors, who shall not hold any other appointment or engage in private practice or employment without express written consent of the council.

(2.) The county council and any district committee, as the local authority under the Public Health Acts, may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district committee, on such terms as to the contribution by the district committee to the salary of any medical officer or sanitary inspector, or otherwise, as may be agreed, and the medical officer or sanitary inspector shall have within such district all the powers and duties of a medical officer or sanitary inspector appointed by a district committee.

(3.) So long as such an arrangement is in force, the obligation of the district committee as the local authority under the Public Health Acts to appoint a medical officer or sanitary inspector shall be deemed to be satisfied without the appointment of a separate medical officer or sanitary inspector.

See P.H. Act, § 8, and notes.

Medical Officer, &c., to send Reports to County Council, &c.

53.—(1.) Every medical officer and sanitary inspector under the Public Health Acts for a district in any county shall send to the county council a copy of every report of which a copy is for the time being required by the regulations of the Board of Supervision (which they are hereby authorised to make) to be sent to that Board.

(2.) If it appears to the county council that the Public Health Acts have not been properly put in force within any district, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Board of Supervision on the matter.

For the Regulations issued by the Board under this section, see Part III.

Qualifications of Officers, &c.

54.—(1.) No person shall hereafter be appointed the medical officer of any county or district or parish, unless he is a registered medical practitioner.

(2.) No person shall after the first day of January one thousand eight hundred and ninety-three be appointed the medical officer under the Public Health Acts for a county or district or parish which contained, according to the last published census for the time being, a population of thirty thousand or upwards, unless he is qualified as above mentioned, and also is registered on the Medical Register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886.

(3.) No person shall, except with the express consent of the Board of Supervision, be appointed as the sanitary inspector for a county unless he has been during the three consecutive years preceding his appointment the sanitary inspector of a local authority under the Public Health Acts.

(4.) Every medical officer and every sanitary inspector appointed under this Act or under the Public Health Acts shall be removable from office only with the sanction of the Board of Supervision.

But the question has been raised whether § 54 (4) includes the sanitary officers appointed in burghs over 10,000. See P.H. Act, § 8, and notes.

*Power to County Council to enforce provisions of
39 & 40 Vict. c. 75.*

55.—(1.) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district.

(2.) Any county council shall have power to contribute towards the expenses of any prosecution under the said Act instituted by any other county council or by any sanitary authority.

(3.) The Secretary for Scotland, by provisional order made on the application of the council of any of the counties and burghs concerned, may constitute a joint committee or other body representing all the counties and burghs through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order, and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties and burghs represented by it, and for the audit of the accounts of such committee or body, and their officers.

A provisional order made under this section shall be of no effect until it is confirmed by Parliament.

See the Rivers Pollution Act, 1876, *infra*.

Power of County Councils to make Byelaws.

57.—(1.) The council of a county may from time to time make such byelaws as to them seem meet for the administration of the affairs of the county, for the prevention of vagrancy, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the county, and may thereby appoint such penalties, not exceeding in any case five pounds, as they deem necessary for the punishment of offences against the same.

As to nuisances, see P.H. Act, § 16.

Summary proceeding for determination of questions as to transfer of powers.

61. If any question arises or is about to arise as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee, or district committee under this Act, that question, without prejudice to any other mode of trying it, may on the application of the county council or other authority concerned, or of the clerk of the peace, be submitted for decision to either division of the Inner House of the Court of Session in a summary way; and the court, after hearing such parties, and taking such evidence (if any) as it thinks just, shall decide the question, and such decision shall be final.

Levy of Consolidated Rates.

62. The following provisions shall be made with respect to the levy of the consolidated rates; that is to say,

- (1.) All rates imposed by the county council shall be deemed and taken to be for the year (in this Act referred to as the local financial year) from the fifteenth day of May preceding the date of imposing the same, and shall be made payable on or before a day to be fixed by the council not being earlier than the first day of November then ensuing.
- (2.) The demand note shall set forth the several branches of expenditure in respect of which the consolidated rates are imposed and the amount*in the pound applicable to each several branch, and shall state the amount to be paid by the person named in the note and the manner and time of appealing against and paying such amount and such other particulars as shall be prescribed.
- (3.) The county council shall make regulations in regard to the lodging and hearing of appeals against rates, and shall hear any appeals lodged in accordance therewith.
- (4.) The county council may relieve from payment of any rate any occupier of lands and heritages under the annual value of four pounds as appearing on the valuation roll on the ground of poverty, but only on application by such occupier; but no lands or heritages shall be exempted from assessment on the ground that they are under the said annual value, or are or have been during the period of assessment unoccupied and unfurnished, except in respect of the amount payable by the occupier.

Power to modify Regulations as to Rating.

63. In any case in which it shall happen that, by reason of the special enactments regulating the rating in any division or district of a county, the provisions contained in this Act cannot conveniently receive effect without modification or addition, the county council may by regulations make such modification or addition, and such regulations shall have effect as if they were contained in this Act. But no such regulations shall be made unless public notice of their purport has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such regulations relate, and also in the 'Edinburgh Gazette.'

Provided that such regulations shall have no effect until they have been confirmed by the sheriff after such publication and inquiry as he shall think necessary.

Borrowing by County Council.

67.—(1.) The county council may from time to time, with the consent in writing (signed by two members and the county clerk) of the standing joint committee appointed in pursuance of this Act, borrow on the security of any rate leviable by the council under or in pursuance of this Act or of any other Act, such sums as may be required for the following purposes, or any of them; that is to say,

(a.) For any purpose for which any authority whose powers and duties are by or in pursuance of this Act transferred to the county council were, at the passing of this Act, authorised to borrow;

but neither the transfer of powers by this Act nor anything else in this Act, shall, save as herein-after provided, confer on the county council any power to borrow without the consent above mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by any Acts relating to such borrowing, and the said standing joint committee, before giving their consent, shall take into consideration any representation made by any ratepayer.

(2.) A loan under this section shall be repaid within such period, not exceeding thirty years, as the county council, with the consent of the said standing joint committee, determine in each case.

See P.H. Amendment Act, 1875, as to Loans from Public Works Loan Board; also P.H. Act, §§ 86, 89 (6); and P.H. Amendment Act, 1871, § 2.

Audit of Accounts of County Council.

68.—(1.) The accounts of the receipts and expenditure of a county council (including those of the district committees) shall be made up and balanced to the fifteenth day of May in every year in such form and shall be completed and signed by such person or officer and before such date as the Secretary for Scotland shall from time to time prescribe.

(2.) The accounts of a county council (including as aforesaid) shall be audited in manner herein-after provided; and from and after the appointed day all provisions in regard to the audit of accounts of any administrative body whose powers and duties are by this Act transferred to the county council are hereby repealed.

Appointment of County Auditors.

69. The Secretary for Scotland shall from time to time appoint one or more fit persons (in this Act referred to as county auditors) to audit the accounts of each county council (including those of the district committees), and may remove any county auditor.

Annual Budget of County Council.

71. At their meeting in the month of October in each local financial year every county council shall cause to be submitted to them the estimates, prepared as herein-before provided by the finance committee, of the receipts and expenditure of such council (including those of the district committees) during that financial year, whether on account of property, contributions, rates, loans, or otherwise, and shall revise such estimates and authorise such expenditure and make such provision for meeting the same as they shall approve under the provisions herein-before contained.

Proceedings of County Council.

73.—(8.) The councillors or members of district committees appointed to represent a burgh or an electoral division consisting of a police burgh or part of a police burgh shall not act or vote in respect of any matters involving expenditure to which such burgh does not contribute or for which the lands and heritages in such burgh or police burgh are not assessed.

Proceedings of Committees.

74.—(1.) A county council appointing under this Act any committee may from time to time, subject to the provisions of this Act, make, vary, and revoke regulations respecting the quorum and proceedings of such committee; but, subject to such regulations, the proceedings and quorum and the place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a casting vote as well as a deliberative vote.

(2.) Every committee shall report its proceedings to the county council by whom it was appointed.

See *infra*, § 80 ; also P.H. Act, § 7, and notes.

Payments out of County Fund and Appointment of Finance Committee.

75.—(1.) All payments to and out of the county fund shall be made to and by the county treasurer, and all payments out of the fund shall, unless made in pursuance of the specific requirement of an Act of Parliament or of a decree of a competent court, or on the requisition of any district committee or standing joint committee, or for the periodical payment of salaries and wages, be made in pursuance of an order of the council signed by three members of the finance committee and countersigned by the county clerk, and the same order may include several payments. Moreover, all cheques for payment of moneys shall be signed by two members of the finance committee and be countersigned by the county clerk or by a deputy approved by the council.

Appointment of Joint Committees.

76.—(1.) Any county councils or county councils and town councils may from time to time join in appointing out of their respective bodies a joint committee for any purpose of this Act in respect of which they are jointly interested.

(10.) For the purposes of this section town council shall include police commissioners of a burgh or police burgh.

Division of County into Districts for Roads and Public Health Purposes.

77. In order to give effect to the provision of this Act that (except as herein-after provided) every county shall be divided

into districts for the purposes of the management and maintenance of highways, and the administration of the laws relating to public health, there shall be enacted the following provisions:—

- (1.) The county council shall at their first meeting in the month of May next after the passing of this Act, and thereafter from time to time, divide the county into districts for the purposes in this section mentioned in such manner that each district shall comprise a group of electoral divisions, and that each parish, so far as within the county, shall be wholly included in one district. Provided always that such division into districts shall not be made if it shall appear to the county council unnecessary or inexpedient in the case of a county containing fewer than six parishes, or which has not been divided into districts for the purposes of the management and maintenance of highways therein.
- (2.) Each district shall have the same contents and boundaries for all the purposes in this section mentioned.

Constitution of District Committee.

78. Whenever, for the purposes of this Act, a county is, as herein-before provided, divided into districts, the following provisions shall have effect with respect to the constitution of the district committee for each district:

- (1.) The district committee shall consist of the county councillors for the electoral divisions comprised in the district, together with one representative from the parochial board of each parish comprised or partly comprised therein, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland) Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county. Provided that in the case of parishes partly landward and partly burghal the representative from every such parish shall be a ratepayer within the meaning of this Act.
- (2.) The representatives of the parochial boards and burghs as aforesaid shall be appointed from time to time by their respective boards and town councils, and their appointment shall be forthwith intimated in writing to the county clerk, and, after his appointment as herein-after provided, to the clerk of the district committee. Each such repre-

representative shall hold office until the appointment of his successor has been duly intimated.

- (3.) Provided that where a county is not divided into districts the powers and duties and liabilities of a district committee under this Act shall devolve upon the county council, and for the purposes of the management and maintenance of highways, and the administration of the laws relating to public health, the following persons shall be deemed to be county councillors; that is to say, one representative from a parochial board of each parish comprised or partly comprised within the county, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland) Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county; and the provisions of the immediately preceding sub-section shall apply to those representatives.

As to appointment of representative from the parochial board, see Circular of 19th February 1890, appended to this Act.

Powers and Designation of District Committee.

79. Each district committee shall have and may exercise all the powers and duties and be subject to all the liabilities transferred to or conferred upon it, as the case may be, by or in pursuance of but subject to the provisions of this Act, and shall be designated according to the district within which it acts, and may sue and be sued under that designation.

Proceedings of District Committee.

80. The first meeting of a district committee shall take place as soon as may be after the thirty-first day of May next after the passing of this Act, and shall be called by the county clerk by circular addressed to each member whose appointment has been intimated to him. The committee may act notwithstanding any vacancy upon it. For the purpose of the regulation of its quorum and proceedings a district committee shall be deemed to be a committee of the county council.

Provided that a district committee may from time to time elect a chairman who shall hold office for such period as shall be fixed at his election, and in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot. The chairman shall have a casting vote as well as a deliberative vote. A district committee shall have

power to appoint and remove a district clerk and district treasurer, if need be, and, subject to the approval of the county council, to fix the salary which shall be payable to them.

Provision for special Drainage or Water Supply Districts.

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 part consist of persons, whether members of the district committee or not, who are resident within the special drainage district or special water supply district;
- (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;
- (3.) Where a special drainage district or special water supply district is wholly within a police burgh formed after the passing of this Act, the police commissioners of such police burgh shall become the local authority under the Public Health Acts for such special district, 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.

As to special districts, see P.H. Act, §§ 76, 89 (5), and P.H. Amendment Act, 1882. As to assessments on special districts, see P.H. Act, §§ 93, 94 (1).

Payments to and by District Committee.

82. All sums passed by the county council to the account of any district committee shall be paid into an account to be kept

in name of the district committee with an incorporated or joint stock bank (including any branch thereof) for that purpose appointed by the county council; and all cheques on such account shall be signed by two members of the district committee nominated for that purpose by the committee, and be countersigned by the district clerk.

Transfer of Land, &c.

90. All land and buildings, roads and bridges, drainage and water supply works, and all other heritable subjects with their pertinents now vested in the commissioners of supply or county road trustees of any county or in any local authority under the Public Health Acts, in so far as their powers are by this Act transferred to the county council, or in any person on their behalf, and all interest in the same for any of the uses and purposes of the county or any division or district of the county or of any parish therein shall, on the appointed day, and without any new instrument or conveyance, but subject to the provisions of this Act be transferred to and vested in that council for the same interest and purposes, and subject to the same conditions and restrictions for and subject to which the same are held by such commissioners of supply, county road trustees, local authority, or person on their behalf.

See P.H. Act, §§ 39, 73, 76, 89.

Saving as to formation of Police Burghs, 25 & 26 Vict. c. 101.

99. Nothing in this Act shall interfere with the formation of police burghs under the provisions of the General Police and Improvement (Scotland) Act, 1862; and on the formation of any police burgh the commissioners of police thereof shall become the local authority therein under the Public Health Acts, subject to adjustment by the sheriff in regard to the property and debts and liabilities affected by such change: Provided always, that unless and until the determination as to the number of county councillors and of electoral divisions is altered under the provisions of this Act, any police burgh formed after the passing of this Act shall in all other respects remain a part of the parish in which it is situated, and shall not be entitled to be an electoral division of the county.

Saving for existing Securities and discharge of Debts.

100. Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any

rate or property by this Act transferred to a county council; and all such securities, as well as all unsecured debts, liabilities, and obligations lawfully incurred by any local authority, body, or person, in the exercise of any powers or in relation to any property transferred from them to the county council under this Act, shall be discharged, paid, and satisfied by the council.

Saving for pending Actions, &c.

101.—(1.) If at the passing of this Act any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority, in relation to any powers, duties, liabilities, or property by this Act transferred to the county council, the same shall not be in anywise prejudicially affected by reason of the passing of this Act, but may be continued, prosecuted, and enforced by or against the county council as successors of the said authority, in like manner as if this Act had not been passed.

