

The law relating to public health : being the Public Health (Scotland) Act, 1867, and Amending Acts of 1871, 1875, and 1882 : annotated with special reference to the changes introduced by the Local Government (Scotland) Act, 1889, with numerous decisions, Scotch and English, a copious index, and appendices containing practical forms and relative statutes / by J. Eaton Dykes and Dudley Stuart.

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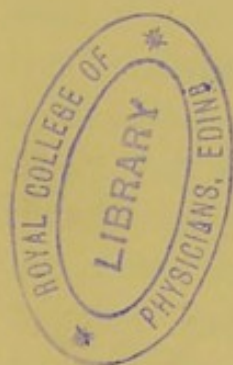
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THE LAW
RELATING TO
PUBLIC HEALTH;
BEING
THE PUBLIC HEALTH (SCOTLAND) ACT, 1867,
AND
AMENDING ACTS OF 1871, 1875, AND 1882;
ANNOTATED
WITH SPECIAL REFERENCE TO THE CHANGES INTRODUCED BY THE
LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.
WITH
NUMEROUS DECISIONS, SCOTCH AND ENGLISH,
A COPIOUS INDEX, AND APPENDICES
CONTAINING
PRACTICAL FORMS AND RELATIVE STATUTES.



BY
J. EATON DYKES,
ADVOCATE;
AND
DUDLEY STUART,
ADVOCATE.

EDINBURGH:
BELL & BRADFUTE, 12 BANK STREET,
Law Publishers.

MDCCCXC.

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PREFACE.

THE passing of the Scottish Local Government Act of last session has invested the laws relating to Public Health with a new interest, transferring as that measure does their administration in parishes from the Parochial Boards to the new County Councils through their District Committees. Whatever opinion there may be regarding the other changes which that Act will effect, it is generally considered that this transfer is one of the most hopeful which it brings.

The study of the laws relating to Public Health is one which will now necessarily engage many minds throughout the country for the first time, and it has appeared to us that the present is a convenient time to endeavour to supply a want that has been felt, not only by many members of the legal profession, but also by those in whom is vested the administration of these laws. Since the publication in 1879 of the last edition of the able and useful work by the late Sheriff Monro on the Public Health Act, 1867, and Amending Acts, there have been many decisions, both in the Supreme and Inferior Courts, which throw light on the interpretation to be given to the provisions of these Acts. The original Act has, since the year 1879, been further amended, and the changes made by the Local Government Act, to which we have referred, affect not only the Executive under the Public Health Acts, and the areas within which these Acts will fall to be administered, but also many other important provisions. There also was passed in last

Session of Parliament the Infectious Disease (Notification) Act, the provisions of which have an important bearing on the subject of Public Health.

We have printed in an Appendix, so that they may be easy of reference, some of the more important Statutes relating to Public Health. A regard for space has obliged us to omit those affecting the housing of the working classes—viz., the Artizans and Labourers Dwellings Acts of 1868, 1875, 1879, 1880, 1882, and 1885. These would themselves fill a bulky volume.

We have also cited all the decisions bearing upon the provisions of the Acts that have come under our notice. Among these decisions are many English cases, but in quoting these, great care has been taken to ensure that the provisions of the English Public Health Acts, upon which they turn, are in terms virtually identical with those of the Scotch Acts. For these we are indebted in great measure to the exhaustive work of Mr. Lumley upon the English Public Health Statutes.

There have been added a number of practical forms issued by the Board of Supervision, and several circulars relating to various matters issued by the same body, which, it is thought, may be found useful to those called upon to administer the Acts.

J. E. D.

D. S.

EDINBURGH, *January*, 1890.

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THE
PUBLIC HEALTH (SCOTLAND) ACT, 1867.

30 & 31 VICTORIÆ REGINÆ, c. 101.

*An Act to consolidate and amend the Law relating to the Public Health in Scotland.*¹—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.

1. This Act may be cited for all purposes as the "Public Health (Scotland) Act, 1867."¹

§§ 1-2.

Short Title.

¹ By the Public Health (Scotland) Amendment Acts, 1871 and 1875, this Act is amended as to hospitals and certain powers of assessment and borrowing; and by the Public Health (Scotland) Amendment Act, 1882 (which repeals the Public Health [Amendment] Act, 1879), as to alteration of special drainage and water supply districts. See the Acts *infra*.

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,¹ Sections 441 to 447, both inclusive, of the General Police and Improvement (Scotland) Act, 1862,² and also the Sewage

19 & 20 Vict.
c. 103, except
Part V. §§ 441
to 447 inclusive
of 25 & 26 Vict.
c. 101, 28 & 29
Vict. c. 75,
and 29 & 30
Vict. c. 90,
repealed.

§§ 2-3.

Utilisation 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.

¹ Part V. was repealed by the General Police Act, 1862, § 1, except so far as already adopted by any burgh.

² The General Police Act, 1850, 13 & 14 Vict. c. 33, remains in force as to burghs where it was adopted.

Interpretation
of certain
terms.

3. In this Act the following words and expressions shall have the meanings hereinafter 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"¹ shall signify a duly qualified medical practitioner appointed under the Act eighth and ninth Victoria, chapter eighty-three,² or under this Act.

The word "Sheriff" shall include Sheriff-substitute.

The word "Burgh" shall include not only Royal Burgh,³ 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"⁴ 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,⁵ 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"⁶ 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"⁷ shall signify a house or part thereof where lodgers are housed at an amount not exceeding fourpence⁸ *per* night for each person, whether the same be payable nightly or weekly,

§§ 3-5.

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.

¹ See § 8, note (1), and the Local Government Act, §§ 17 (3), and 52-54.

² The Poor Law Act of 1845.

³ See note 3, § 5.

⁴ See interpretation of "owner," Local Government Act, § 105, *infra*.

⁵ See § 52.

⁶ See § 18, and note 2, § 19, *infra*.

⁷ See § 59.

⁸ The sum may be varied, see § 59.

8 & 9 Vict. c. 19, and 23 & 24 Vict. c. 106, incorporated.

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."¹

¹ See §§ 72, 89 (1), 90.

PART I.

Local Authority and Board of Supervision.

Local Authorities, as herein-named, to execute this Act.

5. The following bodies shall respectively be the Local Authority to execute this Act in the districts hereunder stated in Scotland:—¹

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.²

Board of Supervision to determine the Local Authority in parishes not wholly within the jurisdiction of a Town Council, &c.

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.³

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 recall or vary such determination;⁴ 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.⁵

¹ See §§ 52-56 as to ships.

² The Commissioners of Police of a Burgh having been reduced below the statutory quorum by resignations; *held*, that under § 36 of the General Police Act, 1850, nomination of commissioners in place of those who had resigned was a statutory duty imposed on remaining commissioners, which could be validly performed without a quorum, and that it was unnecessary to fill up more vacancies than would make a quorum. *Sime v. Coghill, &c.*, 5 R. 132.

By this section the Police Commissioners of burghs formed under the General Police Act, 1862, become, *ipso facto*, the Local Authority therein; and each such burgh becomes, under the Local Government Act (§ 4 (2)), either an electoral division, or is divided into two or more electoral divisions.

See, however, note (3), *infra*, as to disability of burgh representatives voting upon matters of public health.

³ The Local Government Act does not affect the administration of the Public Health Acts in burghs. In these, the Town Council or the Police Commissioners or Trustees, as the case may be, are still the Local Authority, and their limits are (by § 43) to be those fixed for police purposes, without reference to the Parliamentary area, if any, of such burghs. In parishes, however, so far as these are within the county, the whole powers and duties of the Local Authorities under the Public Health Acts are transferred to the County Council (§ 11 (4)). But § 17 (Local Government Act) provides for the division of the county into districts, each district to be controlled by a District Committee, which is to have the immediate administration of the Public Health Acts, and thus become the Local Authority in its district. The District Committee, as Local Authority under the Public Health Acts, will consist (§ 78 (1)), 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. The representative from a Par-

§§ 5-6.

ochial Board will not be a county councillor, but only a member of the Committee of the district in which the parish he represents is situated. It will accordingly be necessary in minuting the appointment of a representative that this should be kept in view. To the powers of a District Committee there are certain limitations, viz.:—(1.) They cannot raise money by rate or loan, § 17 (2); (2.) They must conform to the general regulations imposed upon them by the County Council, *ibid.*; (3.) Their proceedings, other than those for the removal of nuisances, may be appealed from to the County Council, *ibid.*; (4.) They cannot (nor, indeed, can the County Council) remove a medical officer or sanitary inspector from office without the sanction of the Board of Supervision, § 54 (4). See §§ 11, 17, and 52-54, Local Government Act, *infra*.

Although by § 78 (1) certain burghs within a district are to be represented on the District Committee, § 73 (8) provides that no county councillor or member of a District Committee representing such burghs shall be entitled to vote in respect of any matters involving expenditure to which such burghs do not contribute. As public health is not one of the purposes for which burghs contribute, their representatives are excluded from taking part in matters relating to public health.

For details as to constitution, powers, &c., of District Committees, see §§ 74, 77-82, and 117, *ibid. infra*.

⁴ This procedure is now superseded. The Local Government Act, § 11 (4), limits the authority of the County Council to "parishes, so far as within the county (excluding burghs and police burghs);" accordingly, in all cases where the Board had determined under this section which of two or more bodies should be the Local Authority, such determination has been withdrawn by the Board, and the burghal portion of such parish falls under the jurisdiction of the Town Council or Police Commissioners, and the landward portion under that of the County Council.

⁵ See note 2 to § 6.

Where
district in
more than
one county.

6. Where any parish or burgh¹ 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 recall 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.

¹ (a.) *Parishes.* This procedure is superseded by § 77 (1) of the Local Government Act, in which the County Council are directed to divide the

county into districts for the purposes *inter alia* of the Public Health Acts, in such manner that each parish, so far as within the county, shall be wholly included in one district.

(b.) *Burghs.* The procedure here authorised seems to be still competent, but by § 49 (1) of the Local Government Act, the Boundary Commissioners are authorised to deal with the boundaries of burghs, counties, or parishes, and detached parts of counties 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."

§§ 6-7.

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;¹ and the Local Authority may appoint any committee or committees² of their own body to receive notices,³ to take proceedings, and in all or certain specified respects to execute this Act, whereof two shall be a quorum,⁴ 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;⁵ 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 Authorities to be bodies corporate. Committees may be appointed.

¹ Cf. Local Government Act, §§ 72, 79.

² See §§ 17, 74, 77-82 of Local Government Act, and note (3), § 5, *supra*.

³ See § 96.

⁴ By the Local Government Act, § 74 (1), the County Council has power to make regulations respecting the quorum and proceedings of its committees—including district committees (§ 80).

⁵ See §§ 18, 26, 28, 35, 42, 46-51, 62, 70, 79, 85, 96-103, 112-114, 117, and 118, *infra*. See specially § 102, which provides for a Local Authority appearing and pleading in legal proceedings by any person duly authorised.

§ 8.

Local Authority to appoint sanitary inspectors and other officers.

8. The Local Authority may,¹ and where it shall be thought necessary by the Board² for the purposes of this Act the Local Authority shall appoint a sanitary inspector³ or inspectors, who shall be also inspector or inspectors of common lodging houses, and a medical officer or medical officers, and may make bye-laws⁴ for regulating the duties of such inspectors and medical officers, which bye-laws 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;⁵ 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.²

¹ The Local Government Act makes it imperative on every County Council to appoint a medical officer and sanitary inspector for the County, § 52 (1). These officers, whose qualifications are prescribed by § 54, *ibid.*, are not allowed to engage in private practice or other employment without the written consent of the Council. Their services can be made available for any district by the District Committee arranging with the County Council to contribute to their salaries, § 52 (2). Where this arrangement is made, the obligation imposed on the Local Authority—*i.e.*, District Committee, by this section to appoint a separate medical officer and sanitary inspector is deemed to be satisfied.

By § 17 (3), a District Committee may "appoint such officers either for

the whole district or for any part thereof, or parish therein, as shall be deemed expedient."

§§ 8-9.

The Board, by circular issued in 1871, required every Local Authority where there was a town or village population of 2000 to appoint a sanitary inspector. It seems probable that every District Committee will have to make such an appointment, unless an arrangement is made with the County Council for the services of the County sanitary inspector.

² The powers of the Board are untouched by the Local Government Act; accordingly it must probably be satisfied as to the expediency of any arrangements, such as are contemplated in §§ 17 (3) and 52 (2) Local Government Act.

By § 54 (4) Local Government Act, every medical officer and sanitary inspector appointed under that Act or the Public Health Act "shall be removable from office only with the sanction of the Board of Supervision."

³ The Board are in use to sanction the appointment of police constables as sanitary inspectors.

⁴ See §§ 44, 62; also Appendix, p. 169, for regulations recommended by the Board.

⁵ See § 53 (1) Local Government Act as to obligation on district medical officer and sanitary inspector to furnish reports to Board and County Council.

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,¹ 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,² and also in these two latter cases with the consent of one of Her Majesty's Principal Secretaries of State,³ 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, respect-

Powers of the Board to require returns and examine witnesses.

§§ 9-11.

ively, 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.

¹ The officers of the Board—viz., two General Superintendents of the poor, and two Visiting officers, report annually on the sanitary state of parishes visited. See § 14.

² See §§ 10 and 11, as to special inquiries with the consent of the Secretary of State (*i.e.* Secretary for Scotland, See note 3, *infra*), or of the Lord Advocate.

³ By the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), § 5, all the powers and duties of a Secretary of State under the Public Health Acts are transferred to the Secretary for Scotland.

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 State¹ 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,² and to report thereon to the Board; and such member so authorised and empowered shall be entitled to summon and examine on oath witnesses and havers, and to exercise all such other of the powers by this Act given to the Board as may be necessary for conducting such inquiry, and such member shall be reimbursed by the Board of all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of the Board are now defrayed.

¹ See note (3), § 9.

² See note (2), § 9.

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 State¹ 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 State¹ 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,² 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 State¹ 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.

¹ See note (3), § 9.

² The Medical Acts are 21 & 22 Vict. c. 90 (amended by 22 Vict. c. 21, 23 & 24 Vict. c. 7, and 39 & 40 Vict. c. 40), and 49 & 50 Vict. c. 48. By §§ 2 and 3 of the last-mentioned Act, a person is not entitled to be registered as a medical practitioner unless he has passed an examination in medicine, surgery, and midwifery, held by any University in the United Kingdom, or by any medical corporation legally qualified to grant a diploma in medicine and surgery, or by a combination of any two or more such corporations, provided these are in the same part of the United Kingdom; §§ 11 and 12, however, provide for the registration of persons holding recognised colonial or foreign medical diplomas.

12. It shall be lawful for the Board, in any case where they see fit, to order and allow such expenses of witnesses,

§§ 11-12.

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

§§ 12-14. 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.¹

¹ See §§ 103 and 105.

Power to
Board to
appoint
clerks, &c.

14. The Board are hereby empowered from time to time to appoint all such officers¹ 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 State²

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. §§ 14-16.

¹ See note (1), § 9.

² See note (3), § 9.

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.¹ Salaries of legal members of Board.

¹ The Poor Law Act, 1845.

PART II.

Removal of Nuisances.

16. The Word "Nuisance"¹ under this Act shall include—² Description of nuisances under this Act.

- (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.
- (b.) Any pool, watercourse,³ ditch,⁴ gutter,⁵ drain,⁶ sewer,⁷ privy,⁸ urinal,⁸ cesspool,⁹ or ashpit so foul as to be injurious to health, or any well or other water supply¹⁰ 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.
- (c.) Any stable, byre,¹¹ pigstye,¹² or other building in which any animal or animals are kept in such a manner as to be injurious to health.

§ 16.

- (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.¹³
- (e.) Any work, manufactory, trade, or business injurious to the health of the neighbourhood, or so conducted as to be offensive or injurious to health,¹⁴ or any collection of bones or rags injurious to health.
- (f.) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates.¹⁵
- (g.) Any factory, workshop, or workplace, not under the operation of any General Act for the regulation of factories¹⁶ or bakehouses,¹⁶ 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.¹⁷
- (h.) Any fireplace or furnace which does not as far as practicable¹⁸ 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 gaswork, or in any manufactory or trade process whatsoever.¹⁹
- (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.

(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.²⁰

¹ One species of nuisance—viz., the excessive evolution of acid gases is provided against by the Alkali, &c., Works Regulation Act, 1881, 44 & 45 Vict. c. 37, which repeals former Acts. Under it the Local Authority has certain limited powers (*vide* Appendix, p. 190). See § 99.

² By § 57 (1), Local Government Act, the County Council are empowered to make bye-laws for the "prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the county," and may enforce the same by penalty (§ 94, *ibid.*).

³ In a complaint before the Sheriff that the bed of a river (Water of Leith) was so foul as to be a nuisance under this sub-section, *Held*: (1) (affirmed by the Lord Ordinary), that the *alveus* of the river was a "water-course," and, therefore, application competent; (2) that the nuisance was proved; and (3) that the respondent, as "author of the nuisance" in the sense of the Act, was bound to take the necessary steps for cleansing the stream so far as within his property. *Local Authority of Edinburgh v. Henderson*, 9th July, 1885, 2 S.L. Rev. 189. See also § 24, and *Police Commissioners of Govan v. Mackinnon*, *infra*, note (2) § 19.

⁴ Cf. *infra*, *Barony Parochial Board v. Cadder Parochial Board*, note (4) § 19. See also § 24.

⁵ See § 24.