(2.) All contracts, deeds, bonds, agreements, and other instruments entered into or made and subsisting at the time of the transfer in this section mentioned, and affecting any such powers, duties, liabilities, or property of any authority as are by this Act transferred to a county council, shall be of as full force and effect against or in favour of the council, and may be enforced as fully and effectually as if, instead of the authority, the said council had been a party thereto.

Interpretation of certain Terms.

105. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say—

The expression "county" means a county exclusive of any burgh wholly or partly situate therein, and does not include a county of a city.

The expression "burgh" means any royal or parliamentary burgh.

See definition of "burgh" in P.H. Act, § 3. As to burghs of barony, see note to P.H. Act, § 5.

The expression "police burgh" means a populous place, the boundaries whereof have been fixed and ascertained under the provisions of the General Police and Improvement (Scotland) Act, 1862, or of the Act first therein recited, or under the provisions of any local Act.

The expression "parish" means a parish *quoad civilia* for which a separate parochial board is or can be appointed, and where part of a parish is situate within and part of it without any county or other area, includes each such part.

The expression "Public Health Acts" means the Public Health (Scotland) Act, 1867, and any Acts amending the same, and shall include section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886.

These sections of the Contagious Diseases (Animals) Acts contain the provisions as to dairies, which are administered by the local authorities under the P.H. Act. See the sections and notes, *infra*.

TRANSITORY PROVISIONS.

Appointed Day.

110.—(1.) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the fifteenth day of May next after the passing of this Act, or such other day, earlier or later, as the Secretary for Scotland (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections or for different counties.

(2.) Any enactment of this Act authorising anything to be done by the Commissioners of Inland Revenue or the Secretary for Scotland, or relating to the registration of county electors, or to the elections, or to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall come into effect on the passing of this Act; but, save as aforesaid, and save so far as there may be anything in this Act inconsistent herewith, any enactment of this Act shall come into operation on the appointed day.

Existing Officers and Servants.

118.—(1.) All persons who at the appointed day hold office as treasurer, collector, assessor, inspector, or surveyor, or are officers of the commissioners of supply, county road trustees, local authority under any Act of Parliament, or quarter sessions or

justices of the county, or are servants thereof and perform any duties in respect of the business transferred by or in pursuance of this Act to the county council, and also, but subject to the provisions of this Act, the clerk of supply and the county road clerk shall after the appointed day become the officers and servants of the county council.

As to Officers transferred to County Councils.

119.—(1.) The officers and servants of any authority who held office at the passing of this Act, and who, by virtue of this Act, become officers and servants of a county council (in this Act referred to as existing officers), shall hold their offices by the same tenure, and upon the same terms and conditions as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration, and be entitled to not less pensions (if any) than they would have received or been entitled to if this Act had not passed, and when any such officer can only be removed with the consent of some specified authority, such consent shall be part of the tenure of his office.

(2.) The county council may distribute the business to be performed by existing officers in such manner as the council may think just, and every existing officer shall perform such duties in relation to that business as may be directed by the council.

(3.) The county council may abolish the office of any existing officer whose office they may deem unnecessary, but such officer shall be entitled to similar compensation under this Act as he would have been entitled to under his former engagement.

The construction of the provisions of § 119, in so far as they apply to sanitary officers, is attended with difficulty. While on the one hand power is given to the county council to abolish any existing office which they consider unnecessary, it is provided on the other hand that existing officers shall hold their offices by the same tenure as if the Act had not passed, and that "when any such officer can only be removed with the consent of some specified authority, such consent shall be part of the tenure of his office." Sanitary inspectors appointed under the Public Health Act could be removed only by the Board of Supervision; and by § 54 (4) of the Local Government Act, medical officers are now placed in the same position as sanitary inspectors. If the county council are entitled to abolish any office they may deem unnecessary (the officer receiving compensation), the officer does not continue to hold office by the same tenure as before, nor is the consent of the specified authority required. The difficulty, perhaps, may be evaded by holding that sanitary officers become the officers of the district committees; but in any view it is thought that the Court would give effect to the provisions for the protection of existing officers from arbitrary dismissal. See also note to § 17 *supra*.

Compensation to existing Officers.

120.—(1.) Every existing officer declared by this Act to be entitled to compensation and every other existing officer, whether before mentioned in this Act or not, who, by virtue of this Act or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office, or by diminution or loss of salary or fees, shall be entitled to have compensation paid to him for such pecuniary loss by the county council to whom the powers of the authority whose officer he was are transferred under this Act, regard being had to the conditions on which the appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act, or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

CIRCULAR AS TO THE APPOINTMENT OF REPRESENTATIVE
FROM PAROCHIAL BOARD TO DISTRICT COMMITTEE OR
COUNTY COUNCIL (§ 78).

BOARD OF SUPERVISION,
EDINBURGH, 19th February 1890.

SIR,—The Board have had numerous communications from members and officers of parochial boards with reference to the appointment of representatives from the parochial boards to the district committees or the county councils (as the case may be),¹ in terms of section 78 of the Local Government (Scotland) Act; and they think it may be convenient that they should state shortly, for the guidance of the parochial board, the opinions they have expressed:—

1. The appointment of a representative should be made at a meeting,

¹ It is provided by section 77 that the division of the county into districts shall not be made "if it shall appear to the county council unnecessary or inexpedient in the case of a county containing fewer than six parishes, or which has not been divided into districts for the purposes of the management and maintenance of highways therein." Section 78 provides that when the county is not divided into districts, the representatives from the parochial boards of each parish, comprised or partly comprised in the county, shall, for the maintenance and management of highways and the administration of the laws relating to public health, be deemed to be county councillors.

duly called in terms of the Board's rules, and, in the notice calling the meeting, it should be intimated that the appointment will be made.

2. The appointment of a representative should be made by the parochial board, and not by a committee of the parochial board.

3. The Act merely provides that the appointment is to be made from time to time, and does not specify the time when the first appointment is to be made, nor the time for which the office is to be held. The districts will not be formed until the first meeting of the council on Thursday, May 22d; and it appears somewhat anomalous to appoint representatives before the districts are formed. There may be substantial reasons, moreover, which may induce a parochial board to hold that they are not in a position to select the best qualified representative until they have been made acquainted with the limits of the district over which the jurisdiction of the district committee is to extend. Many of the half-yearly statutory meetings are held during the month of May; and they can be held (without the approval of the Board being obtained of new) on any day before the close of the month. Probably the most satisfactory course will be to fix the meeting for the appointment of a representative for a day between May 22d and May 31st;¹ but the Board are not prepared to say that appointments made before May 22d will be incompetent or irregular. The minute containing the appointment should specify the period for which it is to be held.

4. The Board are of opinion that "the representative from the parochial board" must be a member of the parochial board; and that the appointment will be *ipso facto* vacated by the representative ceasing to be a member of the parochial board.

5. An elected member of the parochial board may be appointed the representative; but he will cease to act at the end of the year for which he is elected, and thereafter a new appointment must be made.

6. It appears to the Board that a mandatory is not eligible for appointment; but they are not prepared to say that the disqualification attaches to a commissioner and factor, who is authorised by his commission to act and vote at meetings of the parochial board, and whose commission and factory has been duly stamped and recorded.

7. Medical officers and sanitary inspectors appointed by parochial boards, acting as local authorities under the Public Health Act, become, on the "appointed day," the officers of the county councils, and are not therefore eligible to be appointed as representatives from parochial boards to the district committees or county councils.

8. It is provided by section 78 (1) of the Local Government Act that "in the case of parishes partly landward and partly burghal, the representative from every such parish shall be a ratepayer within the meaning of this Act." By section 105, "ratepayer" is defined to mean "any owner or occupier liable in payment of any rate imposed under or in pursuance of this Act." The effect of the proviso appears to be that in any parish which contains a burgh where no rate is imposed under or in pursuance of the Local Government Act, the representative from the parochial board must be an owner or occupier in that part of the parish which is beyond the police or municipal boundaries of the burgh.

9. By section 105, "parish" is defined to mean "a parish *quoad civilia*,

¹ It is provided by section 117 that the parochial board shall continue to act as local authority until the 31st day of May after the first election of county councillors. By section 118 the officers of the parochial board acting as local authority are transferred to the county council as from the "appointed day." The "appointed day" is May 15th, unless the Secretary for Scotland determine otherwise.

for which a separate parochial board is or can be appointed ;” and it is added, “where part of a parish is situate within and part of it without any county or other area, includes each such part ;” and section 78 (1) provides that the district committee shall consist of “the county councillors for the electoral divisions comprised in the district, together with one representative from the parochial board of each parish comprised or partly comprised therein, &c.” The parochial board of a parish which is partly in one county and partly in another is therefore entitled to send a representative to the district committee or county council of each of the counties in which it is situated ; and it would appear to be desirable and in conformity with other provisions of the Act that the representative should be a ratepayer in that part of the parish which is within the district of the committee of which he will be a member.

10. The Board have to point out, in conclusion, that it will be necessary for the parochial board, before they cease to be local authority on May 31st, to confer with the provisional council, so that the sanitary business of the parish may be wound up, and the books and other documents relating to the administration of the Public Health Acts handed over to the district committee or county council.—I am, &c.,

JOHN SKELTON, *Secretary.*

II. THE CONTAGIOUS DISEASES (ANIMALS) ACTS, 1878 AND 1886.

ENACTMENTS AS TO DAIRIES, COWSHEDS, AND MILK-SHOPS.

SECTION 34 of the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), provides:—

The Privy Council may from time to time make such general or special orders as they think fit, subject and according to the provisions of this Act, for the following purposes or any of them:—

- (i.) For the registration with the local authority of all persons carrying on the trade of cow-keepers, dairymen, or purveyors of milk.
- (ii.) for the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cow-keepers or dairymen.
- (iii.) For securing the cleanliness of milk-stores, milk-shops, and of milk-vessels used for containing milk for sale by such persons.
- (iv.) For prescribing precautions to be taken for protecting milk against infection or contamination.
- (v.) For authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the Privy Council prescribe.

Section 9 of the Contagious Diseases (Animals) Act, 1886 (49 & 50 Vict. c. 32), provides:—

(1.) The powers vested in the Privy Council of making general or special orders under section thirty-four of the principal Act, for the purposes in that section mentioned, are hereby trans-

ferred to and shall henceforth be exerciseable by the Local Government Board; every such order shall have effect as if enacted in this section, and shall be published in such manner as the Local Government Board may direct, and the said Board may from time to time alter or revoke any such order.

(3.) Any expenses incurred by a local authority in the metropolis in pursuance of section thirty-four of the principal Act, as amended by this section, shall be defrayed out of the local rate applicable to their expenses under the principal Act; and any expenses so incurred by any other local authority shall be defrayed as if they were incurred in the execution of the Public Health Act, 1875, and in the case of a rural sanitary authority shall be deemed to be general expenses.

(4.) The local authority and their officers, for the purpose of enforcing the said orders and any regulations made thereunder, shall have the same right to be admitted to any premises as the local authority, within the meaning of the Public Health Act, 1875, and their officers have, under section one hundred and two of that Act, for the purpose of examining as to the existence of any nuisance thereon; and if such admission is refused the like proceedings may be taken, with the like incidents and consequences as to orders for admission, penalties, costs, expenses, and otherwise, as in the case of a refusal to admit to premises for any of the purposes of the said section one hundred and two, and as if the local authority mentioned in the said Act included a local authority in the metropolis as defined in this section.

Provided that nothing in this section shall authorise any person, except with the permission of the local authority under the principal Act, to enter any cowshed or other place in which an animal affected with any disease is kept, and which is situate in a place declared to be infected with such disease.

(5.) The like penalties for offences against orders or regulations made for the purposes of section thirty-four of the principal Act as amended by this section may be imposed by the Local Government Board or local authority making the same, and such offences may be prosecuted and penalties recovered in a summary manner, and subject to the like provisions, as if such orders or regulations were byelaws of a local authority under the Public Health Act, 1875, and as if the local authority mentioned in that Act included a local authority in the metropolis as defined in this section.

(6.) Whereas under the powers of the principal Act the Privy Council have made an Order known as the Dairies, Cowsheds, and Milk-Shops Order of 1885, and certain authorities have made regulations under that Order, or having effect in pur-

suance thereof; and it is expedient by reason of the foregoing provisions of this section to make provision respecting such Order and regulations: Be it therefore enacted as follows:—

(a.) The Dairies, Cowsheds, and Milk-Shops Order of 1885, and any regulations thereunder, or having effect in pursuance thereof, made by any local authority under the principal Act, other than the local authority of a county, shall be deemed to have been made respectively by the Local Government Board and by a local authority under this section; and any such regulations made by the local authority of a county, within the meaning of the principal Act, shall, so far as they extend to the district of any local authority as defined in this section, be deemed to have been made by such local authority.

(b.) So much of any register kept by the local authority of any county under the said order as relates to the district of any local authority as defined in this section, or a copy thereof, shall, as soon as may be after the passing of this Act, be delivered to the local authority by the local authority of the county.

(7.) In the application of this section to Scotland, the expression "Local Government Board" shall mean the Board of Supervision for relief of the Poor and for Public Health; the expression "local authority" shall mean the local authority under the Public Health (Scotland) Act, 1867; the expressions "Public Health Act, 1875," and "section one hundred and two of the said Act" shall mean respectively the Public Health (Scotland) Act, 1867, and section seventeen of the said Act; the expression "byelaws of a local authority" shall mean rules and regulations made by a local authority under the Public Health (Scotland) Act, 1867; and generally the Board of Supervision and the local authority under the Public Health (Scotland) Act, 1867, shall have all the powers of the Privy Council, and the local authority under section thirty-four of the Contagious Diseases (Animals) Act, 1878, with regard to the regulation of dairies, cowsheds, and milk-shops: Provided always, that no general or special order made by the Board of Supervision under this section shall be binding until it has been confirmed by the Secretary for Scotland, subject to such conditions, if any, as the Secretary for Scotland shall think fit.

BOARD'S CIRCULAR OF 16TH AUGUST 1886.

The following is an extract from the Board's circular of 16th August 1886, calling the attention of local authorities to the

provisions of the Contagious Diseases (Animals) Act, 1886, with regard to dairies, &c.:—

It is obvious that co-operation between the officers of the local authority under the Public Health Act, and of the officers under the Animals Act of 1878, is extremely desirable. The Privy Council have requested the local authority under the Animals Act to instruct their inspector to give notice to the sanitary inspector of any case of human infectious disease within his district, in dairies, cowsheds, or milk-shops, whereby milk might be contaminated. The Board are of opinion, on the other hand, that any case of disease in animals found by the sanitary inspector in dairies or cowsheds, should be reported by him to the inspector under the Animals Act; and it shall be the duty of the sanitary inspector without delay to make such report.

It is now an ascertained fact that disease is largely disseminated from dairies and milk-shops where the sanitary arrangements are defective, and from which persons suffering from infectious disease have not been removed. There is no doubt, therefore, that the statute imposes on the local authority a most important duty, which the Board trust will be duly discharged.

THE DAIRIES, COWSHEDS, AND MILK-SHOPS ORDER OF 1885.

The Privy Council, under the powers vested in them by § 34 of the Contagious Diseases (Animals) Act, 1878, issued the following Order, which, subject to the modifications on article 14 imposed by the Amending Order of 1887, is still in force:—

At the Council Chamber, Whitehall, the 15th day of June 1885. By Her Majesty's Most Honourable Privy Council. Present—Lord President, Mr Trevelyan.

The Lords and others of Her Majesty's Most Honourable Privy Council, by virtue and in exercise of the powers in them vested under the Contagious Diseases (Animals) Act, 1878, and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows:—

Short Title.

1. This Order may be cited as the Dairies, Cowsheds, and Milk-Shops Order of 1885.

Extent.

2. This Order extends to England and Wales and Scotland only.

Commencement.

3. This Order shall commence and take effect from and immediately after the thirtieth day of June one thousand eight hundred and eighty-five.

Interpretation.

4. In this Order—

The Act of 1878 means the Contagious Diseases (Animals) Act, 1878.
Other terms have the same meaning as in the Act of 1878.

Revocation of former Orders.

5. The Dairies, Cowsheds, and Milk-Shops Order of July 1879 is hereby revoked: Provided that nothing in this Order shall be deemed to revive any Order of Council thereby revoked or to invalidate or make unlawful anything done before the commencement of this Order, or interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty incurred under, the said Order hereby revoked.

Registration of Dairymen and others.

6.—(1.) It shall not be lawful for any person to carry on in the district of any local authority the trade of cow-keeper, dairymen, or purveyor of milk unless he is registered as such therein in accordance with this article.

(2.) Every local authority shall keep a register of persons from time to time carrying on in their district the trade of cow-keepers, dairymen, or purveyors of milk, and shall from time to time revise and correct the register.

(3.) The local authority shall register every such person, but the fact of such registration shall not be deemed to authorise such person to occupy as a dairy or cowshed any particular building or in any way preclude any proceedings being taken against such person for non-compliance with or infringement of any of the provisions of this Order or any regulation made thereunder.

(4.) The local authority shall from time to time give public notice by advertisement in a newspaper circulating in their district, and, if they think fit, by placards, handbills, or otherwise, of registration being required, and of the mode of registration.

(5.) A person who carries on the trade of cow-keeper or dairymen for the purpose only of making and selling butter or cheese, or both, and who does not carry on the trade of purveyor of milk, shall not, for the purposes of registration, be deemed to be a person carrying on the trade of cow-keeper or dairymen, and need not be registered.

(6.) A person who sells milk of his own cows in small quantities to his workmen or neighbours, for their accommodation, shall not, for the purposes of registration, be deemed, by reason only of such selling, to be a person carrying on the trade of cow-keeper, dairymen, or purveyor of milk, and need not, by reason thereof, be registered.

Construction and Water Supply of New Dairies and Cowsheds.

7.—(1.) It shall not be lawful for any person following the trade of cow-keeper or dairymen to begin to occupy as a dairy or cowshed any building not so occupied at the commencement of this Order, unless and until he first makes provision, to the reasonable satisfaction of the local authority, for the lighting, and the ventilation including air-space, and the cleansing, drainage, and water supply, of the same, while occupied as a dairy or cowshed.

(2.) It shall not be lawful for any such person to begin so to occupy any such building without first giving one month's notice in writing to the local authority of his intention so to do.

Sanitary State of all Dairies and Cowsheds.

8. It shall not be lawful for any person following the trade of cow-keeper or dairymen to occupy as a dairy or cowshed any building, whether so

occupied at the commencement of this Order or not, if and as long as the lighting, and the ventilation including air-space, and the cleansing, drainage, and water supply, thereof are not such as are necessary or proper—

- (a.) for the health and good condition of the cattle therein ; and
- (b.) for the cleanliness of milk-vessels used therein for containing milk for sale ; and
- (c.) for the protection of the milk therein against infection or contamination.

Contamination of Milk.

9. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop—

- (a.) to allow 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 cow-keeper or dairyman, purveyor of milk, or occupier of a milk-store or milk-shop, so far as regards the production, distribution, or storage of milk ; or
- (b.) if himself so suffering or having recently been in contact as aforesaid, to milk cows, or handle vessels used for containing milk for sale, or in any way to take part in the conduct of his trade or business, as far as regards the production, distribution, or storage of milk—

until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased.

10. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop, after the receipt of notice of not less than one month from the local authority calling attention to the provisions of this article, to permit any water-closet, earth-closet, privy, cesspool, or urinal to be within, communicate directly with, or ventilate into, any dairy or any room used as a milk-store or milk-shop.

11. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop to use a milk-store or milk-shop in his occupation, or permit the same to be used, as a sleeping apartment, or for any purpose incompatible with the proper preservation of the cleanliness of the milk-store or milk-shop, and of the milk-vessels and milk therein, or in any manner likely to cause contamination of the milk therein.

12. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk to keep any swine in any cowshed or other building used by him for keeping cows, or in any milk-store or other place used by him for keeping milk for sale.

Regulations of Local Authority.

13. A local authority may from time to time make regulations for the following purposes, or any of them :

- (a.) For the inspection of cattle in dairies.
- (b.) For prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cow-keepers or dairymen.
- (c.) For securing the cleanliness of milk-stores, milk-shops, and of milk-vessels used for containing milk for sale by such persons.

- (d.) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.

Provisions as to Regulations of Local Authority.

14. The following provisions shall apply to regulations made by a local authority under this Order:

- (1.) Every regulation shall be published by advertisement in a newspaper circulating in the district of the local authority.
- (2.) The local authority shall send to the Privy Council a copy of every regulation made by them not less than one month before the date named in such regulation for the same to come into force.
- (3.) If at any time the Privy Council are satisfied on inquiry, with respect to any regulation, that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be.

Existence of Disease among Cattle.

15. If at any time disease exists among the cattle in a dairy or cowshed, or other building or place, the milk of a diseased cow therein—

- (a.) shall not be mixed with other milk; and
- (b.) shall not be sold or used for human food; and
- (c.) shall not be sold or used for food of swine, or other animals, unless and until it has been boiled.

Acts of Local Authorities.

16.—(1.) All orders and regulations made by a local authority under the Dairies, Cowsheds, and Milk-Shops Order of July 1879, or any Order revoked thereby, and enforced at the making of this Order shall, as far as the same are not varied by or inconsistent with this Order, remain in force until altered or revoked by the local authority.

(2.) Forms of registers and other forms which have been before the making of this Order prepared for use by a local authority under the Dairies, Cowsheds, and Milk-Shops Order of July 1879, or any Order revoked thereby, may be used, as far as they are suitable, for the purposes of this Order.

Scotland.

17. Nothing in this Order shall be deemed to interfere with the operation of the Cattle-sheds in Burghs (Scotland) Act, 1866. C. L. PEEL.

THE DAIRIES, COWSHEDS, AND MILK-SHOPS AMENDING ORDER OF 1887.

The following are the enacting provisions of the Dairies, Cowsheds, and Milk-Shops Amending Order, 1887:—

Whereas it is expedient that the Order of 1885 should be altered as hereinafter mentioned, and that penalties should be imposed for offences against such Order.

Now therefore, we, the Board of Supervision for the relief of the Poor, and for Public Health in Scotland, in pursuance of the powers vested in us by the Act of 1886, hereby order as follows:—

Article 1.—This Order may be cited as “The Dairies, Cowsheds, and Milk-Shops Amending Order of 1887.”

Article 2.—Article 14 of the Order of 1885 shall be altered by the substitution therein of the words “Board of Supervision” for the words “Privy Council” occurring therein.

Article 3.—If any person is guilty of an offence against the Order of 1885, he shall for every such offence be liable to a penalty of five pounds.

Provided, nevertheless, that the sheriff or other magistrate before whom any complaint may be made, or any proceedings may be taken in respect of any such offence, may, if he think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this Order.

Article 4.—In this Order the expression “local authority” means the local authority under the Public Health (Scotland) Act, 1867.

Certified and signed by me this twenty-seventh day of January, in the year one thousand eight hundred and eighty-seven.

JOHN SKELTON, *Secretary.*

BOARD OF SUPERVISION,
EDINBURGH, 27th January 1887.

I hereby confirm the foregoing Order.

ARTHUR JAMES BALFOUR,
Her Majesty's Secretary for Scotland.

L. S.

DOVER HOUSE, WHITEHALL,
8th February 1887.

BOARD'S CIRCULAR OF 27TH JANUARY 1887.

The following is the Board's circular as to the provisions of the Dairies Order of 1885:—

BOARD OF SUPERVISION,
EDINBURGH, 27th January 1887.

SIR,—The duty of putting in force the provisions of the Contagious Diseases (Animals) Act of 1878, in so far as regards the regulation of dairies, cowsheds, and milk-shops, in terms of section 34 of that Act, having now devolved upon the local authorities under the Public Health Act, many communications have been received by the Board in reference to the provisions of the Act and the relative Privy Council Order of 1885, to which the Board have given their best consideration. The Board are anxious to assist local authorities as far as is in their power, and they trust that the explanations which they now propose to give will facilitate the action of the local boards.

The specific duties imposed upon local authorities by the Act and by the Order may be considered under the following heads: I. Registration; II. Regulations; III. Inspection; IV. Prosecutions and Penalties.

I. Registration of Persons carrying on the Trade of Cow-keeper, Dairyman, or Purveyor of Milk.

The Order declares that it shall not be lawful for any person to carry on the trade of cow-keeper, dairyman, or purveyor of milk in the district of any local authority unless he is registered as such therein; and it requires every local authority to keep a register of such persons, and from time to time to revise and correct the register.

The Board have prepared for the guidance of local authorities various forms in connection with registration, of which copies are herewith sent.

a. A form of application for registration.

b. A form of certificate of registration.

c. A form of register.

These forms are not compulsory, but the Board think they may be adopted with advantage.

Local authorities are bound, on application, to register every person carrying on the trade within their districts, with certain exceptions; and they are not entitled to refuse to register any such persons. The exceptions are—(a) Persons who carry on the trade of cow-keeper or dairyman for the purpose only of making and selling butter and cheese, or both, and who do not carry on the trade of purveyor of milk; and (b) Persons who sell milk of their own cows in small quantities to their workmen or neighbours, for their accommodation.

These two classes of persons do not require to be registered.

In the case of persons who were entered in the register of the local authority under the Contagious Diseases (Animals) Act (which register, or a copy thereof, has now been handed over to the local authority under the Public Health Act) a repetition of their registration is not necessary. Nor does the Act or the Order provide for the annual or periodical renewal of registration; but the local authority are bound from time to time to revise and correct the register.

The local authority must bear in mind that registration applies to persons, not to premises. They cannot therefore refuse to register any person, though his premises may be considered unfit for the purposes of the trade. But the fact of registration does not preclude proceedings being taken against such person for contravention of the provisions of the Order, or of any regulation made thereunder.

It will be observed that registration is also necessary in the case of persons who sell milk, from carts or otherwise (though not occupying premises), within the district.

II. Regulations of Local Authorities.

Where the local authority consider it necessary they may issue regulations for the purposes specified in article 13 of the Order. Any regulations made by the local authority under the Contagious Diseases (Animals) Act are continued in force, and it is the duty of the local authority to see that they are complied with. Such regulations do not require to be advertised of new by the local authority.

All new regulations made by local authorities require to be published by advertisement in a newspaper circulating in the district, and a copy of every regulation must be sent to the Board not less than one month before the date named in such regulation for the same to come into force.

The approval of the Board is not required to the regulations, but the Board are empowered at any time to direct the revocation of any regulation which they deem to be of too restrictive a character, or otherwise objectionable (art. 14, (2) and (3), of Order of 1885).

It will be observed that the effect of the Act is to substitute the Board of Supervision for the Privy Council.

The Board understand that the practice of the Privy Council in regard to the disallowing of regulations has been as follows:—

a. *Registration.*—Registration is not one of the purposes specified in article 13 of the Order for which regulations may be made. When local authorities made regulations as to registration, or for enabling them to refuse or cancel registration where requirements were not complied with, they were informed—(1) that they had no power to make regulations as to registra-

tion, and (2) that registration applies to persons and not to premises, and cannot be refused.

b. Inspection.—Article 13 of the Order empowers local authorities to make regulations “for the inspection of cattle in dairies.” Regulations authorising the periodical inspection of premises where cattle were kept by persons following the trade of cow-keepers or dairymen were not objected to by the Privy Council; but where regulations proposed to authorise the inspection of milk-shops (where cattle were not kept) they were disallowed.

c. Notification of Disease, &c.—The following regulations were disallowed by the Privy Council as being of too stringent a character, if not *ultra vires*, viz. :—1. Purveyors of milk to give notice to local authority of outbreak of (human) disease on premises. 2. Purveyors of milk to keep books showing names of customers and farms or sources from which milk is supplied to each customer. 3. Power to prohibit dairymen from supplying milk coming from particular farms (the farms not necessarily being within the district of the local authority).

The first of these regulations appeared to the Privy Council to be part of a much larger subject; and as regards the other two it seemed doubtful whether they could be said to be “precautions for protecting milk against infection or contamination,” their object being rather to prevent the supply of milk when contaminated.

The above are the principal grounds on which regulations were disallowed by the Privy Council.

The Board will in general be disposed to follow the course adopted by the Privy Council. They are prepared, however, if applied to by a local authority, to consider whether, as the duties have now been intrusted to the Board charged with the administration of the Public Health Acts, it may not be competent and desirable in certain cases to extend the scope of the regulations hitherto sanctioned.

The local authority can alter or revoke any regulation in force within their district. In the case of alteration, the same procedure must be gone through as in framing new regulations. In the case of revocation, intimation should be made to the Board, and public notice should also be given by advertisement in the newspapers.

III. *Inspection.*

The Board deem it expedient that in every district in which any person carries on the trade of cow-keeper, dairyman, or purveyor of milk, the local authority should appoint an inspector of dairies, &c., to see that the provisions of the Act and the Order are carried out. It will be convenient, as a rule, that the sanitary inspector should also be inspector of dairies. This, however, is not compulsory; and it is competent for the local authority to appoint an inspector of dairies other than the sanitary inspector.

The sanitary inspector, if appointed to act, should receive additional remuneration in respect of his new duties.

IV. *Prosecutions and Penalties.*

Section 9 (5) of the Contagious Diseases (Animals) Act, 1886, provides that—“The like penalties for offences against orders or regulations made for the purposes of section 34 of the principal Act as amended by this section may be imposed by the Board of Supervision or local authority making the same, and such offences may be prosecuted and penalties recovered in a summary manner, and subject to the like provisions, as if

such orders or regulations were rules and regulations of a local authority under the Public Health (Scotland) Act, 1867."