⁶ Cf. *infra*, *United Kingdom Temperance, &c., Institution v. Parochial Board of Cadder*, note (2) § 19.

⁷ See § 73.

⁸ See § 41.

⁹ See § 85.

¹⁰ See § 89 (4).

¹¹ By § 9 of the Contagious Diseases (Animals) Act, 1886, amending § 34 of the Contagious Diseases (Animals) Act, 1878, the regulation of dairies, cow-sheds, and milkshops is placed within the jurisdiction of the Local Authority under the Public Health Acts. See circular issued by Board, and Order in Council, Appendix, p. 178.

¹² *Held* to be *ultra vires* of a Local Authority to enact that no pig should be kept within ten yards of a dwelling-house, *M'Creadie v. M'Broom*, 22 D. 405.

§ 16.

¹³ See Opinion of Counsel (Appendix, p. 186), that such accumulation within the limits of a burgh can be removed as a nuisance without proof that it is injurious to health. No authoritative decision on this point has yet been pronounced in Scotland, and English cases are to be received with caution, as the corresponding section in the English Public Health Act (1875), runs thus:—"Any accumulation or deposit which is a nuisance or injurious to health," &c. Upon these words it has been held that an offence was committed where the accumulation emitted offensive smells which interfered with the personal comfort of persons living in the neighbourhood, but did not cause injury to health. *Bishop Auckland Local Board v. Bishop Auckland Iron Company*, 10 Q.B.D. 138. See also *Malton Board of Health v. Malton Manure Company*, 4 Exch. Div. 302. In the only reported case in Scotland the Sheriff held that, in order to constitute an offence under this sub-section, it was necessary to prove that the accumulation was injurious to health. *Local Authority of Inveresk v. North British Railway Company*, 18th Dec. 1884, 1 S.L. Rev. 50. See § 51.

¹⁴ See Opinion of Counsel (Appendix, p. 186), that such a business can be prosecuted for as a nuisance although not necessarily injurious to health. Also *Malton Board of Health*, *supra*, where a trade causing offensive effluvia, which made sick persons become worse, though not injurious to those in sound health, was held to be within § 114 of the English Public Health Act (1875)—"a nuisance or injurious to health." In the Sheriff Court (Edinburgh), however, it was decided that a slaughter-house is not a nuisance under this sub-section unless it be so conducted as to be injurious to the health of the neighbourhood. *Local Authority of Corstorphine v. Snow*. 26th Oct. 1885, 2 S.L. Rev. 16. See §§ 18 and 30.

¹⁵ A landlord let along with a farm a cottage containing sufficient accommodation for six persons. The tenant put into it a workman and his family—nine persons in all. On complaint by the Local Authority under this sub-section, the Sheriff convicted and fined both landlord and tenant. The landlord appealed:—*Held*, that he was not in the sense of the Act the "author of the nuisance," the cottage not being under his control, and the landlord was not responsible for the act or default of his tenant. *Home v. Local Authority of Kelso*, 17th March, 1876, 3 Coup. 239. See § 62.

¹⁶ The Factory and Workshop Act, 1878, 41 Vict. c. 16, gives to the Local Authority certain powers in regard to the sanitary condition of factories; and the Factory and Workshop Act, 1883, 46 & 47 Vict. c. 53, transfers the regulation of bakehouses to the same body. See § 5, note (3), *supra*, and Appendix, p. 202.

¹⁷ See § 18 as to medical certificate or requisition.

¹⁸ Appellant had been convicted on a charge of not having complied with a provision in a local Act, the terms of which were practically the same as in this sub-section. It appeared that his furnace might be made to consume more smoke than it in fact did, but at the cost of rendering it impossible for the appellant to carry on his trade with that furnace. *Held*, that "as far as possible" meant as far as possible consistently with carrying on the trade in which the furnace was employed, and that

the appellant was wrongly convicted, *Cooper v. Woolley*, 2 Exch. 88. See § 99.

§§ 16-17.

¹⁹ It is sufficient to constitute a nuisance under this sub-section if a furnace, though well constructed, is systematically badly worked. Observations on the duty and powers of the Local Authority in investigating an alleged nuisance of this kind. *Local Authority of Dumfries v. Murphy*, 11 R. 694.

The Smoke Nuisance Abatement Act, 1857, 20 & 21 Vict. c. 73, amended by the Smoke Nuisances Act Amendment Act, 1861, 24 Vict. c. 17, and the Smoke Nuisances Acts Amendment Act, 1865, 28 & 29 Vict. c. 102, applies to every town and burgh having not less than 2000 inhabitants. The duty of prosecution under these Statutes is not laid upon the Local Authority under the Public Health Acts. See also § 99.

²⁰ Circumstances in which it was held that a churchyard was a nuisance under this sub-section, and the same ordered to be closed. *Local Authority of Edinburgh v. Kirk-Session of St. Cuthbert's*, 23rd March, 1874, 2 P.L.M. 203; *Local Authority of Gourock*, 24th September, 1875, 4 P.L.M. 86. See also § 96, note 5.

17. If the Local Authority or sanitary inspector have reasonable grounds for believing that nuisance exists in any premises,¹ 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,² 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 belief³; 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,³ 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 pounds⁴; and on being satisfied of such failure or refusal, the Sheriff, magistrate, or justice may grant warrant³ to such person or persons for immediate forcible entry into the

Power of entry to Local Authority or their officers.

§§ 17-18. 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.⁵

¹ See definition, § 3.

² See § 99.

³ See practical forms in Appendix, p. 151.

⁴ See §§ 103 and 105.

⁵ See also § 114.

Proceedings by
Local Author-
ity 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,¹ 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,² 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,¹ provided that in the cases under the heads marked (*e.*) 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,¹ 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,³ 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.⁴ §§ 18-19.

¹ See forms in Appendix, p. 153.

Several proprietors being summoned by a Local Authority with regard to a nuisance which existed near their premises, the Sheriff remitted to a man of skill to report. The reporter, while specifying the causes of the nuisance, professed himself unable to distinguish the "author" thereof. The Sheriff thereupon, without attempting to ascertain who was the author of the nuisance, remitted to the reporter to remedy it, and decerned against the proprietors jointly and severally for the expense. In a suspension of that decree by one of the respondents *held* that the Sheriff was bound to have given him an opportunity of remedying the nuisance himself, and decree suspended. *Mather v. Local Authority of Pulteneytown*, November, 1889 (Outer House, not reported). See *United Kingdom Temperance Association and Local Authority of Cadder*, *infra*, § 19.

² See § 105 *et seq.*, and form in Appendix, p. 153.

³ See § 3, *voce*, "author of a nuisance," and § 19, note (2).

⁴ See § 96, note (5); also Local Government Act, § 17 (2) (c), where it is provided that any order of a District Committee, *other than that for the removal of a nuisance*, may be appealed against by any five ratepayers to the County Council.

19. It shall not be necessary to restrict such decree to any special remedy prayed for in the petition,¹ but as the case shall require, the author of the nuisance² or owner of the premises may be ordained to provide sufficient privy or watercloset 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,³ 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,⁴ 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

Form of
interlocutor.

§ 19.

overcrowded,⁵ 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,⁶ or to increase the means of ventilation, or to shut up or regulate the use of any churchyard, cemetery, or place of sepulture,⁷ 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 interlocutor⁸ 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.

¹ See form, Appendix, p. 153.

² See § 3, *voce* "author of a nuisance." Several parties were summoned as owners of lands or contributors to a nuisance arising from an open drain. The Sheriff being unable to ascertain the true author, ordered the Local Authority to execute the necessary works, and then decerned against the parties jointly and severally for the expense. *Held*, that, not having given the respondents themselves an opportunity of abating the nuisance, the Sheriff could not under § 22, decern against them for the expense incurred. *United Kingdom Temperance, &c., Institution v. Parochial Board of Cadder*, 4 R. (Justic. Ca.) 39. See also *Mather v. Local Authority of Pulteneytown*, *supra*, p. 19.

In order that Local Authority may recover from the "author of a nuisance" the cost of removing it, it is necessary either that the Sheriff should have ordained him to execute the removal himself, and only on his failure have then ordained the Local Authority to do so; or that, at the date of the order on the Local Authority, it should have appeared that the "author of the nuisance" was unknown. *Local Authority of Cadder v. Lang*, 6 R. 1245.

Police Commissioners 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, owing to the discharge into it of sewage; that these proprietors were the authors of the nuisance, and should be ordained to abate it. It was proved that the sewage was not discharged into the burn by the proprietors complained against, but by other parties higher up its course. The Sheriff, in respect the defenders were the owners of the properties on which the nuisance actually existed, decided that they were the authors under this section, and ordained them to abate the nuisance. Judgment affirmed—*Police Commissioners of Govan v. Mackinnon*, 13 P.L.M. 488.

A proprietor let certain land, and, without his tenant's consent, made a sewer under the land so let; pecuniary compensation was sought, but for two years the sewage of several houses passed through the sewer. The tenant at last closed up the sewer, and the Local Board obtained a conviction against him, although no nuisance existed on *his* land. *Held*, that the tenant was the person by whose act the nuisance arose or continued, and that he was rightly convicted. *Riddell v. Spear*, 40 L.T. (N.S.) 130.

§§ 19-20.

Where there was a flow of sewage from several houses without appreciable damage from each separately, but the accumulation caused a nuisance on the lands of other proprietors, the occupiers of each of the houses were held to be liable as the persons "by whose act or default the nuisance arose or continued." *Hendon Union v. Bowles*, 20 L.T. (N.S.) 609. See also note 4.

³ See § 3, *voce* "premises," and §§ 44, 62, and 69.

⁴ A Local Authority, having petitioned the Sheriff to have a person on whose ground a nuisance existed ordained to remove it, were themselves ordained by the Sheriff to execute the necessary works, he being of opinion that the "author of the nuisance" had not been discovered. The Local Authority then brought an action against the owner of the ground on which the works had been executed to recover the cost. The Court assoilzied the defender, being of opinion that while the Sheriff had erred in not treating him as the "author of the nuisance," he nevertheless ought to have had an opportunity of removing it. The cost of the work was in consequence paid out of the public rates. Subsequently, on a complaint by an inferior heritor that the pipes constructed by the Local Authority rendered the stream unfit for primary purposes, it was held that as the drain complained of was not the property of the Local Authority, and as they had not caused or contributed to the nuisance, they were entitled to be assoilzied. *Barony Parochial Board v. Cadder Parochial Board*, 10 R. 510. See § 27.

⁵ See §§ 16 (f) and 62.

⁶ See § 44 (1).

⁷ See § 96.

⁸ See form, Appendix, p. 155.

20. If the said decree be not complied with in good and sufficient manner, and within the time appointed, the author of the nuisance,¹ or the owner,² 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 penalty³ 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 penalty³ not exceeding twenty shillings *per* day during such infringement; and in the case of nuisances specified in

Penalty for
contravention
of decree and
of interdict.

§§ 20-22.

clauses (e.), (g.), and (h.) in the said section, the party not complying with or infringing such decree shall be liable to a penalty³ 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,⁴ and order to be carried into effect, for mitigating or preventing such injurious effects.

¹ See note (2), § 19.

² See § 3, *voce* "owner."

³ See §§ 103 and 105, and form, Appendix, p. 168.

⁴ See *Cooper v. Woolley*, *supra*, § 16, note 18.

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.¹

¹ See forms in Appendix, p. 155. See note (1), § 18, and notes (2) and (4), § 19.

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

22. In case of noncompliance with or infringement of any decree¹ aforesaid, the Sheriff, magistrate, or justice may, on application by the Local Authority, grant warrant¹ 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 nuisance² 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 recovered³ from the author of the nuisance² or the owner⁴ of the premises.⁴ §§ 22-24.

¹ See forms, Appendix, p. 155.

³ See §§ 103 and 105.

² See § 3, and notes (2) and (4), § 19.

⁴ See § 3.

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 nuisance¹ or the owner² of the premises.² Manure, &c., to be sold.

¹ See § 3, and note (2), § 19.

² See § 3.

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,¹ 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;² 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 Foul ditches, &c., may be replaced by sewers.

§§ 24-25.

damages³ as may be assessed by the Sheriff on a summary application,⁴ 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 cause⁵ such water-course, ditch, gutter, or drain to become foul or offensive,⁶ 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 hereinafter provided⁷ with reference to the general charge and expenses incurred by the Local Authority under this Act.

¹ Application for such approval must be made in the form prescribed by the Board, see Appendix, p. 156.

² See § 73.

³ See § 116.

⁴ See form in App., p. 157.

⁵ Cf. *Riddell v. Spear*, and *Hendon Union v. Bowles*, *supra*, p. 21.

⁶ See § 16 (b). Proceedings may be taken either under that section or this.

⁷ §§ 103 and 105.

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,

Act not to affect navigation of rivers or canals, or irrigation of lands.

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 ;

§§ 25-26.

Provided always, that it shall not be lawful for the Local Authority to execute any works¹ in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the Local Authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any Local Authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

¹ See §§ 73 and 89 (1).

26. The Sanitary Inspector may at all reasonable times¹ enter any premises to inspect and examine any carcass, meat, poultry, game, flesh, fish, fruit, or vegetables exposed for sale,² or which there is probable cause for believing to be intended for human food,³ 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 seized⁴ 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,⁵ 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,⁶ or in whose custody the same are found,⁷ shall be liable to a penalty⁸ not exceeding ten pounds for such carcass, piece of

Penalty on sale of unwholesome meat.

§ 26.

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.

¹ A butcher, at his residence (half-a-mile from his shop), was requested on a Sunday afternoon either to go himself, or send some one, with the key to admit an inspector to examine some meat. He refused, and was convicted of "preventing, obstructing, or impeding," the inspector. *Held*, that although Sunday afternoon might, under certain circumstances, be a reasonable time for inspecting meat, the appellant at most had refused to assist the inspector, and had not impeded him within the meaning of the section. *Small v. Bickley*, 32 L.T. (N.S.) 726. See § 114.

² The Glasgow Police Act, 1866, provides (§ 271), "Every person who is found in possession of . . . any animal or part of an animal . . . which is unsound or unwholesome, or unfit for human food, shall be presumed to have kept or concealed the same knowingly, with a view to sale, until the contrary be shown, and shall be liable in respect thereof to a penalty," &c. A person charged under this section proved that he had the animals complained of in his possession, with a view to sale for boiling down for the manufacture of soap, &c. He was convicted. *Held*, that the words, "with a view to sale," mean with a view to sale as or for human food, and conviction quashed. *Nelson v. M'Phee*, 17th Oct. 1889, 27 S.L.R. 12.

Diseased meat, placed upon a cart when passing along the street from a slaughter-house to a preserved-meat factory, was held to have been properly seized, under 26 & 27 Vict. c. 117, § 2(2), as being "exposed for sale, or deposited in any place for the purpose of sale or preparation for sale, and intended for the food of man." *Daly v. Webb*, 4 Ir. Rep. C.L. 309.

³ *Held*, under § 18 of Nuisances Removal Act, 1856 (which is in similar terms to this section), that penalties are directed not only against the exposure for sale of meat unfit for human food, but also against keeping the same with the intent that it should be used for human food. *Kennedy v. Cadenhead*, 6 M. 179.

To obtain a conviction against the occupier of premises for a contravention of the Edinburgh Police Act, 1879, § 261, by being in the possession of unsound meat "as or for human food," it is not essential to prove that the accused knew either of the meat being in his premises or of its unsound condition. *Dickson v. Linton*, 15 R. (Justic. Ca.) 77.

A farmer, in Perthshire, despatched for sale to the Dead Meat Company, Edinburgh, a carcass, which had been dressed in his presence, "as or for human food," by the butcher who slaughtered it. In consequence of its appearance, the manager of the market had it examined, and it was condemned. The farmer was charged before the Police Court of Edinburgh, under § 261 of the Edinburgh Police Act, 1879, with having the carcass in his possession in Edinburgh "as or for human food," the same being unsound, and was convicted. Conviction quashed. *Cairns v. Linton*, 16 R. (Just. Ca.) 81.

⁴ A butcher exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards, at the request of the appellant (inspector of nuisances) handed it over to him, and it was condemned by a justice as "unfit for human food." *Held*, that it was not "seized" in the sense of the section (Public Health (England) Act, 1875, § 116), and therefore respondent was not liable to the penalty. *Vinter v. Hind*, 10 Q.B.D. 63.

⁵ In a petition by the Local Authority of Glasgow for an order to destroy a carcass affected with tuberculosis, as being "unfit for food of man," the Sheriff (Berry), after a lengthy proof, in which the owner of the carcass appeared and led evidence, granted the order craved. *Couper v. Lang*, 12th December, 1889.

See Form of Petition in this case, Appendix, p. 168; also § 108, note (2), as to appeal from such an order.

Held, that meat might be taken before a justice and condemned without any summons or notice to the person to whom it belonged, and that such person having been, subsequently to the destruction of the meat, summoned and convicted of an offence under the 116th section Public Health (England) Act, such conviction was good. *White v. Redfern*, 5 Q.B.D. 15.

See form in Appendix, p. 158.

⁶ The appellant, an under-bailiff on an estate, was ordered to send by rail two diseased carcasses to a butcher. He despatched them in his own name, telegraphing to the butcher to "make best of it;" and on butcher replying that the meat was no use to him, telegraphed again to bury it if he could not dispose of it, and charge sender expenses. The meat was seized and condemned, and the appellant convicted as being the "person to whom the same belonged" (Public Health (England) Act, 1875, § 117). Conviction quashed, as there was no evidence that he was so. *Newton v. Monkcom*, 58 L.T. (N.S.) 231.