The Board are of opinion that the effect of this enactment is to render inapplicable to future orders and regulations, and also to the Privy Council's Order of 1885, and regulations thereunder, the penalties fixed by section 60 of the Contagious Diseases (Animals) Act of 1878, for contravention of orders or regulations. They have accordingly issued an order, which has been confirmed by Her Majesty's Secretary for Scotland, imposing penalties for contraventions of the Order of 1885. A copy is sent herewith. It will now be necessary for any local authority which has already made regulations (or may hereafter make regulations) to impose penalties for contraventions of such regulations similar to those imposed for contraventions of rules and regulations under the Public Health Act of 1867. The penalties to be imposed should not exceed £5 for each offence. Penalties may be sued for summarily under the Summary Jurisdiction Acts, 1864 and 1881.—I am, &c.,

JOHN SKELTON, *Secretary.*

APPLICATION FOR REGISTRATION.

THE CONTAGIOUS DISEASES (ANIMALS) ACTS, 1878 AND 1886; AND THE
DAIRIES, COWSHEDS, AND MILK-SHOPS ORDER OF 1885.

To the local authority of.....

I hereby make application to be placed on the register kept by the local authority under the above-named Order.

Name of applicant	
Occupation	
Residence	
Situation of premises	
State whether a— Cow-keeper Dairyman, or Purveyor of milk	

Signature }
of Applicant, }

(Place).....

(Date).....

CERTIFICATE OF REGISTRATION.

THE CONTAGIOUS DISEASES (ANIMALS) ACTS, 1878 AND 1886; AND THE
DAIRIES, COWSHEDS, AND MILK-SHOPS ORDER OF 1885.

I certify that.....
residing at.....
and occupying premises at.....
is registered as a.....
within the district of the local authority of.....

(Signature).....
Clerk to the Local Authority, or Sanitary Inspector.

(Place).....
(Date).....

This certificate is to be preserved by the holder, and exhibited when required.

The fact of registration shall not be deemed to authorise the person registered to occupy as a dairy or cowshed any particular building, or in any way preclude any proceedings being taken against such person for non-compliance with, or infringement of, any of the provisions of the above-named Order, or any Regulation made thereunder.

[Any regulations made by the local authority may be printed on the back of this Certificate.]

[REGISTER

REGISTER OF DAIRIES, COWSHEDS, AND MILK-SHOPS.

No. Name of dairy, &c.

Date of Registration.

FIRST INSPECTION AND REPORT.	
This column to be filled up at first visit, any change of circumstances at subsequent visits to be noted under the head "Remarks," on next page.	
Name of person carrying on the trade	
Occupation (state whether cow-keeper, dairyman, or purveyor of milk)	
Residence	
Number of cows	
Milk, how disposed of	
BYRE OR COWSHED—Construction .	
" Lighting	
" Ventilation	
" Cubic space	
" Drainage	
" Water supply	
" Cleanliness	
Situation of byre or cowshed in relation to dwelling-houses, stables, dungsteads, piggeries, &c. }	
DAIRY, MILK-SHOP, OR STORE—	
Situation, construction and general sanitary condition }	
" Cleanliness of place and vessels }	
" Persons sleeping where milk kept, or in place communicating therewith }	
" Other articles kept in milk-store }	
Privy, closet, urinal, or cesspool, communicating with byre, milk-shop, or store }	
Swine kept in byre or milk-store, or place communicating therewith }	

(Date)

Inspector.

NOTES ON THE CONTAGIOUS DISEASES (ANIMALS) ACTS AND RELATIVE ORDERS.

Registration.—See Board's circular of 27th January 1887, and forms of "Application for Registration," "Certificate of Registration," and "Form of Register," *supra*.

Persons having byres, &c., in one district, and selling milk in another, require to be registered in both districts.

Persons selling buttermilk only ought to be registered.

Exemptions from registration.—There is some doubt as to the extent to which the exemptions specified in art. 6 (5) (6) of the Order of 1885 apply. No general rule perhaps can be laid down; but the L.A. will not be wrong in holding that when milk is sold for *profit*, or when cows are kept with the view of contributing by the sale of their milk to the means of livelihood of the persons keeping them, these persons ought to be registered, and do not come within the exception—viz., persons who sell milk in small quantities for the *accommodation* of their servants and neighbours.—B.

Regulations as to registration.—The L.A. have no power to make regulations as to registration. Notice of the arrangements as to registration may be appended to the regulations, and may be advertised in any other manner authorised by art. 6 (4) of the Order of 1885.

Construction of premises.—See Practical Suggestions appended to the P.H. Acts, *supra*, s.v. Byres.

Several local authorities have made regulations requiring that plans of new premises, drawn to a specified scale, be lodged along with the notice required by art. 7 (2) of the Order of 1885.

The Local Government Board (England) have advised that the space allowed in respect of each cow should not be less than 800 cubic feet.

Duty of L.A. when infectious disease occurs at a dairy.—As soon as it becomes known that infectious disease exists at a dairy, the M.O. should forthwith visit the premises and direct such precautions to be taken as may be necessary to prevent the risk of contamination of the milk. If the M.O. should be of opinion that the milk has already been exposed to infection, or if the precautions which he deems necessary cannot be carried out, or if the dairyman refuses to follow the instructions of the M.O., the L.A. should order the supply of milk from the dairy to be stopped until such time as the M.O. certifies that it may be resumed without danger. There is no power under the Dairies Order to enforce an order for the stoppage of the supply of milk, but in such a case the dairy could be proceeded against as a nuisance under § 16 (c) of the P.H. Act, being a "business so conducted as to be injurious to health." See art. 9 of the Order of 1885, and note, *infra*, as to regulation for stopping sale of milk from infected premises.

Every L.A. ought to adopt the Infectious Disease (Notification) Act, so as to obtain early intimation of the occurrence of infectious disease at dairies. See note, *infra*, as to regulation respecting intimation of infectious disease at dairies.

Use of milk-shop or milk-house for other purposes.—Milk is frequently exposed to contamination from articles kept or stored in the place where the milk is kept. In many cases the L.A. have made a regulation prohibiting any article other than milk being kept in a milk-shop or milk-store. A regulation of such a nature was not objected to by the Privy Council; but the Board have hesitated to allow a regulation of so stringent a nature, as they consider it doubtful whether a prosecution based upon such a regulation would be successful. Probably the terms of art. 11 of the Order of 1885, which prohibits the use of a milk-shop or milk-store for any purpose incompatible with the cleanliness of the place or the milk-vessels or milk, or in any manner likely to cause contamination of the milk, would be found sufficient.

Milk in sleeping apartments.—The use of a milk-shop or milk-store as a sleeping apartment is prohibited by art. 11 of the Order of 1885, but many local authorities have made regulations prohibiting any apartment which communicates directly with a sleeping apartment being used as a milk-shop or milk-store.

Regulations for inspection of dairies.—Under art. 13 (a) of the Order of 1885, regulations may be made "for the inspection of cattle in dairies," but it would appear that regulations for the inspection of dairies or milk-shops where cattle are not kept are not authorised by the Order. See the Board's circular of 27th January 1887, *supra*.

The L.A. have no power to make regulations as to cattle-sheds, except those where milk-cows are kept.

Regulations as to intimation of infectious disease.—The Privy Council held that a regulation requiring that cases of infectious disease occurring at a dairy should be intimated to the L.A. was *ultra vires*. (See Board's circular of 27th January 1887, *supra*.) But the Board have allowed such regulations. The better course now, however, will be for the L.A. to adopt the Infectious Disease (Notification) Act, 1889.

Regulation for stopping sale of milk.—The Privy Council did not allow regulations which prohibited dairymen supplying milk from farms or other premises where infectious disease exists, but the Board, after consideration, decided that such regulations should not be disallowed.

Regulation requiring intimation of sources of milk supply.—The Privy Council did not allow regulations which required dairymen to intimate to the L.A. the names of the farms or other sources whence their milk supply was obtained. But the Board have allowed such regulations. The Board, however, have followed the practice of the Privy Council in disallowing regulations which required dairymen to supply the L.A. with the names of their customers. See the Board's circular of 27th January 1887, *supra*.

Publication of regulations.—The regulations must be published in *extenso* in the newspapers, and the L.A. should see that every dairyman in the district receives a copy.

Approval of Board to regulations.—The requirement of art. 14 (2) of the Order of 1885 that regulations must be sent to the Privy Council, is altered by the Amending Order of 1887, and the regulations must now be sent to the Board. The "approval" of the Board is not required to the regulations, but the Board are empowered to disallow any regulations which they consider too stringent or otherwise objectionable.

Milk of diseased cows.—Art. 15 of the Order of 1885 prohibits the sale or use of milk from diseased cows, but the word "disease" in the Order has the same meaning as in the Act of 1878 (see art. 4), and accordingly applies only to cattle-plague, pleuro-pneumonia, and foot-and-mouth disease. There is therefore no power under the Order to prevent the sale of milk from cows suffering from other diseases, such as tuberculosis. See Dr Littlejohn's report on tuberculosis, Part III., *supra*.

Nor is there power under the Order to prevent the sale of milk from cows standing alongside of animals suffering from foot-and-mouth disease or any other disease, however great the risk of infection.

Contraventions of Orders or regulations.—Persons contravening the Order of 1885 are liable in the penalty fixed by the Amending Order of 1887—i.e., £5. Persons contravening the regulations made by the L.A. are liable in the penalty imposed by the L.A., which may not exceed £5 for each offence. Penalties may be recovered under the Summary Jurisdiction Acts, and § 105 of the P.H. Act. See the Board's circular of 27th January 1887.

III. THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

(52 & 53 VICT. c. 72.)

An Act to provide for the Notification of Infectious Disease to Local Authorities.—[30th August 1889.]

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:

Short Title.

1. This Act may be cited as the Infectious Disease (Notification) Act, 1889.

Extent of Act.

2. This Act shall extend—

- (a) to every London district after the expiration of two months from the passing of this Act, and
- (b) to any urban, rural, or port sanitary district after the adoption thereof.

Notification of Infectious Disease.

3.—(1.) Where an inmate of any building used for human habitation within a district to which this Act extends is suffering from an infectious disease to which this Act applies, then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say:—

(a.) the head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the building or being in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district:

(b.) every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering.

(2.) Every person required by this section to give a notice or certificate who fails to give the same, shall be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding forty shillings;

Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given.

As to forms and case of several Medical Practitioners.

4.—(1.) The Local Government Board may from time to time prescribe forms for the purpose of certificates under this Act, and any forms so prescribed shall be used in all cases to which they apply.

For form of certificate prescribed by the Board see Form 4, appended to additional Byelaws in Part III., *supra*.

(2.) The local authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this Act a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.

(3.) Where in any district of a local authority there are two or more medical officers of health of such authority a certificate under this Act shall be given to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the local authority may from time to time direct.

Adoption of Act in urban or rural district.

5.—(1.) The local authority of any urban, rural, or port sanitary district may adopt this Act by a resolution passed at a meeting of such authority; and fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either:

- (a.) given in the mode in which notices to attend meetings of the local authority are usually given, or
- (b.) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England.

(2.) A resolution adopting this Act shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution as the local authority may fix, and upon its coming into operation this Act shall extend to the district.

(3.) A copy of the resolution shall be sent to the Local Government Board when it is published.

See Forms 1, 2, and 3, appended to additional Byelaws in Part III., *supra*.

Definition of Infectious Disease.

6. In this Act the expression "infectious disease to which this Act applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any

particular district any infectious disease to which this Act has been applied by the local authority of the district in manner provided by this Act.

Power to Local Authority to extend definition of Infectious Disease.

7.—(1.) The local authority of any district to which this Act extends may, from time to time, by a resolution passed at a meeting of such authority where the like special notice of the meeting and of the intention to propose the resolution has been given as is required in the case of a meeting held for adopting this Act, order that this Act shall apply in their district to any infectious disease other than a disease specifically mentioned in this Act.

(2.) Any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the local authority which made the same.

(3.) An order under this section and the revocation and variation of any such order shall not be of any validity until approved by the Local Government Board.

(4.) When it is so approved, the local authority shall give public notice thereof by advertisement in a local newspaper and by handbills, and otherwise in such manner as the local authority think sufficient for giving information to all persons interested. They shall also send a copy thereof to each registered medical practitioner whom, after due inquiry, they ascertain to be residing or practising in their district.

(5.) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the local authority may fix, and upon such order coming into operation, and during the continuance thereof, an infectious disease mentioned in such order shall, within the district of the authority, be an infectious disease to which this Act applies.

(6.) In the case of emergency three clear days' notice under this section shall be sufficient, and the resolution shall declare the cause of such emergency and shall be for a temporary order, and a copy thereof shall be forthwith sent to the Local Government Board and advertised, and the order shall come into operation at the expiration of one week from the date of such advertisement, but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the Local Government Board.

(7.) The approval of the Local Government Board shall be conclusive evidence that the case was one of emergency.

Notices and Certificates.

8.—(1.) A notice or certificate for the purposes of this Act shall be in writing or print, or partly in writing and partly in print; and for the purposes of this Act the expression "print" includes any mechanical mode of reproducing words.

(2.) A notice or certificate to be sent to a medical officer of health in pursuance of this Act may be sent by being delivered to the officer or being left at his office or residence, or may be sent by post addressed to him at his office or at his residence.

Expenses.

9. Any expenses incurred by a local authority in the execution of this Act shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health and in the case of a rural authority shall be general expenses.

Non-disqualification of Medical Officer by receipt of Fees.

11. A payment made to any medical practitioner in pursuance of this Act shall not disqualify that practitioner for serving as member of the council of any county or burgh, or as member of a sanitary authority, or as guardian of a union, or in any municipal or parochial office.

Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which he would be entitled if he were not such medical officer.

Application of Act to Vessels, Tents, &c.

13.—(1.) The provisions of this Act shall apply to every ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a building.

(2.) A ship, vessel, or boat, lying in any river, harbour, or other water not within the district of any local authority within the meaning of this Act shall be deemed for the purposes of this Act to be within the district of such local authority as may be fixed by the Local Government Board, and where no local authority has been fixed, then of the local authority of the dis-

trict which nearest adjoins the place where such ship, vessel, or boat is lying.

(3.) This section shall not apply to any ship, vessel, or boat belonging to any foreign Government.

Saving for Local Act.

14. Where this Act is put in force in any district in which there is a local Act for the like purpose as this Act, the enactments of such local Act, so far as they relate to that purpose, shall cease to be in operation.

See last par. of § 17.

Exemption of Crown Buildings.

15. Nothing in this Act shall extend to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof.

Definitions.

16. In this Act—

The expression "occupier" includes a person having the charge, management, or control of a building, or of the part of a building in which the patient is, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either as his own account or as the agent of another person, and in the case of a ship, vessel, or boat, the master or any person in charge thereof.

Application of Act to Scotland.