⁷ See *Cairns v. Linton*, *supra*.

⁸ When unwholesome meat has been condemned by a justice, and proceedings are afterwards taken against the owner of the meat, evidence may be given by him as to the state of the meat at the time of the condemnation. *Waye v. Thompson*, 15 Q.B.D. 342.

See §§ 103 and 105.

27.¹ 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,² who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, well,³ 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

Penalty for causing water to be corrupted by gas washings, &c.

§§ 27-28. 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 act⁴ 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.⁵

¹ The Authority for enforcing the provisions of the Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75 (*q.v.*, Appendix, p. 212), is the Local Authority under the Public Health Act, now the District Committee, (see note 3, § 5, *supra*); and, in addition, the County Council are empowered to enforce its provisions with regard to so much of any stream as passes through or by any part of their county; and the Secretary for Scotland is empowered to appoint a joint committee, representing all the counties or burghs through which a river or any portion of a river passes, conferring on such body all the powers of a sanitary authority under the Rivers Pollution Act. (Local Government Act, § 55, *infra*.)

² See § 83.

³ Gas Company found liable in penalty (imposed by similar section in Birmingham Gas Act) through the washings produced in the manufacture of gas percolating through a crack in the bottom of a gas-tank and fouling the water in plaintiff's well, although the crack was caused by mining operations under the tank, of which the Gas Company was ignorant. *Hipkins v. Birmingham, &c., Gas Co.*, 30 L.J. (Exch.) 60.

⁴ A Local Authority, in carrying out a new drainage system are not entitled to discharge the sewage and polluted drainage into the water of a neighbouring stream, so as to render it unfit for domestic and other primary purposes. *Barony Parochial Board v. Police Commissioners of Kirkintilloch*, 8 P.L.M. 371.

⁵ By the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), § 21, the penalty imposed upon a Gas Company for fouling any stream, &c., with gas-washings is £200, and £20 for each day during which the nuisance continues after twenty-four hours' notice has been given. This Act applies to Scotland.

See § 104, and form in Appendix, p. 158.

Such penalties, &c., to be sued for within six months.

28. Such penalty may be recovered,¹ 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 notice² 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.

§§ 28-30.

¹ See §§ 103 and 105, and form in Appendix, p. 168.

² See form in Appendix, p. 159.

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 pounds¹ (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 notice² of the offence shall have been served on such person by the Local Authority, or by the person into whose water such product, washing, or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the Local Authority or person from whom such notice shall proceed; and all moneys recovered by the Local Authority under this or the preceding section shall, after payment of any damage³ caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Daily penalty during the continuance of the offence.

¹ See note (5), § 27, *supra*.

² See form in Appendix, p. 159.

³ This is the only case in which reparation is to be made out of a penalty. In all other cases, the penalties are to be applied for the purposes of the Act (§§ 103, 104).

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,¹ 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

Offensive trades to be subject to regulations.

§§ 30-31. 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,² 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 penalty³ not exceeding fifty pounds, and a further penalty³ 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 bye-laws 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 effects thereof.

¹ See § 16 (e) and note.

A Cattle Market Company (cattle never having been slaughtered before in the market) erected a new slaughter-house, and allowed the public to slaughter at a charge of two shillings per head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. *Held*, under corresponding section in the Public Health (England) Act, 1875, that the company were liable to the penalty. *Liverpool New Cattle Market Company v. Hodson*, 2 Q.B. 131.

² See Opinion of Counsel, Appendix, p. 186.

³ See §§ 103 and 105.

PART III.

Prevention and Mitigation of Diseases under Order in Council.

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,¹ or any three or more of them (the Lord President of the Council or one of Her Majesty's Principal Secretaries of State¹ 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.

§§ 31-32.

¹ By the Secretary for Scotland Act, 1885, § 5, not only the powers and duties of a Secretary of State, but also the powers herein conferred upon the Privy Council, are transferred to the Secretary for Scotland.

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

When order is issued, Board to be vested with certain powers.

Power to appoint a Medical Officer and additional clerks.

§§ 32-34.

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.

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 regulations¹ 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.

¹ In pursuance of an order of the Privy Council putting in force Part III. of this Act, for six months, the Board, in July 1883, issued directions and regulations to all Local Authorities in Scotland. They have also from time to time issued regulations prohibiting the importation of rags from infected countries.

Orders of Council, directions and regulations of Board to be laid before Parliament.

34. Every Order of Her Majesty's Privy Council,¹ 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. §§ 34-36.

¹ See note (1), § 31, *supra*.

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 Authority¹ 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.²

Matters to be provided for by such regulations.

Local Authority shall execute regulations and may direct prosecution for violating the same.

¹ See Part IV. *infra*, as to the ordinary duties of Local Authority in regard to prevention and mitigation of disease.

² See §§ 103, 105, and 114.

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.¹

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

¹ See § 114 as to penalty for obstructing Local Authority.

§§ 37-39.

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,¹ 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.²

¹ See note (2), § 11.

² See §§ 16 (f), 59 *et seq.*, and 103.

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 ships¹ and vessels, as well upon arms and ports of the sea aforesaid as upon inland waters.²

¹ See Infectious Disease (Notification) Act, 1889, §§ 13 and 15 (Appendix, p. 221).

² See §§ 52-56 as to the ordinary duties of Local Authority in regard to ships.

PART IV.

*General Prevention and Mitigation of Disease.*¹

39. The Local Authority may provide within their district hospitals² or temporary places for the reception of the sick, for the use of the inhabitants.³

Power to provide hospitals.

Such Authority may build such hospitals or places of reception, 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 place⁴ 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.⁵

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.⁶

¹ See Infectious Disease (Notification) Act, 1889 (Appendix, p. 221). Where this Act is in force in a district (any Local Authority may adopt it after due notice of their intention to do so), it shall be the duty of the head of the family, or other person in charge of any patient suffering from an infectious disease, as well as of the medical attendant, to give notice of the case to the medical officer of health.

² The Public Health (Amendment) Act, 1871, § 2, authorises the Local Authority to borrow for the purpose of providing permanent hospitals, on the security of the general assessments specified in §§ 94 and 95. The time specified for repayment is thirty-five years ; but see § 67 (2) of Local Government Act, *infra*.

The Local Government Act, also, by § 18 (6) (7), provides that no "capital works" shall be undertaken without the consent of the standing joint committee appointed in terms of that section. See also § 67 of that Act as to powers of borrowing.

³ An asylum for the reception of poor persons suffering from small-pox, or other infectious or contagious disorders, may be a nuisance although erected and maintained under the provisions of an Act which enables but does not order such asylums to be erected. *Metropolitan Asylums District v. Hill*, 6 App. Ca. 193.

Cholera hospital held not to be a nuisance at common law. *Mutter v. Fyfe*, 11 D. 303.

⁴ See note (1), § 42, *infra*.

⁵ Held that, in cases of persons attacked by infectious or contagious disease, the burden of providing for them while ill falls on the Local Authority, and that the Local Authority has no claim against the Parochial Board for recovery of any advances. *Local Authority of Airdrie v. Ferrier*, 4 P.L.M. 398. See similar decision in *Dempster v. King*, 15 P.L.M. 198 ; and *Shotts Parochial Board v. New Monkland Parochial Board*, 1 S.L. Rev. 349.

⁶ See § 55, *infra*, as to removal to hospital of sick persons from ships.

§§ 40-41.

Power to provide means of disinfection, and carriages for conveyance of infected persons.

40. The Local Authority in each district may¹ 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 carriage² 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 certificate³ of any legally qualified medical practitioner,⁴ 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 duty⁵ of the Local Authority to give notice in writing,⁶ 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 penalty⁷ 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.⁸

¹ As the Local Authority are not obliged to provide such a place, probably they may charge those who are able to pay for its use.

² See § 49. ³ See form, Appendix, p. 160. ⁴ See note (2), § 11.

⁵ See § 96, as to neglect of duty on part of Local Authority.

⁶ See form, Appendix, p. 160. ⁷ See §§ 103 and 105. ⁸ See § 50.

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 shall¹ cause such privies to be cleansed daily²; and the Local Authority may also, by written notice³ to the owner or occupier of any schoolhouse or of any factory⁴ 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 waterclosets 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 penalty⁵ not exceeding twenty pounds.

§§ 41-42.

¹ See § 96.

² See § 16 (b), as to foul privy or urinal being a nuisance.

³ See form, Appendix, p. 160.

⁴ § 3 of the Factory and Workshop Act, 1878, provides for the sanitary condition of factories and workshops; and § 4 enacts that where an Inspector of Factories is aware of any defect with regard to privies, waterclosets, &c., in any factory, which is not remediable under that Act, he shall give notice to the Local Authority. See Act, Appendix, p. 202.

⁵ See §§ 103 and 105.

42. Where a hospital or place¹ 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 application² of the Local Authority, with the consent² of the superintending body of such hospital or place, by order on a certificate² signed by a legally qualified medical practitioner,³ direct the removal⁴ 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,⁵ or may direct the removal from the room occupied by such person of all others² not in attendance on him, the Local Authority providing suitable accommodation for such other persons.

Removal of persons sick of infectious disorders, and without proper lodging, in any district.

¹ This word has been held (in England) to apply to the infirmary or sick wards of a workhouse.

² See forms in Appendix, p. 161.

⁴ See § 40.

³ See note (2), § 11.

⁵ See § 55.

§§ 43-44.

Places for the reception of dead bodies may be provided at the public expense.

Burial of dead bodies.

43. Any Local Authority may provide¹ 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 certificate² signed by a legally qualified medical practitioner,³ order by a writing under his hand² 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 recovered⁴ by the Local Authority in a summary manner from any person legally liable to pay the expense of such burial.

¹ By the Burial Grounds (Scotland) Act, 1855, 18 & 19 Vict. c. 68, § 20, any Parochial Board may provide a place in which bodies may be received previous to interment.

² See forms in Appendix, p. 162.

³ See note (2), § 11.

⁴ See §§ 103 and 105.

In burghs, &c., the Local Authority may make regulations as to lodging-houses, with consent of the Board.

44.¹ 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 number² 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. §§ 44-45.
3. For the inspection³ of such houses, and the keeping the same in a cleanly and wholesome state.⁴
4. For enforcing therein the provision of privy accommodation, or watercloset 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.⁴
5. For the cleansing and limewhiting at stated times of such premises.
6. For the enforcement of the above regulations by penalties⁵ 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.

¹ The regulations herein authorised to be made do not apply to common lodging-houses, *q.v.*, §§ 3, and 59 *et seq.*

² See § 16 (*f*).

³ See § 99.

⁴ See § 16 (*a*).

⁵ See §§ 103 and 105.

45. It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied¹ as a dwelling-place, any cellar whatsoever, or any vault or underground 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 watercloset or privy and ashpit, or which shall not also have a glazed window made to open to the full extent

Rules as to
underground
dwellings.

§§ 45-46. 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 notice² 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.

¹ See note (1), § 46, *infra*.

² See form, in Appendix, p. 163.

Penalty on letting underground dwellings.

46. Every person who lets separately, or who knowingly suffers to be occupied for hire¹ as a dwelling, any vault, cellar, or room contrary to the provisions of this Act, shall be liable to a penalty² not exceeding twenty shillings for every day during which such vault, cellar, or room is so occupied after conviction of the first offence.³

¹ It is to be observed that, while the prohibition in § 45 is against letting or suffering to be occupied, the penalty here imposed is for letting or knowingly suffering to be occupied *for hire*. It may therefore be doubted whether a conviction could be obtained if the occupation were gratuitous.

² See §§ 103 and 105.

³ A first conviction under the provisions of this section seems to bring no punishment with it. It is only on the offence being continued, after a conviction has been already obtained, that the penalty is exigible. One would rather have expected the provision to read, as in the English Public Health Act, 1875, § 73, "liable to a penalty . . . for every day . . . after notice from the Local Authority."

47. Where two convictions against the provisions of this Act relating to the overcrowding¹ 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.²

¹ See §§ 16 (f), 37, and 62.

² *Quære*, Do the words, "two convictions," mean two convictions involving a penalty (see note (3), § 46, *supra*), or two convictions *in all*?

§§ 47-49.

Cases in which two convictions have occurred within three months.

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,¹ 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 penalty² not exceeding five pounds; and no owner or person in charge of any public conveyance shall be bound to convey any person so suffering.

Penalty on person suffering from infectious disorder entering public conveyance without notifying to driver that he is so suffering.

¹ *Held*, that it is only the Local Authority of the district within which a person suffering from an infectious disease enters or is put into a railway carriage that can sue for the penalties, and not the Local Authority of any district into which the train carrying such person comes. *Local Authority of Motherwell v. Grant*, Guthrie's Sheriff Court Cases, 465.

² See §§ 103 and 105.

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 exposes¹ the sufferer, and any owner or person in charge of a public conveyance who does not

Penalty on any person with infectious disorder exposing himself or on any person in charge of such sufferer causing such exposure.

§§ 49-50.

immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or person in charge, conveyed² any such sufferer, and any person who, without previous disinfection,³ 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 penalty⁴ 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.³

¹ A doctor sent a patient suffering from scarlet fever to the infirmary with a certificate, bidding him walk in the middle of the road. Owing to an informality in the certificate, the patient was refused admission. The doctor then walked with the patient through the streets to the police station to obtain an ambulance to take him to the infirmary. *Held*, that the justices were right in refusing to convict the doctor, as it was not proved that he had "charge of" the patient, and that he had not wilfully exposed him "without proper precaution." *Tunbridge Wells Local Board v. Bisshopp*, 2 C.P.D. 187.

² From an answer given in Parliament by the President of the Local Government Board, on 23rd February, 1886, it would appear to be the opinion of the Department that the provisions of this section do not extend to the removal, in a public conveyance, of the dead body of a person who has died of an infectious disorder. Such a case is not provided for by the Act.

³ See § 40.

⁴ See §§ 103 and 105.

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 infectious 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, disinfected¹ to the satisfaction of a qualified medical practitioner,² 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 penalty³ not exceeding twenty pounds. For the purposes of this section

the keeper of any inn or hotel shall be deemed to let part of a house to any person admitted as a guest into such inn or hotel. §§ 50-52.

¹ See § 40.

² See note (2), § 11.

³ See §§ 103 and 105.

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,¹ 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 penalty² 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.

Removal of
manure in
mews, &c.

¹ See § 16 (d).

² See §§ 103 and 105.

52. Any ship¹ 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 provisions² 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.³

Provision as to
ships within
the jurisdiction
of Local Auth-
ority.

¹ See § 3, *vide* "ship" and "premises."

² See § 38 for powers of Board as to infectious disease in ships.

³ See Infectious Disease (Notification) Act, 1889, §§ 13 and 15, Appendix, p. 221.

§§ 53-55.

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.¹

¹ See note (3), § 52, *supra*.

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 an 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.

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 removal¹ to any hospital² 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 penalty³ not exceeding five pounds on any person committing any offence against the same.

¹ See § 40.

² See §§ 39 and 40.

³ See §§ 103 and 105.

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 expenses¹ 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.

§§ 56-58.

Description of ships within provisions of 6 Geo. IV. c. 78, and power to reduce penalties imposed thereby.

¹ See §§ 103 and 105.

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-six and twenty-seven Victoria, chapter one hundred and eight.¹

Power to defray cost of vaccination in certain cases.

¹ The administration of this Act (the Vaccination Act) is not in the hands of the Local Authority, but of the Parochial Board, and the Board of Supervision.

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.¹

Power to provide grounds for public recreation.

¹ The Public Parks (Scotland) Act, 1878 (41 Vict. c. 8), empowers the Local Authority of any burgh to purchase and lay out grounds for public recreation, and for that purpose enables them to take land compulsorily in terms of the Lands Clauses Acts.

§§ 59-60.

PART V.¹*Regulation of Common Lodging Houses.*

Common
lodging-houses
to be regis-
tered.

59. The Local Authority shall cause a register² to be kept, in which shall be entered the names and residences of the keepers³ of all common lodging houses³ 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 sixpence³ per night.

¹ *Held*, that the provisions in Part V. are universally imperative throughout Scotland, and the magistrates of Glasgow, as the Local Authority, are not exempt from the enactments in § 59, and have not under § 104 of this Act, taken along with § 245 of the Glasgow Police Act, 1866, any discretion entitling them to refuse to adopt the provisions of the Public Health Act. *M'Phee v. M'Inally*, 19th March, 1881, 4 Coup. 424.

² A Local Authority passed a resolution that a certain house should be registered. The clerk did not carry out this resolution, and no formal registration was made. Eight months afterwards the Local Authority resolved that the house should not be registered, and two months later prosecuted the owner for keeping an unlicensed common lodging-house. *Held*, that, for the purposes of the Act, the resolution of the Local Authority constituted registration, and that the justices were right in refusing to convict. *Coles v. Fibbens*, 52 L.T. (N.S.) 358.

³ See § 3, *voce* "common lodging-house" and "keeper of common lodging-house."

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 com-

mon lodging house any house, not being a licensed victualling house,¹ 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 houses² 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.³

§§ 60-62.

¹ Such houses are regulated by:—9 Geo. IV. c. 58; 16 & 17 Vict. c. 67; 25 & 26 Vict. c. 35; 39 & 40 Vict. c. 26; and 50 & 51 Vict. c. 38.

² See § 8.

³ See § 114.

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.

Evidence of register.

62. The Local Authority may from time to time make rules and regulations¹ 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 cleanliness² and ventilation² of such houses, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made,³ and the said Local Authority may, by any such rules and regulations, impose upon offenders against the same such reasonable penalties⁴ 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

Power to Local Authority to make rules and regulations respecting common lodginghouses, to take effect when confirmed by the Board.