17. In the application of this Act to Scotland—

The expression "Local Government Board" shall mean Board of Supervision:

The expression "Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act amending the same:

The expression "local authority" shall mean the local authority as defined by the Public Health (Scotland) Act, 1867, and any Act amending the same:

The expression "England" in section five shall mean Scotland:

The powers contained in this Act shall be in addition to and not in lieu of any powers existing in any local authority by virtue of any general or local Act.

Information as to the working of the notification provisions of local Acts will be found in a return to the House of Commons, dated 27th April 1882. This return contains reports by Dr Littlejohn of Edinburgh and Dr Wallace of Greenock, which are also printed in the Board's Report, 1882, App., p. 26.

The following circular explains the procedure under the Act :—

BOARD OF SUPERVISION,
EDINBURGH, 24th May 1890.

SIR,—On 1st November 1889 the Board of Supervision issued a circular, drawing the attention of the local authorities, as then constituted, to the provisions of the Infectious Disease (Notification) Act; and since that date the Act has been adopted by thirty-two burghs and twelve parishes. These, with the burghs of Edinburgh, Dundee, Aberdeen, and Greenock, that have notification provisions in their local Police Acts, make up a total of forty-eight burghs and parishes in which the notification of infectious disease is now compulsory.

In view of the changes which have been effected by the Local Government Act, the Board take this opportunity of intimating to the newly constituted local authorities the opinion they have already expressed regarding the Infectious Disease (Notification) Act, viz. :—

"The Board are strongly of opinion that no time should be lost by the local authority in availing themselves of the provisions of the Act, with the view of checking the spread of infectious disease within their district. The experience of the local authorities who have already exercised similar powers under local Acts proves that the notification of cases of infectious disease by medical practitioners and others is of unquestionable utility in the protection of the public health."

The Board have had a very considerable amount of correspondence with local authorities who have written to them for advice regarding the Act, and they think it might be of advantage to state briefly the points which require most attention by local authorities who propose to adopt it. These are—(1) as to the procedure for adopting the Act, (2) as to the Board's certificate under section 4, and (3) as to the procedure *after* the Act has been adopted.

I. The Board would direct the special attention of the local authority to the statutory notices under section 5, as any accidental omission on the part of a local authority might invalidate the proceedings.

(a) The Act can only be adopted by a resolution passed at a meeting of the local authority *fourteen* clear days at least before such meeting; and special notice of the meeting and of the intention to propose the resolution must be given.

(b) The resolution should contain the *date* fixed by the local authority for the Act coming into force.

(c) The advertisement in a local newspaper, giving public notice of the adoption of the Act, must be first published not less than one *month* before the date fixed for the Act coming into force. By section 3 of the *Interpretation Act*, 1889, the expression "*month*" means a *calendar month*.

To aid local authorities in putting the Act into force, the Board have prepared the forms hereto appended, viz.: Forms Nos. 1, 2, and 3.

With regard to the procedure under section 7, for extending the definition of "infectious disease" in the Act so as to include other diseases, the fourteen days' notice must be given as in section 5; but the resolution must be sent to the Board of Supervision for approval before it can be advertised, and such advertisement need only be published *one week* before the date fixed for the extension coming into force.

II. In terms of section 4, the Board have prescribed a form of certificate required by the Act to be sent to the medical officer of the local authority by medical practitioners when notifying cases of infectious disease. This form must be used by *all* local authorities adopting the Act, and cannot be altered except by the Board. (Form No. 4.)

The Board have not prescribed any form for householders, and a notification from a householder in any form will be sufficient. Unless a copy were sent to every householder, there would be no use of a prescribed form, as infectious disease may occur in any house, and it would only cause delay to insist upon the intimation being made in one form only.

The Board may here point out, also, that in view of the terms of section 3, a medical practitioner is bound to notify every case coming under his observation, even though the case may have already been notified by the householder; and, similarly, a householder is bound to notify, even though he is aware that the medical practitioner has already done so.

III. The Board have framed byelaws for regulating the duties of medical officers and sanitary inspectors under the Act, which the Board recommend the local authority to adopt as additional byelaws under section 8 of the Public Health Act. (Two copies of the byelaws are herewith enclosed.)

The Board also transmit (1) a form of register of notifications, arranged so as to facilitate for statistical purposes the classifying and summarising of the information received; and (2) the form of tabular statement referred to in No. 11 of the aforesaid byelaws, and in No. III. of the Board's regulations for sanitary inspectors of districts of counties, issued under section 53 (1) of the Local Government Act. (Forms 5 and 6.)

Where one or more parochial boards within the district of a district committee had adopted the Act before the present local authorities were constituted, it will obviously be advisable that no time should be lost by the district committee in taking the necessary steps to extend its provisions to the whole of their district.—I am, &c.,

JOHN SKELTON, *Secretary.*

Note.—The Byelaws and Forms will be found in Part III.

IV. THE RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. c. 75).

An Act for making further Provision for the Prevention
of the Pollution of Rivers.—[15th August 1876.]

WHEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution :

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

Short Title of Act.

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876.

PART I.

LAW AS TO SOLID MATTERS.

Prohibition as to putting Solid Matters into Streams.

2. Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manu-

factory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

PART II.

LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to Drainage into Streams of Sewers.

3. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty

of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

PART III.

LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

Prohibition as to Drainage into Streams from Manufactories.

4. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Prohibition as to Drainage into Stream from Mines.

5. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless

the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.

Restriction on Proceedings under this Part of the Act.

6. Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that Board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other

sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

ADMINISTRATION OF LAW.

Sanitary Authority to afford facilities for Factories draining into Sewers.

7. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers :

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view :

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

Power of Sanitary Authority to enforce Act.

8. Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses

properly incurred by that authority in the execution of the Public Health Act, 1875.

Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1.) LEGAL PROCEEDINGS.

Offences to be restrained by Summary Order of County Court.

10. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and costs of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a-day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in de-

fault to the person or persons executing such order, and may be recovered accordingly in the county court.

Appeal from County Court, and removal of Case into High Court of Justice.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

Certificate of Inspector of Local Government Board as to best practicable Means.

12. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means

under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

Restriction on Proceedings for Offences.

13. Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act; nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.

Orders as to Costs of Inquiries.

14. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne; and every such order and every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of Her Majesty's High Court of Justice.

Power of Inspectors of Local Government Board.

15. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places

and matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act.

(2.) SAVING CLAUSES.

Powers of Act cumulative.

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

Saving of Rights of Impounding and Diverting Water.

17. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.

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Saving of Works of certain Local Authorities.

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act.

(3.) DEFINITIONS.

Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

“Person” includes any body of persons, whether corporate or unincorporate:

“Stream” includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary

grounds, be determined by the Local Government Board, by order published in the London Gazette. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid: "Solid matter" shall not include particles of matter in suspension in water:
 "Polluting" shall not include innocuous discoloration.

PART V.

APPLICATION OF THE ACT TO SCOTLAND.

Modifications of Act in Scotland.

21. In the application of this Act to Scotland the following provisions shall have effect:

- (1.) The expression "sanitary authority" shall mean and include the local authority in any parish or burgh in Scotland, acting under the Public Health (Scotland) Act, 1867:
- (2.) The expression "London Gazette" shall mean Edinburgh Gazette:
- (3.) The expression "the Public Health Act, 1875," shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same:
- (4.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary of State" were substituted; and the expression "the Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State:

The powers of the Secretary of State are transferred to the Secretary for Scotland by the Act 48 & 49 Vict. c. 61, § 5 (1).

- (5.) The expression "the county court" shall mean the sheriff of the county, and shall include sheriff substitute; and the expression "plaint entered in a county court" shall mean petition or complaint presented in a sheriff court:
- (6.) The expression "the High Court of Justice" shall mean the Court of Session in either division of the Inner House thereof:

- (7.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs and their substitutes:
- (8.) The Court of Session may, on the application of the Lord Advocate, on behalf of the Secretary of State, interpose their authority to any order made by the Secretary of State as to the costs incurred by him in relation to inquiries instituted by him under this Act, and as to the parties by whom such costs shall be borne; and may grant decree conform thereto, upon which execution and diligence may proceed in common form:

An inspector appointed for the purposes of this Act by the Secretary of State shall, for the purposes of any inquiry directed by the Secretary of State, under this Act, be entitled, by a summons signed by him, to require the attendance of all persons he may think fit to call before him in regard to the matters of the inquiry, and to administer oaths to, and examine upon oath, all such persons, and to require and enforce the production upon oath of all documents, accounts, or papers in anywise relating to such inquiry; and shall also have, in relation to the inspection of places and matters required to be inspected, similar powers to those which sanitary inspectors have under the Public Health (Scotland) Act, 1867.

V. THE FACTORY AND WORKSHOP ACTS, 1878-1883.

PROVISIONS AS TO BAKEHOUSES.

(a.) THE FACTORY AND WORKSHOP ACT, 1878.

(41 VICT. C. 16.)

PART I.

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

(1.) SANITARY PROVISIONS.

Sanitary condition of Factory and Workshop.

3. A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance.

A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

*Notice by Inspector to Sanitary Authority of Sanitary
Defects in Factory or Workshop.*

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

An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority.

See P.H. Act, §§ 16, 41.

PART II.

SPECIAL PROVISIONS RELATING TO PARTICULAR CLASSES OF FACORIES AND WORKSHOPS.

(1.) SPECIAL PROVISIONS FOR HEALTH IN CERTAIN FACTORIES AND WORKSHOPS.

Limewashing and Washing of the interior of Factories and Workshops.

33. For the purpose of securing the observance of the requirements of this Act as to cleanliness in every factory and workshop, all the inside walls of the rooms of a factory or workshop, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory or workshop, if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the period when last washed.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Where it appears to a Secretary of State that in any class of factories or workshops, or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories or workshops, or parts thereof, a special exception that the regulations in this section shall not apply thereto.

See the 1883 Act, *infra*, § 17 (1).

Limewashing, Painting, and Washing of the interior of Bakehouses.

34. Where a bakehouse is situate in any city, town, or place containing, according to the last published Census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed the limewashing shall be renewed once at least in every six months.

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

See the 1883 Act, *infra*.

Provision as to Sleeping Places near Bakehouses.

35. Where a bakehouse is situate in any city, town, or place containing, according to the last published Census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place, unless it is constructed as follows; that is to say,

unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and
unless there be an external glazed window of at least nine

superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

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

See the 1883 Act, *infra*.

Powers of Inspectors.

68. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things; namely,

- (4.) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein.

See the 1883 Act, *infra*, § 17 (1).

Fine for not keeping Factory or Workshop in conformity with Act.

81. If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act; the court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

General Definitions. "Child." "Young person." "Woman."

96. In this Act, unless the context otherwise requires,—

The expression "child" means a person under the age of fourteen years:

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years:

The expression "woman" means a woman of eighteen years of age and upwards.

Application of Act to Scotland.

105. In the application of this Act to Scotland,—

(3.) The expression "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1867:

(4.) The expression "medical officer of health" means the medical officer under the Public Health (Scotland) Act, 1867, or where no such officer has been appointed, the medical officer appointed by the parochial board:

The expression "poor law medical officer" means the medical officer appointed by the parochial board:

(15.) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction Acts at the instance of the procurator fiscal or of an inspector under this Act:

See Act of 1883, § 17 (1) *infra*.

(16.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by such procurator fiscal or inspector presented in common form:

(17.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months.

(b.) THE FACTORY AND WORKSHOP ACT, 1883.

(46 & 47 VICT. C. 53.)

BAKEHOUSES.

Regulations for New Bakehouses.

15. It shall not be lawful to let or suffer to be occupied as a bakehouse, or to occupy as a bakehouse, any room or place which was not so let or occupied before the first day of June one thousand eight hundred and eighty-three, unless the following regulations are complied with:

(i.) No water-closet, earth-closet, privy, or ashpit shall be within or communicate directly with the bakehouse.

(ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a water-closet;

- (iii.) No drain or pipe for carrying off faecal or sewage matter shall have an opening within the bakehouse.

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

*Penalty for Bakehouse being unfit on Sanitary Grounds
for use as a Bakehouse.*

16. Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a local authority that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction, not exceeding five pounds.

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

*Enforcement of Law as to Retail Bakehouses by
Local Authorities.*

17. (1.) As respects every retail bakehouse, the provisions of this part of this Act and of sections three, thirty-three, thirty-four, and thirty-five of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection, taking legal proceedings and otherwise, as an inspector under the Factory and Workshop Act, 1878.

For powers of inspector, see Act of 1878, § 68 (4) *supra*.

(2.) If any child, young person, or woman is employed in any retail bakehouse, and the medical officer of the local authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

For definition of "child," &c., see Act of 1878, § 96, *supra*.

(3.) An inspector under the Factory and Workshop Act, 1878, shall not, as respects any retail bakehouse, exercise the powers of entry and inspection conferred by that Act, unless he has notice or reasonable cause to believe that a child, young person, or woman is employed therein.

Construction of Act and Definitions.

18. This Act shall be construed as one with the Factory and Workshop Act, 1878; and in this Act, unless the context otherwise requires,—

The expression "retail bakehouse" means any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale but by retail in some shop or place occupied together with such bakehouse.

Application of Act to Scotland.

19. In the application of this Act to Scotland the expression "local authority" means the local authority within the meaning of the Public Health (Scotland) Act, 1867.

See P.H. Act, § 5, and notes.

The following is an extract from a circular issued by the Board on 29th January 1884, calling the attention of local authorities to the provisions of the Factory and Workshop Acts as to bakehouses:—

The Board are of opinion that it will be necessary for the due enforcement of the Act that the local authority should instruct their medical officer, either personally or by an authorised assistant, to visit and report upon the various bakehouses within the district of the local authority. The local authority will thus be in a position to take the proper steps for securing that the provisions of the Act are systematically and efficiently enforced.

In a subsequent circular, dated 7th February 1888, the Board intimated that they had instructed their inspecting officers to report specially upon the manner in which the Act is executed in each district.

VI. THE ALKALI, &c., WORKS REGULATION ACT, 1881.

(44 & 45 VICT. C. 37.)

Acid Drainage and Alkali Waste to be kept apart.

5. Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or watercourse into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.

Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Appointment of Inspectors.

14. The Local Government Board shall at any time after the passing of this Act, and from time to time, with the approval of the Commissioners of Her Majesty's Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they from time to time fix) as the Board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette, and a copy of the Gazette shall be evidence of the appointment.

The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Commissioners of Her Majesty's Treasury may sanction, shall be paid out of moneys provided by Parliament.

The power of the Local Government Board to appoint inspectors is transferred as regards Scotland to the Secretary for Scotland, by the Act 48 & 49 Vict. c. 61, § 5 (3).

Additional Inspector on application of Sanitary Authorities.

19. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one-half, out of any rate or rates leviable by such authority or authorities (which undertaking such authority or authorities are hereby authorised to give and to carry into effect), the Local Government Board may (if they see fit) from time to time, with the sanction of the Commissioners of Her Majesty's Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and the same regulations and liabilities as other inspectors under this Act.