§§ 62-63.

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 :¹ 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 bye-laws 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.

¹ The Board issued in 1883 revised rules which they recommended for adoption by Local Authorities. See Appendix, p. 176.

² See § 69.

³ See §§ 68 and 99.

⁴ See §§ 103 and 105.

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.

§§ 63-66.

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,¹ require the owner or keeper² of the common lodging-house, within a time specified therein, to obtain such supply, and to execute all works necessary for that purpose,³ 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.

Power to Local Authority to require an additional supply of water to common lodging-houses.

¹ See form in Appendix, p. 163.

² If notice were served only on the owner, the keeper might have his name removed from the register without his knowledge. The notice should be served on both.

³ See § 89 (2).

65. The keeper of a common lodging-house shall from time to time, if required by any order¹ 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,² 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.

Power to Local Authority to order reports from keepers of common lodging-houses.

¹ See form in Appendix, p. 164.

² The Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, § 10, imposes a penalty upon any lodging-house keeper harbouring thieves or reputed thieves.

66. When a person in a common lodging-house is ill of fever or any infectious¹ or contagious disease, the Local Authority may cause such person to be removed² to a

Local Authority may remove sick persons from common lodging-houses to hospitals, &c.

§§ 66-69. hospital or infirmary, with the consent of the authorities thereof, where different from the Local Authority, and on the certificate³ of the medical officer of the parish, or of any qualified medical practitioner,⁴ 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 disinfected⁵ or destroyed, and may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation⁶ for the injury or destruction thereof, the amount of such compensation being first certified in writing upon a list of such articles.

¹ See note 1, § 39.

³ See form in Appendix, p. 164.

⁵ See § 40.

² See §§ 40 and 42.

⁴ See note 2, § 11.

⁶ See § 116.

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.¹

¹ See note 1, § 39.

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.¹

¹ *Held*, that a room in a common lodging-house, which was not registered, the only access to which was through one of the registered rooms, was subject to inspection, and that the keeper was rightly convicted for refusing to give access to the inspector, *Gunn v. Cadenhead*, 15 R. (Just. Ca.) 57. See § 114.

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 drains¹

thereof, to the satisfaction of the inspector, and so often as shall be required by or in accordance with any regulation² 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.

¹ See § 16 (b).

² See § 62, and Appendix, p. 176.

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 license in writing of the Local Authority, which license the Local Authority may withhold or may grant on such terms and conditions as they think fit.¹

Conviction for third offence, &c., to disqualify persons from keeping common lodging-houses.

¹ Where a keeper of a common lodging-house was duly entered in the register of an urban authority, and the inspector reported that it was kept as a house of bad repute, the Health Committee withdrew his license, and ordered him to clear out his lodgers in a week. On his refusal to comply, he was charged with keeping an unlicensed lodging-house. *Held*, that the Justices were right in refusing to convict, as there was no power to cancel the license except for the reasons set forth in the statute. *Blake v. Kelly*, 52 J.P. 263.

PART VI.

Sewers, Drains, and Water Supply.

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 vested¹ in the Local Authority:² Provided always, that nothing in this Act contained shall affect the rights of any person or persons to the property or

Sewers to be vested in Local Authority.

§§ 71-73. management of any sewers in virtue of any existing Local or General Police Statute.

¹ See Local Government Act, *infra*, §§ 25 and 90.

² Where the sewage of certain houses drained into a sewer, and after passing through the sewer was for some years allowed to fall into an open watercourse, which in its turn flowed into a brook, *Held* (p. Justice Denman) that, under the circumstances, the open watercourse was a sewer which vested in the Local Authority. *Wheatcroft v. Matlock Local Board*, 52 L.T. (N.S.) 356.

Power to purchase sewers.

72. The Local Authority may, in terms of the Lands Clauses Acts,¹ 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 compensation² 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.³

¹ See § 4.

² See § 116.

³ See § 90.

Power to make sewers.

73. The Local Authority shall have power¹ to construct² within their district, and also, when necessary for the purpose of outfall or distribution of sewage, without their district,³ 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,⁴ or any street or place,⁵ 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 writing⁶ (if upon the report of surveyor it should appear to be necessary),⁷ into, through,⁸ or under⁸ 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;⁹ 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,¹⁰ kept,¹¹ and cleansed as not to be a nuisance,¹² and for the purpose of cleansing and emptying them may

Sewers to be cleansed.

construct and place, either above or under ground, such reservoirs, sluices, engines, or other works,¹³ 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,³ 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.

¹ These words would not seem, at first sight, to impose an imperative duty on the Local Authority. It has been held, however, that "neglect or refusal" on the part of the Local Authority to provide a proper system of drainage is sufficient to entitle the Board to proceed under §§ 96 and 97. See *Board of Supervision v. Local Authority of Montrose*, *infra*, § 97.

² A Local Authority having resolved to carry out a scheme of drainage, certain feuars petitioned the Sheriff for interdict on the ground that the proposed scheme would cause a nuisance and injure their property. *Held*, that the Sheriff was right in dismissing the petition as being an attempt to control the resolution of the Local Authority. *Steel, &c., v. Police Commissioners of Gourock*, 10 M. 954.

See *Parochial Board of Barony v. Police Commissioners of Kirkintilloch*, § 27, note (4), *supra*.

³ Notwithstanding the obligation imposed on a Local Board by §§ 15 and 23 of the Public Health (England) Act, 1875, to drain their district, their right to send the sewage of their district directly or indirectly into the sewers belonging to the Sanitary Authority of an adjoining district is, in the absence of express agreement or enactment, no higher than the right of a landowner to send sewage from his land on to the land or into the drains of a neighbouring landowner. If, therefore, a prescriptive right has been acquired to send some sewage from one district into the sewers of another, the burden cannot be increased without the consent of the Sanitary Authority of the latter district. *Attorney General v. Acton Local Board*, 22 Ch. Div. 221.

⁴ A Local Authority were held entitled to lay a sewer in a private road. *Taylor v. Corporation of Oldham*, 4 Ch. Div. 395.

⁵ As to sewers under docks, harbours, &c., see § 25.

⁶ *I.e.*, to the owner and occupier.

An injunction was granted to restrain a Local Authority from constructing a sewer through private lands, on the ground that "reasonable notice in writing" had not been given, and that the surveyor had not reported the construction to be necessary. *New River Company v. Ware Union Rural Sanitary Authority*, L.J., *Notes of Cases*, 1883, p. 20.

⁷ *Held*, that "the necessity for making a new sewer being ascertained as a matter of fact, it was for the Local Authority to exercise their judgment in what direction that new sewer should be made through the adjoining

§§ 73-74.

land, and so long as they exercise an honest discretion, without misconduct or negligence, they are not liable to have their judgment overruled in a court of law." *Earl of Derby v. Bury Commissioners*, 4 Exch. p. 225. See also note (6).

⁸ Under the corresponding section in the Public Health (England) Act, a Local Board proceeded to carry a sewer through the plaintiff's pleasure grounds, so that a permanent embankment, six feet high, would be made. *Held*, that the Board was authorised to do so, as the Act did not confine them to carrying a sewer underground. *Roderick v. Aston Local Board*, 5 Ch. Div. 328.

⁹ See *Attorney-General v. Guardians of Dorking Union*, 20 Ch. Div. 595. Also § 16 (b).

¹⁰ Local Authority are liable in an action for damages, caused by their negligence in making a sewer. Such injury does not merely give the person injured a claim for compensation, but also a right to damages. *Hall v. Corporation of Batley*, 47 L.J., Q.B., 148. See also § 116.

¹¹ Local Authority are liable for damage done by the bursting of a sewer, caused by defects in its original construction, and by their omission to take reasonable means to discover such defects. *Fleming v. Corporation of Manchester*, 44 L.T. (N.S.) 517.

¹² Local Authority may not construct a sewer which will cause a nuisance by its discharge. *Southampton and Itchin Bridge Company v. Southampton Local Board*, 28 L.J., Q.B. 41.

¹³ A manhole or side-entrance into a sewer, for the purpose of cleansing it, is part of a sewer within the meaning of the (English) Act, and the Local Authority may construct a man-hole on any land, without first purchasing the land required for the purpose, the owner being entitled to compensation only. *Swanston v. Twickenham Local Board*, 11 Ch. Div. 838. See also § 116.

Powers of
utilising
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,¹ 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.

¹ The proprietor of an estate adjoining a town constructed sewers to carry to his lands the sewage of part of the town. The town having adopted the General Police Act, the Police Commissioners, with his knowledge, connected some of their drains with his said system of drainage. Thereafter the town increased, and the sewage became a nuisance. *Held*, that no contract to receive sewage in time coming could be implied from the actings of the parties, and that the proprietor was entitled to interdict the Commissioners from discharging said sewage upon his lands. *Houldsworth v. Police Commissioners of Wishaw*, 14 R. 920.

§§ 74-76.

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 withholds¹ access and leave to perform the said operations, the Local Authority may apply² to the Sheriff, who, if no sufficient cause be shown to the contrary, shall grant warrant² to the Local Authority, their officers and others thereby authorised, to enter and do all or any of the works or operations foresaid.

Power of entry.

¹ See § 114.

² See form in Appendix, p. 164.

76. Upon requisition¹ 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,² and the resolution³ 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 appeal⁴ against the resolution to the Sheriff,⁵ 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

Formation of special drainage district.

§ 76.

find that no special drainage district should be formed, or may enlarge or limit⁶ 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.⁷

¹ See forms in Appendix, p. 167.

² By Local Government Act, § 81, it is provided that, where a special drainage district or special water supply district has been formed in any parish, the District Committee may appoint a sub-committee for the management of the drainage or water works, consisting partly of residents within that district, whether they be members of the District Committee or not. Where the district is partly within a county and partly within a burgh or police burgh, the management shall be in the hands of this sub-committee, along with "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." Again, where the special district is wholly within a police burgh formed after the passing of the Local Government Act, the Police Commissioners shall become the Local Authority for such special district, the assessments, however, being levied as formerly. See Local Government Act, *infra*, and §§ 93 and 94 (1) of this Act as to the assessments in special drainage and water supply districts.

³ Circumstances in which *held* that no grounds had been established for interfering with a resolution of a Local Authority refusing to form a village into a special drainage district. *Ainslie, &c., v. Local Authority of Ormiston*, 7 P.L.M. 428.

⁴ See form in Appendix, p. 167.

An appeal against such a resolution may be taken either under this section to the Sheriff, or, where the Local Authority is the District Committee, under § 17 (2) (c) of the Local Government Act (*q.v.*, *infra*), which provides that any five ratepayers may appeal to the County Council from any order of a District Committee.

⁵ Doubtful if Sheriff has power to award expenses in such an appeal. See *Sinclair v. Local Authority of Dumbarton*, 13th March, 1886, 2 S.L. Rev. 169, and *North British Railway Co. v. Dunfermline Local Authority*, 3 S.L. Rev. 178.

⁶ See Public Health (Amendment) Act, 1882, § 3, *infra*, as to enlarging or limiting the boundaries of or combining special drainage and water supply districts.

⁷ The Police Commissioners of a burgh resolved, in exercise of their powers under the General Police Act, 1862, and the Public Health Act, and with a view to imposing assessments in respect of the special sewer rate and general sewer rate, which they are authorised to levy under either of said

Acts, "to form into a special or separate drainage district" a certain specified part of the burgh. *Held*, that resolution was incompetent in so far as it was founded on both Acts, and that procedure should have been under one or other. *Mackay v. Police Commissioners of Maryhill*, 5 S.L. Rev. 281.

§§ 76-78.

77. Any owner¹ or occupier of premises¹ within the district of a Local Authority liable for general or special sewerage or drainage assessment² shall be entitled to cause his drains to empty into the sewers of such Local Authority;³ 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.

Power to drain into sewers of Local Authority.

¹ See § 3.

² See §§ 93-95.

³ By the Rivers Pollution Act, 1876, § 7, it is provided that every Local Authority, having sewers under their control, shall give facilities to manufacturers within their district for discharging the liquids from their factories into such sewers, provided the discharge be not such as will prejudicially affect the sewers or the disposal of the sewage matter. See Act, *infra*, Appendix, p. 212.

In a petition, under this section and the above-mentioned section of the Rivers Pollution Act, by a manufacturer, to have a Local Authority ordained to receive into their sewers the discharge from his works, *held*, that the Local Authorities were bound to receive the discharge, since they had failed to prove that it would prejudicially affect their sewers or sewage matter. *Guthrie, Craig & Co. v. Magistrates of Brechin*, 15 R. 385.

78. Any owner¹ or occupier of premises¹ 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 assessment² 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.³

Use of sewers by persons beyond district.

¹ See § 3.

² See §§ 93-95.

³ See form in Appendix, p. 165.

§§ 79-83.

Penalty for
making un-
authorised
drains.

79. Every person not being authorised by the Local Authority, who shall make any drain into any sewer vested in the Local Authority, shall be liable in a penalty¹ not exceeding five pounds, besides shutting up said drain or paying the expense of shutting it up.

¹ See §§ 103 and 105.

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.

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.¹

¹ See § 114.

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.¹

¹ See § 16 (b).

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,¹

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.²

§§ 83-85.

¹ See § 16 (d) (e).

On a complaint of pollution of the River Leven, the Board were advised by counsel:—“(1.) That ‘offensiveness’ in the 83rd section 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; (2.) That the manufacturers polluting the River Leven are likewise liable to be prosecuted for penalties under the 27th and 29th sections, as persons who wilfully ‘do, or permit to be done, an act whereby the water in a stream is fouled;’ . . . (4.) That the remedy, under the 27th and 29th sections, and that under the 83rd 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.”
—From Annual Report of Board, 1869, p. 19.

² See § 27.

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.

Drain discharging below high-water mark.

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,¹ or without such drain as is sufficient for effectual drainage, the Local Authority may, by notice,² 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,³ 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 such distance, then emptying into such covered cesspool⁴ or other place, not being under any house, as the Local Authority may direct; and if the person on

As to the drainage of houses.

§§ 85-86. — whom such notice² 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,⁵ and the expenses incurred by them in so doing may be recovered from such owner in a summary manner.⁶

¹ See § 16 (a).

² See form in Appendix, p. 166.

³ See §§ 77 and 78.

⁴ See § 16 (a) (b) as to insufficient or defective cesspool being a nuisance.

⁵ "The Act" (i.e., Public Health (England) Act, 1875, § 23) "requires that the work shall be done by the one party or the other, and the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." *Per Lush, J., in Hall v. Corporation of Batley*, 47 L.J., Q.B. 148.

⁶ See §§ 103 and 105.

Power of
borrowing for
sewers.

86. It shall be lawful for the Local Authority to borrow,¹ for the purpose of making, enlarging, or constructing sewers, and on the security of the after-mentioned special sewer assessments,² where such exist, and general assessments,³ 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,⁴ 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 reconstructing sewers, and to no other purpose whatsoever. §§ 86-88.

¹ A District Committee has not the power of raising money by rate or loan (Local Government Act, § 17(2)(a).) Such power is reserved to the County Council.

The Local Government Act provides (§ 18) that no "capital works" (including *inter alia* the construction or extension of drainage or water supply works) shall be undertaken in any county or district thereof without the consent, in writing, of the Standing Joint Committee appointed in terms of that section. See also § 67 (*ibid.*) as to borrowing powers, repayment of loans, annual returns to Secretary for Scotland as to outstanding loans, &c. See also § 3 of the Public Health Amendment Act 1875, *infra*, p. 98, as to loans from Government.

² See § 93.

³ See §§ 94 and 95.

⁴ See Local Government Act, § 67(2)(3).

87. Two or more Local Authorities may, with the sanction of the Board,¹ combine together for the purpose of executing and maintaining any works by this Act authorised 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. Local Authorities may combine.

¹ Cf. § 92, *infra*, where similar powers are given with regard to water-works, but where the sanction of the Board does not seem to be essential to such a combination.

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,¹ 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 Supply of water for burghs above 10,000.

§§ 88-89. 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 hereinbefore provided.²

¹ By the Public Health Amendment Act, 1871 (*q.v.*, *infra*), § 1, where a local Act does not sufficiently provide for a supply of water, or does not authorise an assessment to be levied for that purpose, then such a burgh shall be treated as one having *less* than 10,000 inhabitants, and shall be accordingly supplied and assessed under §§ 89 and 94.

² See § 97, and cases there cited, as to Local Authority neglecting to provide a water supply.

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,¹ 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,² may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such water-works, pipes, and premises,³ 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 Acts⁴: Provided always, that they shall make reasonable compensation⁵ 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,⁶ established by Act of Parliament, is authorised to supply with water, unless the Local Authority shall previously have purchased or acquired the undertaking of such company.

- (2.) If any house⁷ 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.⁸ House without supply of water.
- (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,⁹ 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 baths, &c.
- (4.) The Local Authority may cause all existing public cisterns, pumps, wells,¹⁰ 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. Cisterns, &c., to be supplied with water.

§ 89.

Special water
supply dis-
trict.

(5.) Upon requisition¹¹ 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,¹² 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 appeal¹³ 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 enlarge¹⁴ 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.¹⁵

Power to
borrow for
water supply.

(6.) It shall be lawful for the Local Authority to borrow¹⁶ 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,¹⁷ where such exist, and of general assessments,¹⁷ 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 assignations 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 repayable¹⁸ 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.