The proportion of salary or remuneration aforesaid shall be paid at the prescribed time or times into Her Majesty's Exchequer, and in the case of failure on the part of any sanitary authority to pay any sum payable by them in pursuance of this

section, the same may be recovered by action in any court of competent jurisdiction.

Local Government Board.—See note to § 14, *supra*.

Complaint by Sanitary Authority in Cases of Nuisance.

27. Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without the district) to which this Act applies is carried on in contravention of this Act, or that any alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority, who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority.

Interpretation of Terms.

29. In this Act, unless the context otherwise requires—

“Central authority” means as regards England the said Local Government Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland one of Her Majesty’s Principal Secretaries of State.

Secretary of State.—Now the Secretary for Scotland. See the Act 48 & 49 Vict. c. 61, § 5 (1).

“Sanitary authority” means any local authority entrusted with the execution of the Public Health Act.

“The Public Health Act” means, as regards England, the Public Health Act, 1875; and as regards Scotland, the Public Health (Scotland) Act, 1867; and as regards Ireland, the Public Health (Ireland) Act, 1878.

Saving as to General Law.

31. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action indictment or otherwise, to which he would have been entitled if this Act had not passed.

See P.H. Act, § 16 (c) (g), *supra*.

VII. THE COAL MINES REGULATION ACT, 1887.

(50 & 51 VICT. C. 58.)

Fencing in case of Abandoned Mine.

37.—(1.) Where any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of every shaft and every side entrance from the surface to be and to be kept securely fenced for the prevention of accidents. . . .

(5.) Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875.
.

Application of the Public Health Act, 1875, s. 38.

74. Section thirty-eight of the Public Health Act, 1875 (which relates to privy accommodation for any house used as a factory or building in which both sexes are employed), shall apply to the portions of a mine which are above ground, and in which girls and women are employed, in like manner as if it were herein re-enacted with the substitution of "those portions of the mine" for the house in the said section mentioned.
.

Application of Act to Scotland.

76. In the application of this Act to Scotland—

(10.) Sections forty-one and sixteen of the Public Health (Scotland) Act, 1867, shall respectively be substituted for sections thirty-eight and ninety-one of the Public Health Act, 1875.

VIII. HOUSING OF THE WORKING CLASSES ACT, 1885.

(48 & 49 VICT. C. 72.)

MEMORANDUM AS TO THE PROVISIONS OF THE HOUSING OF THE
WORKING CLASSES ACT, 1885 (48 & 49 VICT. C. 72), SO FAR AS
AFFECTING SCOTLAND.

The Housing of the Working Classes Act, 1885, may be divided into
two parts :—

- I. Provisions affecting the statutes dealing with houses for the labour-
ing classes.
- II. Provisions affecting the general sanitary law.

I.

The statutes as to houses for the labouring classes which are affected by
this Act (§ 14) may be arranged in three groups.

Group A.—The Labouring Classes Lodging Houses Acts, 1851 to 1867.

Group B.—The Artizans Dwellings Acts, 1868 to 1882. (Torrens'
Acts.)

Group C.—The Artizans and Labourers Dwellings Acts, 1875 to 1882.
(Cross's Acts.)

GROUP A.

This group of statutes comprises—

The Labouring Classes Lodging Houses Act, 1851 (14 & 15 Vict. c. 34).

The Labouring Classes Dwelling Houses Act, 1866 (29 & 30 Vict. c. 28) ;
and

The Labouring Classes Dwelling Houses Act, 1867 (30 & 31 Vict. c. 28).

These Acts provide that lands may be purchased or rented for the pur-
poses of the Acts, that lodging houses for the labouring classes may be
provided and furnished, that persons or bodies possessing water-works or
gasworks may supply such lodging houses either gratuitously or on favour-
able terms, that byelaws for the management, use, and regulation of the
lodging houses may be made and enforced, that money for the purpose of
providing dwellings for the labouring classes may be borrowed, and that
railway or other companies by whom persons of the labouring classes are
employed may provide dwellings for their employees.

Section 16 (1) of the Housing of the Working Classes Act, 1885, provides that these Acts (Group A) may be adopted by any local authority in Scotland, and that the expenses shall be paid and money borrowed as under the Public Health Acts.

Section 16 (2) provides that the provisions with respect to the adoption of these Acts (Group A) "by a rural sanitary authority shall apply to the adoption thereof by a local authority, being a parochial board, as if the Board of Supervision for the relief of the Poor in Scotland were substituted in the said provisions for the Local Government Board."

The requirements imposed upon rural sanitary authorities in adopting these Acts are briefly these (§ 1 (2) (3)): 1. They may make application to the Local Government Board, specifying the area to which the Acts are to apply; 2. The Local Government Board shall thereupon cause a local inquiry to be made by one of their inspectors; 3. If the inspector certifies that accommodation for the labouring classes is necessary in such area, that there is no probability of its being otherwise provided, and that it is prudent from a financial point of view for the authority to undertake the scheme, the Local Government Board may publish the certificate in the 'London Gazette,' and thereupon the authority may adopt the Acts; 4. If the authority think it just that the expenses should fall on some "contributory place or places" instead of on the whole district, they may frame their application accordingly, and the Local Government Board may make an order so limiting the area on which the expenses are to fall.

It will be observed that the words "contributory place" have no interpretation attached to them in the clause applying the Act to Scotland. In the English Public Health Act, 1875 (§ 229), the expression has a definite meaning, but no similar expression is used in the Scotch Act, nor is there in the Scotch Act any area exactly corresponding, although the special districts for drainage and water supply are no doubt similar. The question thus arises, whether in Scotland the expense of adopting and executing these Acts could be confined to a limited area under the provisions of section 1 (3) of this Act.

In connection with section 16 (2) another question may arise—

Seeing that after the Local Government (Scotland) Act comes into operation there will be no parochial board in Scotland acting as local authority, will this sub-section be by implication repealed? or,

Seeing that under the Local Government Act the powers and duties of parochial boards as local authorities will be transferred to the county councils and district committees, will the provisions applicable to rural sanitary authorities apply to the bodies which supersede parochial boards as local authorities—viz., the district committees?

GROUP B.

The second group of statutes to which the Act of 1885 refers—viz., The Artizans Dwellings Acts, 1868 to 1882 (the Torrens' Acts), comprises—

The Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130).

The Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879 (42 & 43 Vict. c. 63); and

The Artizans Dwellings Act, 1882, Part II. (45 & 46 Vict. c. 54).

These Acts apply in Scotland to burghs and police burghs only. They provide that when the medical officer or sanitary inspector finds that any premises in the burgh are dangerous to health or unfit for habitation, he shall report the same to the local authority, who shall thereupon consult

a surveyor, and obtain a report as to the cause of the evil and the best means of remedying it. The local authority may then require the owner to execute the necessary works or demolish the premises, and on his default they may themselves proceed to do so. The expenses may be made a charge on the premises, and a special rate may also be levied. Compensation may be settled by arbitration, and money may be borrowed from the Public Works Loan Commissioners. The local authority may also make and enforce byelaws for the regulation of dwellings belonging to them under these Acts. Similar provisions apply to houses which, though not themselves unfit for habitation, stop ventilation, or render other houses unhealthy, or prevent the measures required for improving other houses being carried out.

The Housing of the Working Classes Act of 1885 is to be construed with this group of statutes, but does not amend them except to the extent of repealing the power which an owner had of compelling a local authority to purchase premises which they had ordered him to improve or demolish (§ 4).

This group of statutes remains applicable to burghs only; but it is understood that a Bill is to be introduced into Parliament this session making them applicable to rural districts also.

GROUP C.

The third group of statutes (*i.e.*, Cross's Acts) affected by the Housing of the Working Classes Act, 1885, is represented as regards Scotland by the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875 (38 & 39 Vict. c. 49).

This Act gives powers for dealing with large areas similar to the powers for dealing with individual houses given by the Torrens' Acts. The medical officer may make a representation to the local authority that any houses, courts, &c., within their jurisdiction are unfit for habitation, or that diseases indicating a low condition of health prevail within a certain area, and that the evils to which these conditions are due cannot be remedied without an improvement scheme. The local authority may thereupon make a scheme for the improvement of the said area, which scheme shall provide for the opening up and ventilating of such area, and for the accommodation of inhabitants thereby displaced. The improvement scheme requires to be submitted to Parliament for confirmation in the form of a Provisional Order, and the local authority have power to carry it into execution. Rates may be levied and money borrowed for the purposes of the Act.

This Act originally applied only to Royal and Parliamentary Burghs with a population of 25,000 or upwards. By the Act of 1885 (§ 16 (4)), it is made applicable to the whole of Scotland, and its execution is entrusted to the local authorities under the Public Health Act.

SUMMARY OF PRECEDING STATEMENT.

The powers for dealing with the dwellings of the working classes given to local authorities by the Act of 1885 and the statutes affected by it may be summarised thus:—

1. All local authorities have power to provide and regulate lodgings or dwellings for the labouring classes.
2. Local authorities of burghs have power to deal with houses which are injurious to health or which render other houses injurious to health.
3. All local authorities have power to deal with unhealthy areas or aggregations of houses by means of improvement schemes.

It will be observed that while landward local authorities have the same powers as burghs for dealing with unhealthy *areas*, they have not the powers which burghs possess of dealing with *individual houses*.

II.

The provisions of the Housing of the Working Classes Act, 1885, which amend the general sanitary law, are as follows :—

1. Section 7 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."

This is an important provision, very far-reaching in its effects. It provides that when local authorities are entrusted with powers calculated to secure the proper sanitary condition of premises within their jurisdiction, they have no longer any option, but are required to exercise these powers.

2. Section 8 provides that "every local authority shall have power to make byelaws for the matters specified in section 90 of the Public Health Act, 1875."

The byelaws here referred to are byelaws for houses let in lodgings, similar to those authorised by section 44 of the Public Health (Scotland) Act. But section 44 of the P.H. Act gives the power to make such byelaws only in the case of burghs and populous places having a population of 1000 or upwards. By this section the power is extended to *all* sanitary authorities. But in the clause applying the Act to Scotland, there is no provision authorising section 44 of the Scotch Act to be substituted in this section for section 90 of the English Act, and in the absence of such a provision the application of the section to Scotland is doubtful.

3. Section 9 makes various provisions as to tents, vans, sheds, &c., used for human habitation. It is not confined in its application to England, but the interpretations required to make it apply to Scotland are wanting, and it is doubtful whether it can be put in force in Scotland.

Sub-section (1) provides : "A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section 91 of the Public Health Act, 1875 ; and the provisions of that Act shall apply accordingly."

But there is no provision that as regards Scotland section 16 of the Scotch Act shall be substituted for section 91 of the English Act ; and in the absence of a distinct provision the question arises whether such an interpretation is competent. Apart from this special provision, however, it may be held that the word "premises" in section 16 *a* of the Public Health (Scotland) Act includes tents, &c. (See definition of "premises" in section 3 of P.H. Act, *supra*.)

Sub-section (2) provides : "A sanitary authority may make byelaws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same."

Section 10 provides for the enforcing of these byelaws in England, but as regards Scotland there is no such provision, and it is doubtful whether

section 114 or other sections of the Public Health (Scotland) Act would apply.

4. Section 12 provides that in letting houses for the working classes "there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation." This enactment is limited as regards Scotland to houses of £4 rental and under.

If this section amends the law of Scotland as to the conditions implied in the letting of houses, it seems unfortunate that its application is so circumscribed. In England it will apply more extensively, reaching in the metropolis to rentals of £20, in Liverpool, £13, in Manchester and Birmingham, £10, and elsewhere, £8.

The foregoing statement of the provisions of the Housing of the Working Classes Act, 1885, will show the character and extent of the powers conferred by it on local authorities in Scotland, as well as the increased obligations laid upon them in regard to the sanitary condition of premises under their control.



PART V.

FORMS OF PROCEDURE UNDER THE PUBLIC
HEALTH ACT PREPARED BY THE
BOARD OF SUPERVISION.

CONTENTS OF PART V.

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PART V.

FORMS OF PROCEDURE PREPARED BY THE BOARD OF
SUPERVISION.

No. 1.

[*Petition for Order to admit Local Authority and others, with
Procedure under § 17.*]

Unto [Sheriff, magistrate, or justice]

THE PETITION of _____, sanitary inspector¹ of the district of _____, Humbly sheweth,—

That the petitioner verily believes, on reasonable grounds, that within or near the following premises situated within the said district—viz. [Describe the premises. (See § 3, *voce* premises)] there exists a nuisance within the meaning of the Public Health (Scotland) Act, 1867—viz. [State the nuisance, in terms of § 16, as: That the said premises are so overcrowded, while work is carried on therein, as to be dangerous or injurious to the health of those employed therein; or other nuisance; or any other nuisance not specifically mentioned in that section.] That the petitioner on _____ at _____ o'clock _____ m., demanded admission for himself [Here may be inserted the local authority; also the medical officer, the superintendent of police, &c., naming them. See § 17] to inspect the same, but admission was refused. Wherefore this application is made under § 17 of the said Act, for admittance to inspect the premises this day, or any of the next _____ days, at any hour between nine in the morning and six in the evening, and at any time betwixt the hours of _____ and _____ during which period the petitioner believes that the operations suspected to cause the nuisance are in progress, or are usually carried on; or at such other time as may seem fit; and the petitioner therefore

Prays for an order in writing requiring the occupier or person having the custody of the aforesaid premises to admit the local authority of the said district and the petitioner [State others *ut supra*, if wished] at the times foresaid, or such other times as may be fit; and, in case of opposition, to find the opposing party liable in expenses. According to justice, &c.

DEPOSITION OF THE AFORESAID PETITIONER.

At the day of in presence of
 compeared the said petitioner, who, being solemnly sworn,

¹ This petition may run in name of the local authority.

depones that the whole statements in the foregoing petition are true [Signatures of deponent and judge].

WARRANT FOR INTIMATION.

[The order, &c., *infra*, may be granted with or without intimation, § 17.]
[Place and date] appoints a copy of the foregoing petition and deposition, and of this deliverance, to be served on the owner, or occupier, or person in charge of the premises therein mentioned, and appoints appearance to be made by him or them before the undersigned at _____ on _____ at _____ o'clock _____ M., [State so many hours or days] previous service being made.

CERTIFICATE OF SERVICE.

Note.—Service may be made by any person, § 110.

I, _____ hereby certify, that on _____ at _____ o'clock _____ M., I served a copy of the foregoing petition, deposition, and deliverance upon [State the person or persons on whom service is made, and the mode of service (see § 110), and whether owner, occupier, or person in charge] all in presence of _____ witness, hereto subscribing.

Witness.

ORDER FOR ADMITTANCE.

[Place and date.]