¹ In burghs which have adopted the General Police Act, 1862, the Police Commissioners may provide a supply of water under that Act, or as Local Authority under this Act.

² *Held*, that the abstraction by a water works company from a stream did not entitle a riparian proprietor below to require the company to treat for the purchase of his interest in the stream, but only entitled him to compensation as for land injuriously affected. *Bush v. Trowbridge Water-works Company*, 10 Ch. Div. 459. See also § 116.

§ 89.

The diversion of springs which feed a stream, by a Local Authority exercising their powers under this section, does not entitle a lower riparian proprietor, who is not proprietor of the grounds where the springs are situate, to compel the Local Authority to go through the forms prescribed by § 90, as for the purchase of his interest in the stream, but only entitles him to compensation under § 116. *Peterhead Granite Company v. Peterhead Parochial Board*, 7 R. 536.

³ See Local Government Act, *infra*, § 90, which transfers all land and buildings, water supply and drainage works, &c., to the County Council.

⁴ See §§ 4 and 90.

⁵ See *Bush v. Trowbridge Water-works Company*, *supra*, note (2).

⁶ See *Macfarlane, Strang & Company v. Motion*, 12 P.L.M. 638.

⁷ See § 64 as to supply of water for common lodging-houses.

⁸ See § 114.

⁹ *Held*, that an inhabitant of a special water supply district, who keeps cows and sells their milk, is liable to a special assessment for water rates in respect of them, and is not exempt on the grounds that they are domestic animals, and that the water taken for them is for domestic use. *Robertson v. Local Authority of Cults*, 20 S.L.R. 166.

An hotel-keeper in a special water supply district was held to use water for "trading or manufacturing purposes" (in the sense of this sub-section), who used the water for washing bottles and vessels, and mixing with liquors sold in the ordinary course of his business. But also *held*, that the Local Authority, after having levied and been paid by him a special water assessment for the current year, were not entitled to interdict him from using for trading purposes, during that year, the water provided by them for their special district. *Local Authority of Beith v. Muir*, 3 S.L. Rev. 319.

¹⁰ The proprietor of certain lands on which there existed a well used by the inhabitants of an adjoining village for the prescriptive period, applied for interdict against the Local Authority, who had cleaned and enclosed the well, so as to protect it from alleged pollution by drainage. *Held*, (1) that the facts proved had established, *prima facie*, a possessory right on the part of the public; (2) that the Local Authority, as such, had a *locus standi* to vindicate the rights of the community, represented by them, to the effect in question. *Smith v. Police Commissioners of Denny, &c.*, 7 R. (H.L.) 28.

¹¹ See form in Appendix, p. 167.

¹² See § 76, note (2), *supra*.

Held, that where a Local Authority has provided, in terms of the Public Health Act, a supply of water for the district under their control, it is incompetent to create a part of that district into a special water supply district. *Crieff Hydro. Company v. Police Commissioners of Crieff*, 5 P.L.M. 580.

Held, that a Local Authority has power to form a special water supply district, although a private committee for supplying water exists. *M'Culloch v. Parochial Board of Alva*, 2 P.L.M. 64.

¹³ See form in Appendix, p. 167, and § 76, note (4).

¹⁴ Circumstances in which the assessable area of a special water supply dis-

trict defined by resolution of the Local Authority was enlarged by the Sheriff.
Local Authority of Kilwinning v. Eglinton Iron Company, 6 P.L.M. 81.

§§ 89-90.

¹⁵ See Public Health (Amendment) Act, 1882, § 3, *infra*, as to enlarging or limiting the boundaries of, or combining special drainage and water supply districts.

¹⁶ A District Committee cannot borrow ; such power is reserved to the County Council (Local Government Act, § 17 (2) (a)). See also § 3 of the Public Health (Amendment) Act, 1875, as to loans from Government.

¹⁷ See §§ 94 and 95.

¹⁸ See Local Government Act, § 67 (2), (3), *infra*.

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 :

Regulations as to the purchase of land, &c.

(1.) The Local Authority before putting in force any of the powers of the said Lands Clauses Acts,¹ 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

Publication of notices.

Serve a notice² in manner herein-after mentioned on every owner³ 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

Service of notices.

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

§ 90.

Power to Local
Board to
petition
Secretary of
State upon
matters herein
stated.

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;⁴ the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners,³ 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 State⁴ requires.

Secretary of
State may
direct inquiry;

(3.) Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the Secretary of State⁴ 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,⁴ no Provisional Order shall be made affecting any land without the consent of the owners,³ lessees, and occupiers thereof.

and may make
Provisional
Order.

(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 hereinbefore required to be served.

§ 90.
—

- (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,⁴ as soon as conveniently may be, to obtain such confirmation, and the Act⁵ confirming such Order shall be deemed to be a Public General Act of Parliament.

No Provisional
Order valid
until confirmed
by Parliament.

- (6.) All costs, charges, and expenses incurred by the said Secretary of State⁴ 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.

Costs how to
be defrayed.

¹ See § 4, *supra*.

² It has been held that the giving of this notice does not bind the Local Authority to proceed, and that their omission to take the land specified in the notice gives no right of action to the owner, even after the confirmation of the Provisional Order empowering such lands to be taken. *Burges v. Bristol Sanitary Authority*, 50 J.P. 455.

³ See § 3, *voce* "owner"; but for the purposes of the Lands Clauses Acts an owner "shall be understood to mean any person or corporation, or trustees, or others, who, under the provisions of this" (*i.e.*, Lands Clauses Act) "or the Special Act, would be enabled to sell and convey lands to the promoters of the undertaking." (8 Vict. c. 19, § 3.)

§§ 90-93.

Under the corresponding section in the English Lands Clauses Acts it has been held that notice ought to be given to persons known to be mortgagees of the property intended to be taken. *Martin v. L. C. & D. Ry. Co.*, 1 Ch. 501.

⁴ *I.e.*, the Secretary for Scotland, see § 9, note (3), *supra*.

⁵ If the Act confirming the Provisional Order gives power to take more lands than those mentioned in the notice, it appears that such additional lands may be taken. *In re Corporation of Huddersfield and Jacomb*, 17 Eq. Ca. 476.

Loans from
Public Works
Loan Com-
missioners.

91.¹ 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.

¹ This section is repealed by the Public Health (Amendment) Act, 1875, § 3, *q.v.*, *infra*.

Execution and
maintenance
of works as to
water supply.

92. Two or more Local Authorities may combine¹ 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.

¹ *Cf.* § 87, *supra*, where the sanction of the Board is required before Local Authorities can combine for the execution and maintenance of drainage works. Such sanction does not appear to be necessary to combination for water supply.

PART VII.

*Assessments.*¹

Special drain-
age assess-
ment.

93. Where any special drainage district has been formed as herein-before provided,² 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,³ shall be paid out of a special assessment⁴ which the Local Authority shall raise and levy on and within such special district, in the same manner⁴ and with the same remedies and modes of recovery as are herein provided for the district of the Local Authority.⁴

¹ ASSESSMENT IN COUNTIES.—It is necessary carefully to note the provisions of the Local Government Act. Sect. 17 (2) (a) provides :—"A District Committee shall have no power of raising money by rate or loan." Sub-section (4) of the same section provides :—"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." Section 26 (2) provides for all receipts of the County Council being carried to the "county fund," and for all payments being made in the first instance out of that fund ; and sub-section (4) provides :—"If the county fund is insufficient to meet the expenditure, rates (in this Act referred to as the owners' consolidated rate and the occupiers' consolidated rate, and together as the consolidated rates) may be levied to meet such deficiency . . . in the administration of the laws relating to public health . . . upon all rateable property within the several districts . . . of the county . . . in the manner and subject to the conditions in this Act provided." Section 27 provides for the County Council fixing annually the rate in the pound necessary to meet such deficiency, and sub-section (3) further provides :—"The consolidated rates shall be imposed upon lands and heritages according to the annual value thereof as appearing in 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." The section goes on to provide for the payment of rates which, at the passing of the Act, were payable by owners only, without relief to the extent of one-half against the occupiers, being still payable by owners in the event of the average rates so levied during the last ten years being not exceeded, but it is specially provided (sub-sect. 4 (iii.)), "where the rate so fixed by the County Council exceeds such average rate, the portion of the rate beyond the average rate shall be payable by owners and occupiers equally."

The effects of these provisions with respect to the imposing and levying of assessment under the Public Health Acts in districts are :—(1.) That the assessment will be payable by owners and occupiers equally ; (2.) That in a parish (Public Health Act, § 94), where the Local Authority has hitherto been the Parochial Board, and with which there has *not* been combined

§§ 93-94.

a burgh or town, the assessment will be on the same basis as the rate for relief of the poor, with the same classification (if any) and abatements ; (3.) In the case of a parish (Public Health Act, § 94 proviso) with which there has been combined a burgh or town, and in which the Local Authority has hitherto been the Parochial Board, and in which there has been the differential rating of one-fourth in respect of the several classes of lands mentioned in the section above referred to, it is very doubtful if such differential rating will be continued. See § 94, note 9, *infra*.

Where a special drainage or water supply district exists, such district will be liable as formerly for its own special assessment (Local Government Act, § 17 (4)), and will be exempt from the general drainage or water supply assessment, as the case may be (§§ 94 and 95, *infra*). Where such special district is wholly within a police burgh formed after the passing of the Local Government Act, the Police Commissioners become the Local Authority therein, and levy the assessments in the same manner as they were levied before said burgh was formed (§ 81 (3), Local Government Act).

Before this, it was held that Police Commissioners in these circumstances were entitled to disregard a special district within the limits of their burgh, and to assess the whole ratepayers in terms of the General Police Act. *Edmonstone v. Kilsyth Police Commissioners*, 9 R. 917. See note 7, § 94, *infra*.

² See § 76.

³ See § 86.

⁴ See § 94 (2) and notes (4) and (5).

Assessments in burghs under 10,000.

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,¹ 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):²

Special water supply assessment.

(1.) Where any special water supply district has been formed as herein-before provided,³ 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,⁴ shall be paid out of a special assessment,⁵ which the Local Authority shall raise and levy on or within such special district, in the same manner⁵ and with the same remedies and modes of recovery⁵ as are herein provided for the district of the Local Authority :

- (2.) All charges and expenses incurred by the Local Authority⁶ 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 Assessment⁷ 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—

§ 94.

Assessment for general expenses incurred in executing this Act.

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 authorised, 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 :⁸

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,⁹ 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-

§ 94.

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 :¹⁰
4. All mines, minerals, and quarries :¹¹

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 district¹² 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 district¹³ 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 :

- (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.¹⁴

¹ See § 89.

² See note (4), § 5.

³ See § 89 (5).

⁴ See § 89 (6), and note (16).

⁵ See note (1), § 93.

⁶ See § 75, Local Government Act, as to provisions for the supply of money out of county fund to District Committees.

⁷ *Held*, that a farmer, of whose farm only one field was within the burgh (i.e., water supply) limits, was liable for water rate in respect of that field, although he could not compel the Local Authority to supply his house with water. *Caldwell v. Wilson*, 16 P.L.M. 209.

Circumstances in which *held*, that a Hydropathic Company were not exempted from liability for water supply assessments. *Local Authority of Crieff v. Strathearn Hydropathic Company*, 6 P.L.M. 81.

⁸ In parishes where the assessment has hitherto been so levied, it will continue to be levied as formerly with the classifications in force under the Poor Law Act, but it will now be levied by the County Council (instead of the Parochial Board) as part of the consolidated rates (Local Government Act, § 27 (3)). The demand note must distinguish the several branches of assessment, and state the amount in the pound applicable to each. (*Ibid.* 62 (2).)

⁹ § 27 (3) of the Local Government Act provides that the consolidated

§§ 94-95.

rates in a county shall be imposed "subject always to the provisions of the Public Health Act, 1867, in regard to all assessments leviable under that Act." This appears to provide for the continuance of the differential rating here authorised, but, as pointed out in note 4, § 5, *supra*, the condition of a Parochial Board being the Local Authority in a district which includes a burgh as well as the landward part of a parish can no longer exist, and, therefore, it is doubtful whether these provisions do not now apply only to the case where the Local Authority is a Town Council or police commissioners or trustees.

¹⁰ *Held*, that land used for a market-garden is land used for agricultural purposes in the sense of this section, and therefore liable to be assessed at only one-fourth of market value. *M'Gill v. Local Authority of Prestwick*, 14 P.L.M. 320.

¹¹ By the Public Health Amendment Act, 1871, *q.v.*, *infra*, § 1, the annual value of all manufactories within a burgh shall be ascertained in the same manner as that of mines, minerals, and quarries.

¹² See § 76, note (2), and § 93, and note (1).

¹³ See § 76, note (2), § 89 (5), § 93, note (1), *supra*.

¹⁴ This sub-section (3) is repealed by the Public Health Amendment Act, 1871, § 1, except with regard to burghs having a population of 50,000 or upwards; see note (3), § 95, *infra*; and higher rates authorised in certain circumstances there specified.

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—

(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 authorised 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, depots, 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.²

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

§§ 95-96.

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.

- (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.³

¹ By the Public Health (Amendment) Act, 1871, § 1 (*q.v., infra*), it is provided that when the Local Act for police purposes of *any* burgh does not make sufficient provision for a water supply, or does not authorise an assessment for that purpose, such burgh shall come under the provisions of §§ 89 and 94, and not under §§ 88 and 95.

² See note (11), § 94.

³ This sub-section (2) along with sub-section (3) of § 94, is repealed by the Public Health (Amendment) Act, 1871, except with regard to burghs having a population of 50,000 or upwards, and the rates, instead of those specified in this sub-section, may now be 2s. 6d. per £, where the provisions with respect to water supply, or drainage, or permanent hospitals have been put in force, and 6d. per £ where none of these has been put in force.

PART VIII.

Enforcement of and Procedure under this Act.

Procedure if
Local Author-
ity neglect its
duty under
this Act.

96. If any nuisance¹ 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 authorised for the removal of nuisances² or preservation of health, or due regulation of lodging-houses,³ 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;⁴ 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 authorised 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:⁵ 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

- 96-98. any general or local Act or otherwise to be carried out, the better to remove such nuisances.

¹ See § 16. ² See §§ 18 and 19. ³ See §§ 44, 59 *et seq.*

⁴ By the Local Government Act, § 53 (2), the County Council are empowered, if it appear to them that the District Committee as Local Authority are neglecting their duty, to cause a representation to be made to the Board.

⁵ See §§ 16, 18, and 19, *supra*. The petition under the Burial Grounds Act (18 & 19 Vict. c. 68) sets forth that the burial ground or proposed burial ground, "is or would be dangerous to health, or offensive, or contrary to decency;" and the Sheriff, after inquiry, may pronounce an interlocutor, and transmit a copy to the Secretary for State (*i.e.*, Secretary for Scotland), who may then issue an order.

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,¹ with the approval of the Lord Advocate, to apply by summary petition² to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses³ of the proceedings as to the said Division or Lord Ordinary shall appear to be just.

¹ See § 9 *et seq.* as to powers of Board to make inquiries; and note (4), § 96.

² The Board having presented a petition and complaint against the Local Authority of a burgh, calling upon them to introduce a proper system of drainage: *Held*, that such an application was the proper ultimate remedy under the Act. *Board of Supervision v. Local Authority of Montrose*, 11 M. 170. Similar decision as to water supply in *Board of Supervision v. Local Authority of Galashiels*, 12 S.L.R. 111.

³ Board found entitled to expenses of petition and complaint (under this section) against the Local Authority failing to provide a proper water supply. *Board of Supervision v. Local Authority of Pittenweem*, 1 R. 1124.

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 satisfied¹ 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 proceedings which the Local Authority of such place might institute with respect to the removal of nuisances² 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 nuisance³ or any other party as may be competent.

§§ 98-100.

¹ *E.g.*, after an inquiry, see § 9 *et seq.*

² See § 18.

³ See § 19, note (2).

99. It shall be the duty¹ of the Local Authority to make from time to time, and also when required by the Board, either by themselves or by their officers,² inspection of the district, with a view to ascertain what nuisances³ 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.⁴ 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 bound¹ 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.

Duties of Local Authorities as to inspection of nuisances, &c.

Procedure where nuisance beyond district.

¹ See §§ 96 and 97.

² See § 8.

³ See § 16.

⁴ See § 16, note (19).

100. It shall be lawful for the Local Authority, at their discretion, to require¹ the payment of any costs or expenses which the owner² of any premises² may be liable to pay under this Act, either from the owner² or from any person who then or at any time thereafter occupies such premises,² and such

Local Authority may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent.

§§ 100-101. owner² or occupier shall be liable to pay the same, and the same shall be recovered in manner authorised by this Act,³ and the owner² 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,² as if the same had been actually paid to such owner² as part of such rent: Provided always, that no such occupier who shall not be the author of a nuisance⁴ 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 notice¹ 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,² tenant, or occupier of any house, building, or other property, whereby it is or may be agreed that the tenant or occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect as between the contracting parties any contract whatsoever between landlord and tenant.

¹ See form in Appendix, p. 167.

² See § 3 for definition.

³ See §§ 103, 105.

⁴ See § 19, note (2).

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 penalty¹ not exceeding five pounds, in addition to the cost of repairing such works or property.

¹ See §§ 103, 105.

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 authorised generally, or in respect of any special proceeding, by resolution of such Authority, and such person being so authorised shall be at liberty to institute and carry on any proceeding which the Authority is authorised to institute and carry on under this Act; and it shall not be necessary for the Local Authority to appear in any other manner in any prosecution or proceeding at their instance.¹

§§ 102-103.

Appearance of
Local Author-
ities in legal
proceedings.

¹ See § 7, and Local Government Act, § 79.

103. All penalties under this Act,¹ and also all sums of money and expenses herein directed to be recovered in a summary manner,² 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:³ 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,⁴ 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,⁵ 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 imprisonment⁶ for any period not exceeding fourteen days, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

Recovery of
penalties.

¹ The Local Government Act, § 57 (1), empowers the County Council, under certain conditions, to make bye-laws for the "prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the county," and to enforce the same by a penalty not exceeding £5, such penalty to be recovered under the provisions of the Summary Jurisdiction Acts (*ibid.* § 94).

§§ 103-105.

² See § 105, note (1).³ See § 29, note (3).⁴ See §§ 16 (*f*), 37, and 44.⁵ See § 59 *et seq.*⁶ See § 105 as to imprisonment, when offence not prosecuted as a police offence.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,¹ 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.¹

¹ See *M'Phee v. M'Inally*, § 59, note (1), and § 27, note (4).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,¹ 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 speci-

fied time, but the judgment shall not be invalidated by any §§ 105-107. deviation from any of the said periods of time.

¹ The procedure in this section, and §§ 107 and 110, is now superseded since the Summary Jurisdiction Act, 1881, § 3, enacted that its provisions, along with those of the Summary Procedure Act, 1864, shall apply to all summary proceedings for the recovery of penalties, &c. ; and all such applications must now be brought under the provisions of these Acts. The Board have accordingly issued a form similar to that prescribed by the Summary Procedure Act, 1864, but framed so as to be applicable to the recovery not only of penalties, but also of sums due to the Local Authority. (See form, Appendix, p. 168).

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 :¹ Provided always, that no decree under this Act against any party shall bar his right to relief against any other party legally liable therein.

No written pleadings, &c. allowed.

¹ By § 3 of the Summary Jurisdiction Act, 1881, it is provided that "it shall not be necessary 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" (*i.e.*, in the cases under § 16, mentioned above), "or by the sixth section of the Summary Prosecutions Appeals (Scotland) Act, 1875" (which makes it competent for any party to a cause, with a view to appeal, to require the judge or clerk of Court to take and preserve a note of any objections to the admissibility of evidence sustained or repelled by such judge).

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,

Appeal in certain cases.

§§ 107-108. and serving the same on the opposite party or the agent acting in such proceedings for such party, and such note shall operate as a sist of execution until the appeal be determined; and on such note being lodged, the sheriff-clerk shall transmit the process, together with the 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 sist of execution until a judgment be pronounced by the Lord Ordinary, which judgment shall be final unless the Lord Ordinary shall allow a reclaiming note to the Inner House, and the judgment of the Inner House shall be final.¹

¹ See note (1), § 105, *supra*.

No appeal
otherwise.

108. No appeal shall be competent from any decree¹ or order of any magistrate or justices, or from the decree or order of any Sheriff,² 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.³

¹ See § 3, *voce* "decree."

² *I.e.*, where the inferior judge acts within his powers, but if he exceeds his jurisdiction under the Act, suspension is competent. *Dunbar v. Levack*, 20 D. 538; see also *Mather v. Local Authority of Pulteneytown*, § 18, note (1). But by the Summary Prosecutions Appeals Act, 1875 (38 & 39 Vict.

c. 62), appeal is now competent in certain cases. That Act provides that any "cause" (i.e., any proceedings against any party prosecuted for any offence for which under the provisions of any Act of Parliament he is liable, upon summary conviction, to be imprisoned, or fined, or otherwise punished, or to be ordered to do or perform any act, and to be imprisoned in default of performance, or for the recovery of any penalty or sum of money in the nature of a penalty, which, under the provisions of any Act of Parliament, may be recovered by summary complaint or summary diligence), may be appealed, notwithstanding any provision in the Act under which such prosecution is brought; and the Act sets forth the procedure to be followed in order to such appeal. §§ 108-110.

It has been *held* that a summary petition for recovery of assessments is a "cause" in the sense of this definition, and therefore appealable to the Court of Justiciary. *Local Authority of Selkirk v. Brodie*, 4 R. (Just. Ca.) 21.

In a petition for the removal of a nuisance, the Sheriff ordained the defender to execute certain works 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 Public Health Act." *Held*, that an appeal was incompetent on the ground that if the petition was a "cause" in the sense above-mentioned, it had not been finally determined (in the sense of § 3, Summary Prosecutions Appeals Act) by the imposition of a penalty. *Lee v. Lasswade Local Authority*, 11 R. (Just. Ca.) 1.

An inspector having seized a carcass under section 26, a petition was presented to the Sheriff for an order for its destruction. The owner of the carcass was called for his interest, but there was no conclusion for a penalty. The Sheriff having granted the order craved, refused to state a case in terms of the Summary Prosecutions Appeals Act, 1875, for the opinion of the High Court of Justiciary. *Held*, that the proceedings before him did not constitute a "cause" in the sense of that Act, and that he was right in refusing to state a case. *Couper v. Lang*, 12th December, 1889.

³ *Held*, that an appeal from a determination of the Sheriff on a petition presented under § 77 of this Act and § 7 of the Rivers Pollution Act, 1876, was not excluded by this section. *Guthrie, Craig & Co. v. Magistrates of Brechin*, 12 R. 469.

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. Justices being members of Local Authority may act.

110.¹ Notices, petitions, and orders under this Act may be served by any person by delivering the same to or at the residence of the parties to whom they are respectively addressed, or by being put into the post office duly Service of notices, petitions, and orders.

§§ 110-113. addressed to the parties ; and where addressed to the owner² or occupier of premises,² 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.

¹ See § 105 and note. Notices must now be served by an officer of Court. See form in Appendix, p. 168.

² See § 3 for definition.

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,¹ 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.

¹ See Local Government Act, § 57 (6), *infra*, as to authentication of bye-laws made by County Council.

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 owners¹ or occupiers of premises,¹ 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.

¹ See § 3 for definition.

Penalty on occupier obstructing owner.

113. If the occupier of any premises¹ prevent the owner¹ 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 penalty² not exceeding five pounds for every day afterwards during the continuance of such refusal. §§ 113-116.

¹ See § 3 for definition.

² See §§ 103 and 105.

114. Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, obstructs¹ 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 penalty² 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.³ Penalty for violating Act or obstructing its execution.

¹ See *Small v. Bickley*, § 26, note (1), *supra*.

² See §§ 103 and 105.

³ See § 122.

115. The making of works of distribution and service for the supply of sewage¹ to lands for agricultural purposes shall be deemed an improvement of land authorised by the Land Improvement Act, 1864,² and the provisions of that Act shall apply accordingly. Works of distribution of sewage to be deemed a land improvement.

¹ See § 74.

² 27 & 28 Vict. c. 114.

116. Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act,¹ to all persons sustaining any damage by reason of the exercise of any of the powers of this Act,² except when otherwise specially provided;³ 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 Compensation to be made.

§§ 116-118. the sum claimed exceeds fifty pounds sterling, such compensation shall be ascertained and disposed of in terms of the Lands Clauses Acts.⁴

¹ See §§ 93-95.

² When damage is caused by work the doing of which is not authorised by the Act, the remedy is by action, and not by a claim for compensation. *Reg. v. Darlington Local Board*, 33 L.J., Q.B. 305.

Under the Public Health (England) Act, 1848 (§ 144), a Board of Public Health were held not bound to give compensation for any damage which would not have been actionable if they had not been acting under the authority of the Act. *Hall v. Mayor, &c., of Bristol*, 2 C.P. 322. See also dictum of Crompton, J., in *Brine v. Great Western Railway Co.*, 31 L.J., Q.B. 101, approved in *Mersey Docks Trs. v. Gibbs*, L.R., 1 H.L. 93:—"The distinction is clearly established between damage from works authorised by statutes (where the party generally is to have compensation, and the authority is a bar to an action), and damage by reason of the works being negligently done, as to which the owner's remedy by action remains." See also *Swanston v. Twickenham Local Board*, and *Hall v. Corporation of Batley*, § 73; and *Bush v. Trowbridge Waterworks Co.*, § 89 (1), *supra*.

³ *E.g.*, as in § 24.

⁴ See § 4.

Convictions
not void for
want of form.

117. No conviction or other legal proceeding under this Act shall be void for want of form,¹ or for want of any previous notice, provided in this latter case the party proceeded against or convicted has appeared or the charge had come to his knowledge; and the charge may be amended at any time, and the proceedings may be adjourned on the ground of want of sufficient notice, or for other good cause.

¹ § 5 of the Summary Procedure Act, 1864, contains a similar provision. See also § 105, note (1).

Local Author-
ity 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. §§ 118-122.

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.¹

¹ See Local Government Act, § 103, *infra*.

120. All bonds, assignments, 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.

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.¹

¹ See note (3), § 8.

122. Nothing in this Act shall be construed to impair any right of action in respect of nuisances at common law. Act not to impair right of action, &c.

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.



34 & 35 VICTORIÆ, c. 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 :

30 & 31 Vict.
c. 101.

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 :

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,¹ 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

§ 1.

Certain provisions of
recited Act
repealed.

§§ 1-2.

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;² 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.³

¹ These two sub-sections are limitations on the power of assessment.

² *I.e.*, the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof according to the valuation roll.

³ §§ 89 and 94 apply to burghs having a population of less than 10,000, and not having a local Act for police purposes.

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,¹ 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-five² 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.

¹ District Committees cannot assess or borrow (Local Government Act, § 17 (2) (a)), and no "capital works" (which include, *inter alia*, the "erection, rebuilding, or enlargement of buildings") can be undertaken in any county without the written consent of the Standing Joint Committee (*ibid.* § 18).

² See Public Health (Amendment) Act, 1875, § 4, *infra*, which provides that the period for repayment may be extended to fifty years in the case of loans from the Public Works Loan Commissioners. In counties, however, where the powers of borrowing under the Public Health Acts are transferred to the County Council (Local Government Act, § 67), every such loan must be repaid within a period not exceeding thirty years. This provision can only be intended to apply to loans raised after the Local Government Act comes into force.

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-

Power to borrow.

§ 3-5. 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.¹

¹ This section is repealed by the Public Health (Amendment) Act, 1875, § 3 (*q.v.*, *infra*).

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."



38 & 39 VICTORIÆ, c. 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 :

1. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1875. §§ 1-2.

Short title.

2. The expression "Sanitary Acts" shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same ;¹ and also Part IV. sections VII. and X., and Part VI. section II. of the General Police and Improvement (Scotland) Act, 1862. Definitions.

The expression "Local Authority" shall mean and include any Local Authority under the Public Health (Scotland) Act,

§§ 2-3.

1867, and any Acts amending that Act,¹ 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.

¹ See Public Health (Amendment) Act, 1871, *supra*; also Local Government Act, *infra*.

Repeal of 30 &
31 Vict. c. 101,
§ 91 and 34 &
35 Vict. c. 38,
§ 3.

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 :

Power to
Public Works
Loan Com-
missioners to
lend to Local
Authority in
Scotland for
sanitary
purposes.

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,¹ 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.²

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 §§ 3-4.
three and a half per centum per annum.

¹ See Public Health (Amendment) Act, 1871, § 2, note (2), *supra*.

² The following is the scale of interest charged by the Commissioners of the Treasury on loans advanced on the recommendation of the Board:—

On loans repayable within a period not exceeding

35 years	3½ per cent.
Exceeding 35 but not exceeding 40 years	3¾ „
Exceeding 40 but not exceeding 50 years	4 „

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 purpose of the said Acts shall be repaid within a period not exceeding fifty years.¹

Period of
repayment of
sums borrowed
by Local
Authorities
for sanitary
purposes.

¹ See Public Health (Amendment) Act, 1871, § 2, note (2), *supra*.



45 VICTORIÆ, c. 11.

*An Act to amend the Public Health (Scotland) Act,
1867.—[19th June, 1882.]*

30 & 31 Vict.
c. 101.

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 ¹ 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 :

42 & 43 Vict.
c. 15.

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 :

¹ The preamble of a statute cannot restrict the operation of an unambiguous enacting clause, and, therefore, though the preamble of the Public Health (Amendment) Act, 1879 (which was in similar terms), proceeded on a recital of change of circumstances rendering expedient the alteration of boundaries of a special water district, it was held competent to extend the district, although no change was proved. *North British Railway Company v. Local Authority of Dunfermline*, 3 S.L. Rev. 178.

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.

§§ 1-3.

Short title and construction.

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.

Commencement of Act.

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 :

Repeal of 42 & 43 Vict. c. 15.

(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 enlarging¹ 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 :

Special drainage and special water supply districts may be altered, combined, &c.

(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

§ 3.

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.

¹ In order to justify the extension of a special water supply or drainage district, it must be shown that the inhabitants of the territory proposed to be annexed will at once or in the near future derive benefit in improved water supply or drainage, and, accordingly, a resolution by a Local Authority extending the limits of a special water supply and drainage district, with the object of making the new territory assessable for expense already incurred in providing the existing special district with a water and drainage system, disapproved of. *Mackenzie and Others v. Local Authority of Urray*, 5 S.L. Rev. 173.



LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.

52 & 53 VICT. c. 50.

An Act to amend the Laws relating to Local Government in Scotland.—[26th 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 :

Preliminary.

1. This Act may be cited as the Local Government (Scotland) Act, 1889.

§§ 1-3.
Short title.

2. This Act shall extend to Scotland only.

Extent of Act.

PART I.

CONSTITUTION AND POWERS OF COUNTY COUNCIL.

Constitution of County Council.

3. A Council (in this Act referred to as a County Council or the Council of a county) shall be established in every county, and be entrusted with the management of the administrative and financial business of that county as hereinafter provided.

Establishment
of County
Council.

* * * *

§§ 11-17.

Powers of Council.

Transfer to
County Council
of powers of
Commissioners
of Supply,
Road Trustees,
&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).

* * * *

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 Par-
ochial 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

§§ 17-18.

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.

Standing Joint Committee for County.

Standing
joint commit-
tee of County
Council and
Commissioners
of Supply for
certain pur-
poses.

18.—(1.) For the purposes in this section mentioned and with respect to the powers of borrowing transferred or conferred by this Act, or any other Act, there shall be a standing joint committee of the County Council and the Commissioners of Supply, consisting of such number of county councillors not exceeding seven, as shall be appointed by the County Council annually at their meeting in the month of May, and such number of Commissioners of Supply, not exceeding seven, as shall be appointed by the Commissioners of Supply annually at their meeting on the same day. Six shall form a quorum of the committee, and the committee may act notwithstanding any vacancy upon it.

(2.) The Sheriff of the county (or in his absence one of his substitutes to be by him nominated for that purpose) shall be *ex-officio* a member of the said standing joint committee, and the committee shall elect one of their own number to be chairman thereof.

(3.) If any appointed member of such committee shall die, resign, or become disqualified, the vacancy may be filled up by the County Council or Commissioners of Supply, as the case may be, by whom the member vacating office was appointed; any member of such committee may resign office by a writing under his hand addressed to the county clerk.

(4.) On the requisition of the chairman or of any two members of the standing joint committee, the county clerk (who shall without any further appointment or remuneration act as clerk of the committee) shall convene a meeting thereof, on not less than six days' notice, by letter addressed to each member of the committee.

(5.) The standing joint committee appointed in terms of

this section shall, after the appointed day, be deemed to be the police committee under the Police Act, 1857, and shall have all the powers of such committee and be subject to all the provisions of that Act, except in so far as these provisions are expressly modified by this Act. §§ 18-25.
20 & 21 Vict.
c. 72.

(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, reconstruction, 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.

* * * *

PART III.

FINANCE.

Property, Funds, and Expenses of County Council.

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 movable property of any parochial board as the Local Authority under the Public Health Acts, trans-
Transfer of
county pro-
perty and
liabilities.

§§ 25-26. —ferred 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.

(2.) The County Council shall have full power to manage, alter, and enlarge, and, with the consent of the Secretary for Scotland, to alienate the lands and heritages transferred by this section, but shall from time to time provide such accommodation and rooms, and such furniture, books, and other things, for the transaction of the business of the County Council, and of the Quarter Sessions, Justices of the Peace, and Commissioners of Supply, as they respectively may from time to time reasonably require.

* * * *

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.

(2.) All receipts of the County Council from whatever source shall be carried to the county fund, and all payments shall be made in the first instance out of that fund. Such receipts shall be paid into an incorporated or joint stock bank (including any branch thereof) for that purpose appointed by the County Council, and such payments shall be made by cheques drawn, as in this Act provided, upon such bank.

(3.) In this Act "general county purposes" means all purposes for which the County Council are for the time being authorised by law to incur any expenditure, with the exception of (1) the management and maintenance of highways, (2) the administration of the laws relating to public health, and (3) any special purpose in respect of which the county has been or may be divided into divisions or districts under the provisions of any general or local Act of Parliament or of this Act.

(4.) If the county fund is insufficient to meet the expenditure, rates (in this Act referred to as the owners' consolidated rate and the occupiers' consolidated rate, and together as the consolidated rates) may be levied to meet such deficiency for general county purposes upon all rateable property in the county, or, in the case of expenditure for the management and maintenance of highways, the administration of the laws relating to public health, or other special purpose as herein-before mentioned upon all rateable property within the several districts or parishes of the county, as the case may be, in the manner and subject to the conditions in this Act provided.

§§ 26-27.
—

(5.) The County Council shall keep such accounts of the county fund, and of the sums raised by rates, as will prevent a rate being applied to any purpose to which it is not properly applicable.