I [Sheriff, magistrate, or justice] having considered the foresaid petition and deposition, hereby, in terms of § 17 of the aforesaid Act, ordain and require the occupier or person having the custody of the aforesaid premises, to admit the local authority and sanitary inspector foresaid [State if others] to the said premises, for the purpose of inspecting the same, and that on this present day, or any of the next _____ days, at any hour between nine in the morning and six in the evening, and also betwixt the hours of _____ and _____

Note.—Expenses may be found due in case of opposition.

CERTIFICATE OF FAILURE OR REFUSAL TO GIVE ADMITTANCE.

I, _____ hereby certify, that on the _____ at _____ o'clock _____ M., I demanded admittance, in terms of the foregoing order, but admittance was refused and withheld.

WARRANT FOR IMMEDIATE FORCIBLE ENTRY.¹

I [Sheriff, magistrate, or justice] being satisfied of the failure or refusal to give admittance, in terms of the foregoing order, hereby grant warrant to the said local authority and sanitary inspector [here insert any others] or any of them, for immediate forcible entry into the foresaid premises.

No. 2.

[*Requisition for Application to the Sheriff for Removal of Nuisance, under § 18.*]

Unto the local authority of _____ the requisition of the undersigned, being not fewer than ten inhabitants of the district of the local authority. We, the undersigned inhabitants of the said district, hereby, in terms of §§ 16 and 18 of the Public Health (Scotland) Act, 1867, require you, the said local authority, to apply to the sheriff for removal or remedy

¹ Besides this warrant for forcible entry, the prosecutor may insist for a penalty not exceeding £5; but this should be on a separate petition in the appropriate form, No. 21.

or discontinuance or interdict of the following nuisance, existing within the said district—viz. [Here state the nuisance in terms of § 16 (e) or (g), as, That the manufactory of _____ carried on at _____ by _____ is injurious to the health of the neighbourhood]. [Signatures, mentioning place of residence.]

No. 3.

[*Medical Certificate of the existence of a Nuisance, and Petition for Removal thereof, with Procedure, § 18.*]

CERTIFICATE BY THE MEDICAL OFFICER OF THE DISTRICT OF _____

[Place and date.]

I hereby declare, on soul and conscience, to the local authority of the aforesaid district, that within or near the following premises, situated within the said district—viz. [Describe the premises. (See § 3, *voce* premises)], there exists a nuisance within the meaning of the Public Health (Scotland) Act, 1867—viz. [State the nuisance; as, A stable in which animals are kept in such a manner as to be injurious to health, &c. &c.] (Signature.)

Note.—The certificate of the medical officer may be used in all cases; and where the nuisance falls under heads (e) and (g) of § 16, either the certificate or a requisition of not fewer than ten inhabitants is essential.

PETITION.

Unto [Sheriff, magistrate, or justice. Under § 16, heads (e), (g), (h), (i), and (j), the petition must be to the sheriff]. The petition of _____ sanitary inspector of the district of _____ Humbly sheweth,—That within or near the following premises, situated within the said district—viz. [Describe the premises. (See § 3, *voce* premises)] there exists a nuisance within the meaning of §§ 16 and 17 of the Public Health (Scotland) Act, 1867—viz. [State the nuisance, as in the prefixed certificate]. That the author of said nuisance is [State the author or authors of the nuisance, and whether owner or occupier, or both. (See § 3, *voce* author of a nuisance.)] [If the nuisance falls under § 16 (j), the author of the nuisance will not be stated; but the name of the collector of the churchyard or other dues will be set forth. If the nuisance falls under the heads (e) and (g) of § 16, set forth here that this application is made on a certificate by the medical officer, dated _____ or that it is made on a requisition, in writing, under the hands of not fewer than ten inhabitants of the district, and the certificate or requisition should be produced. In case of suspected discontinuance of the nuisance, and of its probable recurrence, it may be set forth: That if the said nuisance is now discontinued, it is likely to recur or be repeated; and the same existed on _____ when a medical certificate thereof was granted (or when a demand for admission to the premises was made on behalf of the local authority.)]

The petitioner therefore prays your [lordship or honours] to ordain service of this petition, and the deliverance thereon, on the said _____, and thereafter to ordain [him or them] to remove and discontinue the said nuisance, and for that purpose to [State any special order]. [Add if desired: and to prohibit and interdict (him or them) from, &c., in time to come.] According to justice [Signature of petitioner or agent].

[Place and date.]

The [Sheriff, magistrate, or justice] appoints a copy of the foregoing petition, and of this deliverance, to be served on the said _____, and ap-

points [the parties to appear before the said _____ at _____ the
day of _____ at _____ o'clock, or, answers to be lodged
within _____ after service].

Note.—Answers must be appointed not more than three days after service.

Note.—Service may be made by any person, § 110.

CERTIFICATE OF SERVICE

I, _____ hereby certify, that on _____ at _____ o'clock
M., I served a copy of the foregoing petition and deliverance upon [State
the person or persons upon whom service is made, and the mode of service.
(See § 110)] all in presence of _____ witness, hereby subscribing.

Witness.

INTERLOCUTOR

Remits to the alleged nuisance. to examine the premises, and report as to

Note.—It is at the discretion of the judge to pronounce this interlocutor, § 105.

OR.

Allows the petitioner a proof of his averments, and the respondent a conjunct proof. Appoints the proof to take place, before the undersigned, at _____ day of _____ at _____ o'clock. [The day for proof must not be later than five days after the date of the interlocutor. If the case falls under § 16, heads (h), (i), or (j), the sheriff must take notes of the evidence, as in civil cases, § 106.]

Note.—It is at the discretion of the judge to pronounce this interlocutor, § 105.

INTERLOCUTOR ON THE MERITS, IF THE PARTY DOES NOT APPEAR.

If structural works are required, the provisions of § 21 will fall to be attended to.

[Place and date.]

The [Sheriff, magistrate, or justice] in respect the respondents have failed to [Appear or lodge answers] and having heard the sanitary inspector, and considered the matter, ordains the said _____ to discontinue and remove the said nuisance. [Here may be inserted, "and for that purpose to" (do whatever may be deemed necessary), "and that within _____ from this date, and failing of this order being duly implemented, authorises the local authority, at the expense of the said _____ to perform the said operations, and for that purpose to enter the premises, and prohibits and interdicts the said _____ from renewing or repeating the," &c.] Finds the said _____ liable in expenses of process, and modifies the same to the sum of _____ and decerns.

INTERLOCUTOR ON THE MERITS AFTER APPEARANCE OF THE RESPONDENTS.

See supra as to structural works.

[Place and date.]

The [Sheriff, magistrate, or justice] having ["heard parties," or "considered the petition and answers," or "considered the proof and whole process"], ordains the said _____ to discontinue and remove the said nuisance [See *supra*] within _____ days, and appoints the petitioner to report on or

before the day of , whether this judgment has been
 complied with: Finds the said liable in expenses of process [“mo-
 modifies the same to the sum of ” or “appoints an account thereof to
 be lodged, and remits the same to to tax and report”], and decerns.

Note.—In the event of the above interlocutor not being complied with,
 the sheriff or magistrate will pronounce judgment in his discretion, in terms
 of § 20.

INTERLOCUTOR ON REPORT OF AUDITOR.

[Place and date.]

Approves of the report of the auditor on the petitioner's account of ex-
 penses; modifies the same to the sum of for which, and expense
 of extract, decerns.

INTERLOCUTOR REFUSING THE PETITION.

[Place and date.]

The [Sheriff, magistrate, or justice] refuses or dismisses the petition:
 Finds the petitioner liable in the sum of of modified expenses,
 and decerns.

No. 4.

[*Petition to the Sheriff for Assessment of Damages, § 24.*]

UNTO THE HONOURABLE THE SHERIFF OF THE PETITION OF
 THE LOCAL AUTHORITY OF against

Humbly sheweth,—That, under § 24 of the Public Health (Scotland) Act,
 1867, they lately caused a certain structure—viz.,
 to be laid down, and, in the course of doing so, they entered the premises at
 [Describe the premises. See § 3, *voce* premises], occupied by
 and belonging to and used a certain part or parts thereof;
 and they are now desirous that your lordship shall assess the damages due
 in respect of such entry and use, and direct the same to be paid to such per-
 son or persons who may be justly entitled thereto, in terms of the said
 statute. [Here may be introduced, if required—“the petitioners, however,
 submit that the said should be found to be not entitled to any
 damages, he having without justifiable excuse, caused, or contributed to
 cause, the foulness of a whereby such structure was rendered
 necessary.]

May it therefore please your lordship to appoint this petition, and the de-
 liverance thereon, to be served on the said and to appoint
 answers to be lodged within three days after service, or appoint the
 parties to attend your lordship, at a time and place specified, and
 thereafter to assess the damages occasioned by the aforesaid entry and
 use of the said premises, and to direct such damages to be paid to such
 party as your lordship may find entitled thereto.

According to justice, &c.

INTERLOCUTOR.

[Place and date.]

The sheriff appoints the foregoing petition and this
 deliverance to be served on therein mentioned, and ap-
 points [Answers within three days; or, appearance of parties at time and
 place specified].

CERTIFICATE OF SERVICE.

I, _____, certify that I served a copy of the foregoing petition and deliverance on _____ therein mentioned, at _____ the _____ day of _____ at _____ o'clock, _____ M., by [State mode of service, § 110], in presence of the undersigned witness, viz.

Witness.

No. 5.

[Order for the Destruction or Sale of Unwholesome Meat, &c., § 26.]

ORDER FOR DESTRUCTION OR DISPOSAL OF UNWHOLESOME MEAT, &c.

[Place and date.]

[See note to *infra*.]

On the application of _____ the sanitary inspector for _____ whose signature is accordingly hereto subjoined, and being satisfied that [The carcass of a cow (or the like)] seized by him on _____ and to have been found in the possession of or on the premises occupied by _____ at _____ [is or are] unfit for human food, hereby, in virtue of § 26 of the Public Health (Scotland) Act, 1867, ordain the said sanitary inspector to destroy the same, or to sell or otherwise dispose of the same in such manner and with such precautions as to prevent the same being exposed for human food, or used for such food.

(Judge) [Signature of sheriff, or two justices, or two magistrates.]

Inspector.

Note.—If it is desired to recover the penalty or expenses mentioned in § 26, a summary petition must be presented. The form No. 21 may be adopted for this purpose, and it would be advisable to found on § 26, as well as the general section 105.

No. 6.

[Notice by the Local Authority to the person by whom any product produced in the manufacture of Gas or other substance is caused or permitted to flow into any Well, &c., §§ 27 and 29.]

NOTICE.

The local authority of _____ hereby give notice to you _____ that you have caused or suffered, and are now causing _____ and suffering _____ or other substance produced in the manufacture of _____ to flow into [Stream, well, &c., at _____ constructed for the supply of water for domestic purposes; or, which is used for the supply of water for domestic purposes, &c.], or into a pipe or drain communicating therewith; also, that you have wilfully done an act connected with the said manufacture in which you are engaged—viz. [State the act], whereby the water in the said _____ is fouled; also that you the said _____ have wilfully done, or permitted to be done, an act—viz. [State the act], whereby the water in the said _____ is fouled; and that you are liable in the penalty of a sum not exceeding £50, under § 27 of the Public Health (Scotland) Act, 1867, and that you will further be liable, under § 29 of the said Act, to forfeit a sum not exceeding £5 for each day during which such substance shall be brought or shall flow as aforesaid, or during which the act by which water shall be

fouled shall continue after the expiration of twenty-four hours from the time when this notice shall have been served upon you.

This notice served on the _____ day of _____
at _____ o'clock _____ M.

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____ certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by [State mode of service, *as*, by putting the same into the post office at _____ addressed (Give address, &c.)], in presence of the undersigned witness.
Witness.

No. 7.

[*Notice as to Penalty for Polluting Water, §§ 27, 28, 29.*]

NOTICE BY THE LOCAL AUTHORITY OF _____ TO _____
AS TO WATER BELONGING TO HIM BEING FOULED, &c.

The local authority of _____ hereby, in terms of § 28 of the Public Health (Scotland) Act, 1867, give you _____ notice, that they intend to proceed against _____ for the penalties provided by the said Act, §§ 27, 28, and 29, incurred by him for contravention of §§ 27 and 29 of the said Act, in regard to the [Well, stream, &c.] belonging to you, unless you shall, within _____ days after the serving of this notice, proceed to recover the said penalties.

This notice is given on the _____ day of _____
at _____ o'clock _____ M.

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____ certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M. by [State mode of service, *as*, by putting it into the post office at _____ addressed (State address, &c.)], in presence of the undersigned witness—viz.
Witness.

No. 8.

[*Medical Certificate for Disinfecting House, &c., and Notice thereon, § 40.*]

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

I hereby certify, on soul and conscience, that the cleansing and disinfecting of the [Describe the house or part of house] situated at _____ and occupied by _____ and of the [State articles requiring to be disinfected] therein contained, would tend to prevent or check the spreading of a contagious or infectious disease—viz.

_____ of which [a case or cases] recently occurred therein. [State when patient removed, or other particulars.]

NOTICE BY THE LOCAL AUTHORITY OF _____ TO _____
[OCCUPIER OR OWNER.]

[Place and date.]

You are hereby required immediately to cleanse and disinfect the premises and articles mentioned in the foregoing certificate, in terms of § 40 of the

Public Health (Scotland) Act, 1867, and that under the penalty and subject to the consequences therein contained.

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by [State the mode of service, § 110], in presence of the undersigned witness—viz.

Witness.

No. 9.

[*Notice by the Local Authority to the Owner or Occupier of a Schoolhouse, Factory, &c., to construct Water-Closets or Privies, § 41. If this notice be not complied with, the form No. 21 may be employed for the recovery of the penalties.*]

NOTICE TO CONSTRUCT WATER-CLOSETS OR PRIVIES.

The local authority of _____ hereby give notice to you [Name and designation; and add: owner (or occupier) of a schoolhouse at _____ or, of a factory or building, situated at _____ in which more than ten persons are employed at one time, in the manufacture of _____ &c.], and require you [to construct _____ water-closets or privies for the separate use of male persons therein employed, and _____ water-closets or privies for the separate use of the female persons therein employed, &c.], and that within _____ from the service of this notice, all in terms of and under the penalties specified in § 41 of the Public Health (Scotland) Act, 1867.

This notice served on the _____ day of _____
Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by [See § 110. State mode of service, as, by putting the same into the post office at _____ addressed to (give address); or, by leaving the same addressed to him, with a person or with a man on the premises, &c.], in presence of the undersigned witness—viz.

Witness.

No. 10.

[*Certificate by Medical Practitioner for Removal of Sick Persons where a Hospital or Place for the reception of the Sick exists, with Procedure thereon, § 42.*]

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

[Place and date.]

I hereby certify, on soul and conscience, that _____ is at present suffering from a [Insert, dangerous, or contagious, or infectious; see § 42] disorder—viz., _____ and is [Without proper lodging or accommodation; or, Lodged in a room occupied by others besides those in attendance on him; or, Is on board the ship or vessel lying at _____].