(6.) The finance committee of the County Council appointed under this Act shall prepare annually estimates of the receipts and expenses of the county fund and of the sums required to be raised to meet the deficiency of such fund for the expenditure chargeable thereon.

Rating.—Consolidation of Rates.

27.—(1.) The County Council shall annually fix the rate in the pound of the rateable property which will be necessary to meet the deficiency in the county fund in respect of each branch of expenditure subject to its control, or for which it is responsible in whole or in part, and such rate shall be imposed upon all lands and heritages within the county, except that the rate for the management and maintenance of highways, the administration of the laws relating to public health, and any other special purpose as herein-before mentioned, shall be imposed upon all lands and heritages within each division, or district, or parish, as the case may be. The rate in respect of each branch of expenditure for which provision is made under an Act of Parliament in force at the passing of this Act shall be deemed to be imposed under the powers and subject to the provisions of that Act, except in so far as

Imposition and regulation of the consolidated rates.

§ 27.

these are inconsistent with the provisions of this Act. The rate necessary in respect of any branch or branches of expenditure for which no provision is made as last mentioned shall be imposed as a general purposes rate under this Act.

(2.) Subject to the provisions hereinafter contained the rates shall be equally divided between owners and occupiers, and the sum of all the rates so fixed and divided shall, as affecting owners and occupiers respectively, constitute the owners' consolidated rate and the occupiers' consolidated rate, as the case may be, in respect of the lands and heritages situated therein.

(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.

30 & 31 Vict.
c. 101.

(4.) Where at the passing of this Act any rate leviable by the Commissioners of Supply in respect of any such branch of expenditure is payable by owners only, without relief to the extent of one-half against the occupiers, the following provisions shall have effect—that is to say,

(i.) As soon as may be after the passing of this Act, the Sheriff shall ascertain and determine what has been during the ten years previous to the term of Whitsunday immediately preceding the passing of this Act, the average amount in the pound of each such rate (in this Act referred to as the average rate), and shall cause his determination (which shall be final), to be recorded in the Sheriff-court books of the county.

(ii.) When ascertaining and determining the average rate in respect of any such branch of expenditure, the Sheriff shall exclude any portion of a rate applicable to the payment of interest and repayment of principal of money borrowed in respect thereof: Provided that, until any money so borrowed shall be wholly repaid, a rate sufficient to provide for the payment of interest and repayment of principal

thereof shall be payable by owners only, and shall be included in the owners' consolidated rate. §§ 27-37.

- (iii.) Where the rate fixed as hereinbefore provided by the County Council as necessary to meet the deficiency in the county fund in respect of any branch of expenditure does not exceed the average rate determined as aforesaid, such rate shall, as heretofore, be payable by owners only, and shall be included in the owners' consolidated rate. But where the rate so fixed by the County Council exceeds such average rate, the portion of the rate beyond the average rate shall be payable by owners and occupiers equally. In the demand note the average rate and any increment thereof shall be separately set forth and demanded.

(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.

* * * *

PART VI.

Application of Act to Special Counties and Burghs.

37. With respect to the application of this Act to the county of Lanark, there shall be enacted the provisions following—that is to say, Application of Act to county of Lanark.

- (1.) On and after the appointed day the ninety-second section of the Roads and Bridges (Scotland) Act, 1878, which relates to the county of Lanark is hereby repealed; and in lieu thereof it is enacted that for all the purposes of that Act in connection with which the county of Lanark is not therein specially named, the lower ward, middle ward, and upper ward of the county of Lanark shall each be deemed and taken to be a district for the purpose 41 & 42 Vict. c. 51.

§§ 37-41.

of maintaining and managing the highways therein in the like manner as if the said county had been divided into districts under and by virtue of the sixteenth section of that Act; provided that any district for the purposes of maintaining and managing highways shall also be a district for the purpose of the administration of the laws relating to public health, and with power to the Council of the said county to further sub-divide the county into districts or to make such other districts as to them may seem proper.

* * * *

Application of
Act to counties
of Aberdeen,
Banff, and
Elgin.

41. Whereas in the local Acts of Parliament relating to highways in the counties of Aberdeen and Banff and Elgin respectively, special provisions were made for including within the county of Aberdeen, for the purposes of those Acts, certain portions of the county of Banff—viz., the parishes of Gamrie and Inverkeithney and parts of the parishes of Alvah and Rothiemay, and also for including in the county of Banff certain portions of the county of Elgin—viz., parts of the parishes of Bellie, Boharm, Keith, and Inveravon; and whereas the Aberdeenshire Roads Act, 1865, makes provision for proprietors redeeming the assessment for the extinction of certain road debts, the provisions following shall have effect; (that is to say),

(a.) Notwithstanding anything in this Act contained, the counties of Aberdeen and Banff respectively shall, for all the provisions of this Act in regard to the administration of the laws relating to highways and to the administration of the laws relating to public health, be deemed to include those portions of the counties of Banff and Elgin respectively hereinbefore mentioned.

(b.) The councillors elected for the respective electoral divisions of the county of Banff in which are situate the parishes or parts of the parishes of that county in this section before mentioned shall, with regard to the provisions of this Act for the administration

of the laws relating to highways and for the administration of the laws relating to public health, have and exercise all the powers and duties of county councillors in the county of Aberdeen. §§ 41-44.

(c.) The councillors elected for the respective electoral divisions of the county of Banff in which are situate the said parishes of Gamrie and Inverkeithney shall not, with regard to the provisions of this Act for the administration of the laws relating to highways and to public health, have or exercise the powers and duties of county councillors in the county of Banff.

(d.) The councillors elected for the respective electoral divisions of the county of Elgin in which are situate the parts of the parishes of that county in this section before mentioned shall, with regard to the provisions of this Act for the administration of the laws relating to highways and to public health, have and exercise all the powers and duties of county councillors in the county of Banff.

* * * *

43. Wherever a royal burgh or police burgh, or part thereof, is included within the parliamentary area of a burgh, it shall nevertheless be deemed to be a separate burgh or police burgh for the purposes of this Act, having for these purposes the boundaries fixed or ascertained for police purposes under any general or local Act of Parliament. Provision as to certain burghs.

PART VII.

APPOINTMENT OF BOUNDARY COMMISSIONERS AND SIMPLIFICATION OF AREAS.

As to Boundaries of Counties, &c.

44. For the purposes and subject to the provisions of this Act, and except so far as varied by an order made under Boundaries of counties.

§§ 44-49. — this Act, as hereinafter mentioned the following provisions shall have effect :—

(a.) From and after the passing of this Act, counties shall have the contents and boundaries which they respectively have, or in the case of counties still subject to local Acts of Parliament regulating highways will have, after the appointed day for the purposes of the Roads and Bridges (Scotland) Act, 1878 ; and

(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 : Provided that police burghs shall not in any case be deemed to be burghs for the purposes of this Act, except for the purposes of and subject to the provisions of the Roads and Bridges (Scotland) Act, 1878.

(c.) If any question arises as to whether a part of a county is detached, or as to the county with which the part has the longest common boundary, or as to the county with which a burgh has the longest common boundary, the Sheriff in the year one thousand eight hundred and eighty-nine, and thereafter the Boundary Commissioners, may by order determine the question.

* * * *

Powers and duties of Boundary Commissioners.

49.—(1.) The Boundary Commissioners shall proceed as soon as may be after such commencement as in this part of this Act mentioned to inquire into the circumstances of the counties, burghs, and parishes, and detached parts of counties and parishes, and shall frame orders for dealing with such counties, burghs, parishes, and detached parts, 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, and that no part of a county or parish be detached therefrom, and such orders may provide for such alteration of boundaries, whether of the county or of any other area, as may seem necessary for the said purpose, and such alteration shall have effect for all purposes, whether County Council, Justices, Sheriff, Militia, Parochial Board, School Board, Local Authority, or other, save as hereinafter provided.

(2.) The Commissioners, before framing any order, shall communicate with such of the authorities, whether Sheriffs, Quarter Sessions, County Councils, Town Councils, Police Commissioners, Parochial Boards, School Boards, Local Authorities, or others, as appear to them to be concerned, and when they have framed a draft order shall cause the same to be communicated to such of the said authorities as appear to them to be concerned, and to be published, and shall consider any objections or suggestions made in relation to such order within one month after such communication or publication.

(3.) The Boundary Commissioners may finally make such order and publish it in the *Edinburgh Gazette* and bring it before Her Majesty, and subject as hereinafter mentioned, it shall be lawful for Her Majesty in Council to confirm such order, and thereupon the order shall have effect as if enacted by Parliament.

(4.) Provided that if within one month after such publication of the order, any of the authorities affected by the order petition Her Majesty in Council to cause the order to be laid before Parliament, and such petition is not withdrawn, or if the Secretary for Scotland recommends that the order shall be laid before Parliament, the order of the Boundary Commissioners shall be deemed to be a provisional order, and shall be of no effect unless confirmed by Parliament.

(5.) The Secretary for Scotland may introduce a Bill confirming any such provisional order, and if any petition is presented against such order, the Bill, so far as it relates to the order petitioned against, shall be deemed to be, and the petitioners shall be allowed to appear and oppose as in the case of, a private Bill.

§§ 49-51.

(6.) An order of the Boundary Commissioners as in this section mentioned may provide for all or any of the following matters ; that is to say,—

- (a.) may provide for the abolition, restriction, establishment, or extension of the jurisdiction of any authority in or over any part of the area affected by the order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the authorities therein, and may deal with the powers and rights of authorities therein, and with any officers therein, and may determine the status of any such area as a component part of any larger part, and for the election of representatives in such area ;
- (b.) may make temporary provision for meeting the debts and liabilities of the various authorities affected by the order, and for the management of their property ;
- (c.) may provide for all matters which appear to the Commissioners necessary or proper for giving full effect to the order.

When an order under this Act has taken effect, the Boundary Commissioners may provide for the adjustment and disposal of the property, debts, and liabilities of the various authorities affected by the order, and for the settlement of differences arising out of the order.

* * * *

As to subsequent Alteration of Boundaries, &c.

Alteration of boundaries, simplification of areas, &c., by Provisional Order.

51. On the representation of a County Council or of a Town Council, the Secretary of Scotland may, at any time after the expiry of the powers of the Boundary Commissioners, by Order provide for all or any of the following things :—

- (a.) For altering the number of County Councillors, the number, contents, and boundaries of electoral divisions, and the assignment of County Councillors to counties and burghs ;
- (b.) For altering the boundaries of the county ;

- (c.) For altering the boundaries of any burgh or of any parish situate or partly situate in the county ;
- (d.) For uniting several parishes or parts of parishes into one parish, or annexing one or more of such parish or parishes or parts of parishes to a larger parish ; and any parish so formed by a union of parishes or parts of parishes, or enlarged by annexation, shall for all purposes be deemed to be one parish ;
- (e.) For dividing any parish in the county which by reason of its inconvenient extent, or by reason of its forming part of, or having within its boundaries, or lying partly within or partly without a burgh, or a police burgh, it seems expedient to divide, and for uniting all or any of such sub-divisions of the parish with other parishes ;
- (f.) For the proper adjustment and distribution of the powers, property, liabilities, debts, officers, and servants of any Local Authority, consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section ; and
- (g.) Generally for doing any matter or thing whatever, whether similar or not to those above mentioned, which may be required or be expedient for the proper carrying into effect the purposes of this Act and the settlement of local differences :

Provided as follows :

- (i.) An Order under sub-section (a) of this section shall not be made unless after the date of any previous Order determining the matters therein mentioned there shall have occurred a material change of circumstances in respect of the population and annual value of the counties, burghs, or electoral divisions concerned in such Order.
- (ii.) If an Order under this section alters the boundaries or contents of any county, burgh, or parish it shall be Provisional only, and shall not have effect unless confirmed by Parliament ; and
- (iii.) Provision shall be made in any Order under this section for preserving the rights of creditors and

§§ 51-52.

all persons having vested interests, and whose rights would otherwise be affected by any alteration made in pursuance of this section.

- (iv.) This section shall be in addition to, and not in derogation of, any provisions in force at the passing of this Act in respect of the union, disjunction, or erection of parishes.

PART VIII.

SUPPLEMENTAL.

Provisions as to Powers of Council.

Power to
appoint medi-
cal 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.

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.

§§ 53-55.

Medical officer, &c., to send reports to County Council, &c.

(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.

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.

Qualifications of officers, &c.

(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.

49 & 50 Vict. c. 48.

(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.

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

Power to County Council to enforce provisions of 39 & 40 Vict. c. 75.

§§ 55-57.

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.

* * * *

Bye-laws.

Power of
County
Councils to
make bye-
laws.

57.—(1.) The Council of a county may from time to time make such bye-laws 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.

§ 57.

(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the Council are present.

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the doors of the county buildings, and of all the parish churches and public schools within the county, and has been advertised in one or more newspapers circulating in the county.

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof signed by the county clerk has been sent to the Secretary for Scotland; and if within those forty days the Secretary for Scotland disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Secretary for Scotland, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5.) A bye-law made under this section shall not be of any force or effect within any burgh or police burgh unless it has been made with the consent of the Town Council of such burgh, or the Commissioners of Police of such police burgh.

(6.) The production of a written or printed copy of a bye-law made by a County Council under this Act, if authenticated by the signature of the county clerk, shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the Secretary for Scotland, or having been made with the consent of the Town Council of any burgh or Police Commissioners of any police burgh therein named.

Provided that all bye-laws with reference to any of the matters aforesaid now in force within any county shall remain in force until new bye-laws have been made under the provisions of this section.

§§ 61-62.

Summary
proceedings 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.

Provisions as to Rating.

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.

§§ 62-67.

- (5.) The whole powers and rights of issuing summary warrants and proceedings, and all remedies and provisions enacted for recovery of the land and assessed taxes, or either of them, and other public taxes, shall be applicable to the rates by this Act authorised to be imposed by the County Council of any county, and Sheriffs, justices of the peace, and other judges may, on the application of the county clerk or collector, grant warrant for the recovery of such rates and expenses, in the like form and under the like penalties as are provided in regard to such land and assessed taxes and other public taxes : Provided, nevertheless, that it shall be competent to the Council to prosecute for and recover such rates by action in the Sheriff Small Debt Court, or in any other court, as the case may be, and that in any summons, complaint, petition, or action for the recovery of such rates more than six defenders may be cited and called, any law or practice to the contrary notwithstanding ; and all rates imposed under any powers transferred or conferred by this Act shall, in the case of bankruptcy or insolvency or liquidation, be preferable to all debts of a private nature due by the parties assessed.

* * * *

Borrowing.

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 with this Act

Borrowing
by County
Council.

§ 67.

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 ;
- (b.) For any purpose for which the County Council is expressly authorised to borrow under the provisions of this Act ; and
- (c.) For making advances (which they are hereby authorised to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonization of inhabitants of the county, with a guarantee for repayment of such advances from any authority in the county or the Government of any colony ;

but neither the transfer of powers by this Act nor anything else in this Act, shall, save as hereinafter 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.

(3.) The County Council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with regulations which may from time to time be framed in that behalf by the Secretary for Scotland.

(4.) If the County Council shall find it necessary in any year to make payments, in connection with the current annual expenditure, for the purposes of the various Acts of Parliament administered by them in anticipation of the rates

under the said Acts applicable to the expenditure of such year, they may, without any consent, borrow from any incorporated or joint stock bank, or other company or person, on such terms and conditions and in such form as may be agreed on between the parties, money on the security of such part of the rates as is still due and unreceived, but not to an amount greater than one-half of such part of such rates, and when any money has been so borrowed on the security of the rates of any local financial year, it shall not be competent to borrow on the security of the rates of any other year until the money borrowed as aforesaid shall have been paid off.

§§ 67-68.

(5.) Where a loan is raised for any purpose upon the security of any rate leviable by the County Council under or in pursuance of this Act, or of any other Act, the Council shall take care that the sums payable in respect of the loan are charged to the special account to which the expenditure for that purpose is chargeable.

(6.) Where money has been borrowed by a County Council or by any authority whose powers and duties are by or in pursuance of this Act transferred to the Council until the loan has been discharged, the County Council shall, within twenty-one days after the expiration of each local financial year, transmit to the Secretary for Scotland a return in such form, and verified in such manner as may from time to time be prescribed, showing the amount of the loan still outstanding, and the steps which have been taken to comply with the provisions of this or any other Act in regard to its payment and discharge.

Accounts and Audit.

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 15th 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.

Audit of
accounts of
County Council.

(2.) The accounts of a County Council (including as aforesaid) shall be audited in manner hereinafter provided ; and

§§ 68-73. 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.

* * * *

Local Annual Budget.

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 hereinbefore 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 hereinbefore contained.

Incorporation of County and Proceedings of County Council and Committees.

Incorporation
of County
Council.

72. The County Council shall be incorporated under the name of the County Council of the county, as the case may be, with perpetual succession and a common seal.

The County Council under that name may sue or be sued, purchase, take, hold, and dispose of lands and other property for the purposes of and subject to the provisions of this Act.

All deeds granted by a County Council shall, in addition to being sealed, be signed by two members of the Council and by the county clerk.

Proceedings
of County
Council.

73.—(1.) A County Council shall, subject to the provisions of this Act, transact their business (including the hearing of appeals against or applications to be relieved from payment of rates) by means of general meetings of their body or committees, as the Council may think expedient. But the Council shall not delegate any power of raising money by

rate or loan : Provided that nothing in this Act shall derogate from the provisions of the Contagious Diseases (Animals) Acts in regard to the appointment on committees under the said Acts of persons not being members of the Local Authority thereunder.