(Signature.)

CONSENT BY THE SUPERINTENDENT OF A HOSPITAL OR PLACE FOR THE
RECEPTION OF THE SICK EXISTING WITHIN THE DISTRICT OF THE
LOCAL AUTHORITY OF

[Place and date.]

I, [State his name and office, and the hospital or place for reception of the sick] consent to the reception in the said of mentioned in the foregoing certificate.

APPLICATION FOR WARRANT.

[Place and date.]

I, sanitary inspector of the district of hereby, in terms of § 42 of the Public Health (Scotland) Act, 1867, crave a warrant for the removal of the said to the said

OR,

[Place and date.]

I, sanitary inspector of the district of hereby, in terms of § 42 of the Public Health (Scotland) Act, 1867, crave a warrant and direction to remove from the room occupied by the said all others not in attendance on him, the local authority providing suitable accommodation for such other persons.

ORDER.

[Place and date.]

I, [Sheriff, magistrate, or justice], hereby direct the removal by the said local authority of the said to the said at the cost of the said local authority.

OR,

[Place and date.]

I, [Sheriff, magistrate, or justice], hereby direct the removal by the said local authority from the room occupied by the said of all other persons not in attendance on him, the local authority providing suitable accommodation for such other persons.

No. 11.

[Certificate by a legally qualified Medical Practitioner for the removal of a Dead Body where a place for the reception of dead has been provided, with Order thereon, § 43.]

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

[Place and date.]

I hereby certify, that died on or about and that [He died of an infectious disease—viz., and the body is retained in a room in which persons live or sleep; or, the dead body is retained in the house (or room)—(describe it), and is in such a state as to endanger the health of the inmates of that (house or room)] and that the body ought to be buried [This day, (or other time specified)].

ORDER FOR REMOVAL.

[Place and date.]

I, [Sheriff, magistrate, or justice], hereby, in terms of § 43 of the Public Health (Scotland) Act, 1867, order the before-mentioned dead body to be removed to the place of reception for dead bodies within the district of the said local authority, by or at the cost of the said local authority, and to be buried within

No. 12.

[*Notice to the Owners of Underground Dwellings, § 45.*]

NOTICE.

The local authority of _____ hereby give notice to you,
 _____, owner of the vaults, cellars, or rooms following—viz.,
 _____ that in terms of § 45 of the Public Health (Scotland)
 Act, 1867, the letting of the foresaid premises as a dwelling-place or dwell-
 ing-places is prohibited from and after the date hereof, under the penalties
 provided by the said Act. This notice given on the _____ day of _____

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing
 is a copy, on _____ therein mentioned, on the _____ day of _____
 at _____ o'clock _____ M., by [State the mode of ser-
 vice, § 110], in presence of the undersigned witness—viz.,

 Witness.

No. 13.

[*Notice by the Local Authority to provide Water to a Common Lodging House, § 64.*]

NOTICE TO PROVIDE WATER TO A COMMON LODGING HOUSE.

The local authority of _____ hereby give notice to you, [State
 name and designation, and add owner or keeper, as the case may be] of a
 common lodging house at _____ and hereby require you,
 within _____ from the date of service hereof, to obtain a proper
 supply of water for the use of the lodgers in said common lodging house [Add
 here, if necessary, and to execute all works necessary for that purpose], other-
 wise the local authority may remove the said common lodging house from the
 register until it be complied with; all in terms of § 64 of the Public Health
 (Scotland) Act, 1867.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing
 is a copy, on _____ therein mentioned, on the _____ day
 of _____ at _____ o'clock _____ M., by [State mode of service, as, by putting
 the same into the post office at _____ addressed (give address); or, deliv-
 ering it to him personally at the premises, &c.], in presence of the under-
 signed witness—viz.,

 Witness.

No. 14.

[*Notice to the Keeper of a Common Lodging House, to report to the Local Authority, &c., § 65.*]

NOTICE TO THE KEEPER OF A COMMON LODGING HOUSE TO REPORT TO THE LOCAL AUTHORITY, &c.

The local authority of _____ hereby order and require you,
 _____ keeper of a common lodging house at _____ to report to
 _____ daily for the next _____ days, every person who resorted

to the said house during the preceding day or night; and, for that purpose, daily to fill up and transmit as aforesaid one of the schedules, of which copies are herewith furnished to you, all in terms of § 65 of the Public Health (Scotland) Act, 1867.

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing is a copy, and also _____ copies of the schedule therein mentioned, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M. [State mode of service, *as*, by putting the same into the post office at _____, addressed to him (give address); *or*, by leaving the same with him personally at the premises, &c., see § 110], in presence of the undersigned witness—viz.,
Witness.

No. 15.

[*Certificate by Medical Officer or qualified Medical Practitioner, as to Removal of Patient from a Common Lodging House, § 66.*]

CERTIFICATE BY MEDICAL OFFICER OR QUALIFIED MEDICAL PRACTITIONER.

I, [Medical officer of the district of _____, or legally qualified medical practitioner], hereby certify that _____, presently residing in the common lodging house kept by _____, at _____ is ill of _____, and that his disease is infectious or contagious, and that the patient may be safely removed.

No. 16.

[*Application for Power to enter Lands, in reference to Sewers or Drains, with procedure thereon, § 75.*]

PETITION.

To the Honourable the Sheriff of _____, the petition of the local authority of _____ against _____
Humbly sheweth,—

That the petitioners find it necessary to enter [examine and lay open] the following lands or premises—viz. [State in terms of § 75],

_____ for the purpose of [State in terms of § 75], but access and leave to the petitioners to do as aforesaid is refused or withheld by the said _____, whereby this application has become necessary under § 75 of the Public Health (Scotland) Act, 1867.

May it therefore please your lordship to appoint this petition and the deliverance thereon to be served on the said _____

_____, and to appoint the parties to attend your lordship personally, at a time and place specified, and thereafter to grant warrant to the petitioners and their officers, and such other persons as they may employ, to [Prayer in terms of § 75] _____, and, in case of opposition, to find the said _____ liable in expenses of process.

According to justice.

INTERLOCUTOR ORDERING SERVICE.

[Place and date].—The sheriff appoints the foregoing petition, and this deliverance, to be served on the said _____, and appoints [Answers within three days; or, parties to attend personally; see § 105].

CERTIFICATE OF SERVICE.

I, _____, certify, that on the _____ day of _____, I served a copy of the foregoing petition and deliverance on _____, therein mentioned by [State mode of service in terms of § 110], in presence of the undersigned witness—viz.,
Witness.

INTERLOCUTOR.

[Place and date].—The sheriff [See § 75].

No. 17.

[Petition to Sheriff, by Private Party, to fix terms of communicating with Drains, § 78.]

PETITION TO THE SHERIFF.

Unto the Honourable the Sheriff of _____, the petition of _____, against the local authority of _____,

Humbly sheweth,—

That the petitioner is the [Owner or occupier, &c., as in § 78. State if without district, or not liable to assessment], and he is desirous that a [Sewer or drain, describe it], from the said premises shall, as provided by the Public Health (Scotland) Act, 1867, be made to communicate with a sewer of the local authority—viz. [Describe it], but the petitioner and the local authority have been unable to agree on the terms and conditions on which such communication is to be allowed, whereby this application becomes necessary under this Act. The petitioner is ready to agree to the following terms, viz. [State what petitioner proposes], or such other terms or conditions as your lordship may deem just.

May it therefore please your lordship to appoint this petition, and the deliverance thereon, to be served on the said local authority, and appoint answers to be lodged within three days, or appoint the parties to appear before your lordship at a time and place specified; and thereafter to find that the petitioner is entitled to make the aforesaid communication bewixt [Specify the two drains or sewers] on the terms and conditions before specified, or such others as your lordship may deem just.

According to justice.

INTERLOCUTOR.

[Place and date].—The sheriff [See prayer].

CERTIFICATE OF SERVICE.

I, _____, certify that I served a copy of the foregoing petition and deliverance on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by [State mode of service under § 110], in presence of the undersigned witness, viz.,

Witness.

No. 18.

[*Notice by the Local Authority to the Owner of Premises, to make a Drain,*
§ 85.]

NOTICE.

The local authority of _____ hereby, in terms of § 85
of the Public Health (Scotland) Act, 1867, give notice to you,
_____, owner of _____,
and require you, within _____ from the date of service hereof,
to make a sufficient drain from the said premises [State how the drain is to
empty itself, in one of the modes mentioned in § 85], and if you fail, the
local authority will proceed in terms of the said Act.

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the
foregoing is a copy, on _____ therein mentioned, on the
_____ day of _____, at _____ o'clock _____ M., by
[State mode of service, *as*, by putting the same into the post office at
_____, addressed (state address), or by delivering the same to him per-
sonally at _____, &c., see § 110], in presence of the undersigned wit-
ness—viz.,

Witness.

No. 19.

[*Requisition to form a Special Drainage District, § 76 ; or Water District,*
§ 89, and Appeal to the Sheriff.]

UNTO THE LOCAL AUTHORITY OF _____, THE REQUISITION OF THE
UNDERSIGNED, being not fewer than ten inhabitants of the district of
the said local authority:—

We, the undersigned inhabitants of the said district, hereby, in terms of
[§ 76, if for drainage ; § 89, if for water] of the Public Health (Scotland) Act,
1867, require you, the said local authority, to meet and consider the pro-
priety of forming, and thereafter to form, the following part of your district
into a special [drainage or water] district—viz., _____ or according
to such other description or boundaries as may seem fit. [Signatures, men-
tioning place of residence.]

APPEAL TO THE SHERIFF OF THE COUNTY OF _____.

Appeal for _____ in terms of [§ 76 or § 89 ; see *supra*]
of the Public Health (Scotland) Act, 1867.

We appeal against the resolution of the local authority of _____
adopted on or about _____ relative to the formation of a special
[drainage or water] district, and

Pray your lordship to _____, or to do otherwise in
the premises as may seem fit.

No. 20.

[*Requisition by local authority on the occupier of premises for payment of costs, &c., due by the owner, § 100.*]

NOTICE AND REQUISITION.

The local authority of _____ hereby, in terms of § 100 of the Public Health (Scotland) Act, 1867, give notice to, and require you, occupier of the following premises—viz., _____ to pay to the said local authority the sum of _____ with interest at _____ per cent from _____ till payment, due to them by owner of the said premises [State nature of claim, as, by decree at their instance against him by the Sheriff of _____, dated _____], such payment by you not to exceed the amount of rent due or to become due by you; and that you are not to pay any rent to the said owner without first deducting the aforesaid amount and interest.

This notice, given on the _____ day of _____
Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____, certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock M., by [State mode of service, as, putting the same into the post office at _____, addressed (state address), or delivering it to him personally in the premises], in presence of the undersigned witness—viz.,
Witness.

No. 21.

GENERAL FORM.

[*Petition to recover Penalties or other Sums due to Local Authority under the Public Health (Scotland) Act, 1867, § 105. Under the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.*]

PETITION.

Unto the honourable [Sheriff, magistrates, or justices. Must be to the sheriff, if under section 16, heads (h), (i), and (j).]

The complaint of _____
Humbly sheweth,—

That [Insert respondent's name and designation] has contravened [or, has been guilty of an offence within the meaning of; or, is due to the said local authority the sum of £ _____ in virtue of] the Public Health (Scotland) Act 1867: In so far as [Here state particulars of act of contravention, or offence, or mode in which sum of money asked has become due] whereby the said _____ is, in terms of section _____ of the said Act, liable to [Here state shortly the nature of the penalty or forfeiture, and the alternative—or, where a sum of money is sought to be recovered, say, "to pay to the said local authority the said sum of £ _____"].

May it therefore please your [lordship or honours] to cite the said _____ to appear before you to answer to this complaint, and thereafter to convict him of the foresaid contravention [or offence] and to

adjudge him to suffer the penalties provided by the said Act [Where a sum of money is sought to be recovered, substitute after "thereafter" the following words, "to find that he is due to the said local authority the said sum of £ and to adjudge him to pay the same, or in default of payment to suffer the penalties provided by the said Act"].

According to justice, &c.

[Complainer signs here.]

NOTE.—This petition must be served by an officer of court. Schedules (C), (D), (E), (F), (I), (K) annexed to the Summary Procedure Act, 1864, contain the forms of the procedure to follow upon the petition.

FORMS OF APPLICATION FOR APPROVAL OF BOARD TO WORKS UNDER SECTION 24.

The Board of Supervision have resolved that all applications for their approval, in terms of section 24 of the Public Health (Scotland) Act, 1867, shall be made in the form of Minute (A) hereto annexed; and that, before they will consider any such application, they will require evidence that the intention to make such application has been intimated by publishing a notice in the Form (B) hereto annexed, once in each of two successive weeks in two newspapers circulating in the district.

(FORM A.)

MINUTE.

Whereas a [Insert, as the case may be, "water-course," "ditch," "gutter," or "drain"] along the side of a [Insert, as the case may be, "public road," "street," or "lane"] being [Describe the road, street, or lane by its name (if any) and by its position] is used or partly used for the conveyance of water, sewage, or other matter from the premises at [Describe the premises by their position and by their name (if any)] owned by [Specify owner or owners] and occupied by [Specify occupier or occupiers] and cannot, in the opinion of the local authority of be rendered free from foulness or offensive smell without the laying down of a [Insert, as the case may be, "sewer," or whatever "other structure" is required] the said local authority do hereby resolve to apply for the approval of the Board of Supervision, in terms of Section 24 of the Public Health (Scotland) Act, 1867, to the laying down of a [Insert, as the case may be, "sewer as aforesaid," or "structure as aforesaid"] from to [Specify the point from which, and the point to which, the sewer or other structure is to run], as indicated by a line on the plan which is marked as relative hereto, the said [Insert, as the case may be, "sewer or structure"] being within the limits of the district of the said local authority.¹

Signed by order and on behalf of the local authority
of .

(Place.)

(Date.)

¹ If the proposed sewer or other structure is to be laid down partly beyond the limits of the district of the local authority, add "and also without the said limits and within the district of the local authority of , the same being necessary for the purpose of outfall," or, as the case may be, distribution of sewage."

(FORM B.)

NOTICE.

Notice is hereby given, that on the day of [Insert a day not less than three weeks nor more than six weeks after the date of notice] next, the local authority of will apply to the Board of Supervision to approve, in terms of Section 24 of the Public Health (Scotland) Act, 1867, of a [Insert, as the case may be, "sewer," or "structure"] as set forth in the subjoined Minute, and that the plan mentioned in said Minute may be inspected at the office of on any lawful day between the hours of 10 A.M. and 6 P.M.

Objections to the proposed structure must be lodged with the clerk to the local authority before the day of [Insert a day not less than three weeks after the date of notice] and they will be transmitted to the Board of Supervision along with the application.

(Place.)

(Date.)

(Copy Minute to be subjoined.)

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