(2.) There shall be not less than three general meetings of the Council annually, that is to say, in the months of May and October, and on such days in these months as the County Council may from time to time determine, and on the third Tuesday of December.

Provided that the first meeting of the County Council in the year one thousand eight hundred and ninety, for the ordinary discharge of its duties, shall take place on the first Thursday after the appointed day.

The general meeting in the month of May shall be deemed to come in place of the annual statutory meeting of the Commissioners of Supply at the passing of this Act held in the months of April or May ; and the general meeting in the month of October shall be deemed to come in place of the general or adjourned meeting of the Commissioners of Supply and the annual general meeting of County Road Trustees at the passing of this Act held in the months of September or October.

(3.) The quorum of the County Council shall, unless the Council with the consent of the Secretary for Scotland otherwise determine, be one-fourth of the whole number of the Council.

(4.) A County Council may act notwithstanding any vacancy or vacancies caused by insufficient election or otherwise, provided that a quorum exists.

(5.) The ordinary day of election of the convener of the county shall be the third Tuesday of December in each year. The election of convener shall be the first business transacted on the day of election.

In the absence from any meeting of the convener and vice-convener of the county, such councillor as the councillors present shall choose shall be chairman of the meeting.

The chairman of a meeting shall have a casting vote as well as a deliberative vote ; and when on the selection of the chairman of the meeting an equal number of votes is

§§ 73-74. — given for two or more persons, the meeting shall determine by lot which of these persons shall be the chairman of the meeting.

20 & 21 Vict.
c. 72.

(6.) Where under any Act excepting the Police Act, 1857, relating to any business, powers, duties, or liabilities wholly or partly transferred by or in pursuance of this Act to the County Council, provision is made for the appointment of any board, committee, or commissioners consisting wholly or partly of Commissioners of Supply, the County Council shall annually appoint county councillors in lieu of the said Commissioners of Supply as the case may be; and the boards, committees, or commissioners constituted under the said Acts, as amended by this Act, shall have and discharge the powers and duties and be subject to the debts and liabilities conferred or imposed or resting upon them under the said Acts amended as aforesaid.

(7.) The County Council may, subject to the provisions of this Act, make, vary, and revoke such regulations as they think fit with respect to the summoning, notice, time, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of their business.

(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. §§ 74-75.

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.

Payments out of county fund and appointment of finance committee.

(2.) Any such order may be stayed by note of suspension in the Bill Chamber, and may be wholly or partly disallowed or confirmed with or without expenses.

(3.) Every County Council shall annually appoint a finance committee for regulating and controlling the finance of their county; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not, save in the cases mentioned in the first sub-section of this section, be made by a County Council except in pursuance of a resolution of the Council passed on the recommendation of the finance committee, and any expenses, debt, or liability exceeding fifty pounds shall not, save as aforesaid, be incurred except upon a resolution of the Council passed on an estimate submitted by the finance committee.

(4.) The notice of the meeting of the County Council at which any resolution for the payment of a sum exceeding fifty pounds out of the county fund, or any resolution for incurring any expenses, debt, or liability exceeding fifty pounds, will be proposed, shall state the amount of the said sum, expenses, debt, or liability, and the purpose for which they are to be paid or incurred.

* * * *

§§ 77-78.

Districts and District Committees.

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 hereinafter 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 hereinbefore 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.

§§ 78-79.

- (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 hereinafter provided, to the clerk of the District Committee. Each such 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.

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

Powers and designation of District Committee.

§§ 79-81. 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
district.

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 subsection 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 ;

§§ 81-83.

- (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.

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.

Payments to
and by District
Committee.

Officers.

83.—(1.) The clerk of supply in office at and after the passing of this Act shall, subject to the provisions of this Act, discharge all the duties of county clerk until the appointed day, and upon such day the clerk of supply in office shall become the clerk of the County Council

Clerk of the
County
Council.

§ 83.

(in this Act referred to as the county clerk or clerk of the County Council), and shall continue in office for twelve months after the first meeting of the Council, unless he shall sooner vacate office by death, resignation, or disqualification. At the expiration of such period he shall continue in office during the pleasure of the County Council.

(2.) In addition to any other rights and duties conferred or imposed on him by the Council, the county clerk shall, after the appointed day and subject to the provisions of this Act, have and discharge the rights and duties now belonging to or devolving on the clerk of supply and county road clerk, and all things authorised or required to be done by or to the clerk of supply and county road clerk may be done by or to the county clerk.

Provided that the County Council may continue in office the county road clerk in office at the appointed day, and such county road clerk shall act as county clerk in so far as regards the administration of the laws relating to highways, and after he ceases to hold office his duties as aforesaid shall devolve on the county clerk.

Provided also that the County Council may appoint any assessor (not being an officer of Inland Revenue) in office at the appointed day to be collector of the consolidated rates.

(3.) Subject to the provisions of sub-section (1) of this section, the County Council may from time to time appoint a county clerk, treasurer, collector or collectors, assessors, surveyors, and such other inspectors, officers and servants as may be necessary and proper for the efficient execution of the duties of the County Council, and may make regulations with respect to the duties of such county clerk, treasurer, collectors, assessors, surveyors, inspectors, officers, and servants. If it is deemed expedient, one person may be appointed to fill two or more offices, and two or more persons may be appointed jointly to fill one office.

* * * *

(6.) The Council shall pay to the county clerk, county road clerk, district clerk, treasurer, collectors, assessors, surveyors, inspectors, officers, and servants continued, appointed or employed by them or by any District Committee, such

reasonable salaries, wages, or allowances as they think proper ; and every such county clerk, county road clerk, district clerk, treasurer, collector, assessor, surveyor, inspector, officer, and servant shall, subject to the provisions of this Act, hold office during the pleasure of the Council or District Committee, as the case may be, by which he was appointed. §§ 83-91.

* * * *

(7.) The Council may at any time discontinue the appointment of any inspector, officer, or servant appearing to them not necessary to be reappointed ; and may from time to time make such arrangements as they think necessary as to the offices required to be created or abolished.

* * * *

As to Land and Buildings.

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. Transfer of lands, &c.

Provisional Orders.

91. With respect to Provisional Orders authorised to be made by the Secretary for Scotland under this Act, the following enactments shall be made :— Regulations as to Provisional Orders.

§ 91.

- (1.) The Secretary for Scotland shall not make any Provisional Order unless public notice of the purport of the proposed Order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such Provisional Order relates, and in the *Edinburgh Gazette* :
- (2.) Before making any such Provisional Order the Secretary for Scotland shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :
- (3.) The Secretary for Scotland may submit to Parliament for confirmation any Provisional Order made by him in pursuance of this Act, but any such Order shall be of no force whatever unless and until it is confirmed by Parliament :
- (4.) If while the Bill confirming any such Order is pending in either House of Parliament a petition is presented against any Order comprised therein, the Bill, in so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills :
- (5.) The making of a Provisional Order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken before the making of such Order have been complied with :
- (6.) Every Act confirming a Provisional Order made by the Secretary for Scotland under this Act shall be a Public General Act.

Power of Secretary for Scotland.

93.—(1.) Where the Secretary for Scotland is authorised or required by this Act to make any inquiry, to make or confirm any order or bye-law, or to give any consent, sanction, or approval to any matter, to determine any difference, or make any adjustment, or otherwise to act under this Act, he may or shall, as the case may be, cause a local inquiry to be held by any person nominated by a writing under his hand, and such person shall be entitled to summon witnesses and examine them on oath, and call for the production of books, documents, and accounts.

Local inquiry,
&c.

(2.) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Secretary for Scotland.

(3.) Where the Secretary for Scotland causes any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the remuneration of any person appointed to hold the same, not exceeding three guineas a-day, shall be paid by the Councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Secretary for Scotland may direct, and the said Secretary may certify the amount of the costs incurred, and any sum so certified shall be a debt to the Crown from the Council or authority directed to pay the same.

Legal Proceedings.

94. Any offence against the provisions of this Act or of any bye-law made thereunder may be prosecuted, and any fine or penalty, together with the expenses of process, may be recovered, at the instance of the procurator-fiscal of Court or of the county clerk, before the Sheriff or any two justices of the peace under the provisions of the Summary Jurisdiction Acts.

Recovery and
application of
penalties.

Every prosecution shall be begun within six months after the offence was committed or the fine or penalty incurred.

§§ 94-101.

Every fine or penalty shall be paid into the county fund, and applied as the County Council shall determine.

Every person found liable in any fine or penalty recoverable summarily under this Act shall, failing payment thereof, with expenses, immediately or within a specified time, as the case may be, be liable to be imprisoned in terms of subsection (b.) of section six of the Summary Jurisdiction (Scotland) Act, 1881.

44 & 45 Vict.
c. 33.

Savings.

* * * *

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 securi-
ties and dis-
charge 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. §§ 101-105.

(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.

* * * *

Definitions.

103. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purpose of this section "print" includes any mechanical mode of reproduction. Definition of "written."

* * * *

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— Interpretation of certain terms.

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.

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

§ 105.

where part of a parish is situate within and part of it without any county or other area, includes each such part.

* * * *

The expression "Sheriff" means the Sheriff of the county, and includes sheriff-substitute.

* * * *

30 & 31 Vict.
c. 101.

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.

41 & 42 Vict.
c. 74.

49 & 50 Vict.
c. 32.

* * * *

27 & 28 Vict.
c. 53.

The expression "Summary Jurisdiction Acts" means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same.

44 & 45 Vict.
c. 33.

* * * *

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day.

The expression "person" includes any body of persons whether corporate or unincorporate.

The expression "ratepayer" means any owner or occupier liable in payment of any rate imposed under or in pursuance of this Act.

The expression "owner" has the same meaning as the expression "proprietor" has in the Valuation Acts, and shall not include a crofter within the meaning of the Crofters Holdings (Scotland) Act, 1886.

49 & 50 Vict.
c. 29.

The expression "property" includes all property, heritable and moveable, and all interests therein.

The expression "powers" includes rights, jurisdictions, capacities, privileges, and immunities.

The expression "duties" includes responsibilities and obligations.

The expression "liabilities" includes liability to any proceeding for enforcing any duty, and all debts and liabilities to which any authority are or would be, but for the passing of this Act, liable or subject, whether accrued due at

the date of the transfer by this Act effected or subsequently accruing, and including any obligation to carry or apply any money to any sinking fund, or to any other particular purpose. §§ 105-106.

The expression "costs" includes expenses.

The expression "rate" includes assessment.

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer.

PART IX.

TRANSITORY PROVISIONS.

General Provisions as to First Elections.

106.—(1.) The members of a County Council first elected under this Act shall not enter on their ordinary duties or become the County Council until the fifteenth day of May next after their election, or such other day as on the application of the Provisional Council the Secretary for Scotland may appoint. Preliminary action of county councillors as Provisional Council.

(2.) Such members shall, on the second Thursday next after the day fixed for the first election, and thenceforward from time to time until the day above mentioned in this section, meet and act as a Provisional Council for arranging to bring this Act into operation.

(3.) The provisional councillors shall at their first meeting elect one of their number to be chairman of that meeting and of the second meeting, and shall at their second meeting, or some adjournment thereof, proceed to elect as their chairman a person qualified to be convener of the county, and may from time to time fill up any vacancy in the office of such chairman, and the person elected chairman shall be chairman of the Provisional Council, and also on and after the appointed day convener of the county, and the term of office of such convener shall end on the next ordinary day of election of convener.

(4.) This enactment shall extend to the vice-chairman.

§ 107.

First proceedings of Provisional Council.

107.—(1.) The Provisional Council, after disposing of the preliminary business, shall proceed to provide for bringing the various provisions of this Act into full operation on the appointed day or days, and to make the necessary arrangements with the several authorities whose powers and duties are transferred to them, and with reference to the distribution of duties among the different officers, and to provide for all matters which appear necessary or proper for enabling the County Council as constituted under this Act to discharge their duties, and for giving full effect to this Act.

(2.) The provisions of this Act with respect to the proceedings of the County Council shall apply to the proceedings of the Provisional Council, and any act of the Provisional Council may be signified under the hand of the chairman and any two members of the Council present at the meeting, and countersigned by the officer acting as their clerk.

(3.) The Provisional Council of a county shall be entitled to use the county buildings of that county, so that they do not interfere with the holding of any Court or any meeting of Commissioners of Supply or county road trustees, and the clerk of supply shall act as the officer of such Provisional Council; and farther, the Provisional Council may from time to time hire such buildings and appoint such interim officers as appear to them necessary for the performance of their duties, and the costs incurred in the hiring of such buildings, and payment of such officers, or otherwise in the performance of their duties, shall be defrayed as costs properly incurred by the County Council. And until such time as the said costs can be paid out of the county fund established under this Act, they may be provided for on the security of the said fund, without any other authority or consent than a resolution of the Provisional Council, by advance from any incorporated or joint-stock bank or person willing to make the same.

(4.) There shall be paid out of the general purposes rate to the clerk of the county such reasonable remuneration as the County Council may award for extra services rendered by him in bringing this Act into operation, and in acting

as such clerk, until his salary for acting as such clerk is fixed in manner provided by this Act. §§ 107-112.

(5.) The Quarter Sessions, Commissioners of Supply, County Road Trustees, and other authorities shall, by the appointment of committees, or the holding of sessions and meetings, and otherwise, make such provisions as are necessary or proper for making arrangements with the Provisional Council for carrying this Act into effect; and the Quarter Sessions, Commissioners of Supply, County Road Trustees, and other authorities aforesaid may, after the appointed day, meet in like manner as if this Act had not passed, for the purpose of receiving reports from the committees and county officers for the period subsequent to the last Quarter Sessions or meeting of Commissioners of Supply or County Road Trustees and other authorities, and prior to the appointed day, and for otherwise concluding and winding up their business.

* * * *

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 15th 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.

Appointed day.

* * * *

Transitional Proceedings.

112.—(1.) Every rate and requisition for sums of money made before the appointed day may be levied and collected, and proceedings for the enforcement thereof taken in like manner, as nearly as may be, as if this Act had not passed.

Current rates.

§§ 112-119. (2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and other consequential proceedings had in like manner, as nearly as may be, as if this Act had not passed, and every officer whose duty it is to make up any accounts, or to account for any portion of the receipts and expenditure in any account shall, until the audit is completed, be deemed for the purpose of such audit to continue in office and be bound to perform the same duties and render the same accounts as before the appointed day.

* * * *

Transitory provisions as to public health local authorities.

117. The members of a Local Authority of a parish under the Public Health Acts holding office at the appointed day shall continue to hold office until the thirty-first day of May next after the first election of county councillors under this Act and no longer; and thereafter the District Committee constituted under this Act shall come into office.

Existing Officers.

Existing officers and servants.

118.—(1.) All persons who at the appointed day hold office as treasurer, collector, assessor, inspector, or surveyor, or as 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 perform-

ing 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.

§§ 119-120.

(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.

(4.) The provisions of this section shall, subject to the provisions of the Police Act, 1857, and of this Act, apply to the chief and other constables of any police force, and to any officers employed in connection with such force.

20 & 21 Vict.
c. 72.

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

Compensation
to existing
officers.

§ 120.

the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the County Council a claim under his hand, setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief: Provided that it shall not be competent for any person to make any claim for compensation after the expiration of two years after the passing of this Act.

5 & 6 Will. IV.
c. 62.

(3.) Such statement shall be submitted to the County Council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4.) If a claimant is aggrieved by the refusal of the County Council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such Council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the Council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount, ought to be granted to the claimant, and such determination shall be final.

(5.) Any claimant under this section, if so required by any member of the County Council, shall attend at a meeting of the Council and answer upon oath, which the convener or vice-convener may administer, all questions asked by any member of the Council touching the matter set forth in the claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the Council on granting the compensation, or in case of appeal, by the Treasury, and shall be a debt due to him from the County Council, and may be enforced accordingly, in like manner as if the Council had entered into a bond to pay the same. §§ 120-121.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other County Council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(8.) All expenses incurred by a County Council in pursuance of this section shall be paid out of the county fund as a payment for general county purposes.

(9.) For the purposes of this section county road clerks and district road clerks shall be deemed to be existing officers.

121. All enactments inconsistent with this Act are hereby repealed; and in the case of every repeal under the provisions of this Act the following provisions shall have effect; that is to say, Repeal of Acts.

(1.) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment in this Act:

(2.) The repeal shall not affect—

(a.) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

121.

- (b.) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed ; or
 - (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
 - (d.) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.
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APPENDICES.

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APPENDIX I.

PRACTICAL FORMS PREPARED BY INSTRUCTIONS OF 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 inspector * 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 times as may seem fit; and the petitioner therefore

* This petition may run in name of the Local Authority.

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 com-
peared the said petitioner, who, being solemnly sworn, 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 inspec-
tor 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.*

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 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,

* 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.

either the certificate or a requisition of not fewer than ten inhabitants is essential.

Unto [Sheriff, magistrate, or justice. Under § 16 heads (e), (g), (h), and (i), 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 appoints [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.

[Place and date.]

Remits to _____ to examine the premises, and report as to the alleged nuisance.

Note.—It is at the discretion of the judge to pronounce this interlocutor, § 105.

OR,

[Place and date.]

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, § 105.]

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 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 ["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.

Approves of the report of the auditor on the [Place and Date.] expenses; modifies the same to the sum of for which, and expense of extract, decerns.

INTERLOCUTOR REFUSING THE PETITION.

The [Sheriff, magistrate, or justice] [Date and Place.] refuses or dismisses the petition: finds the petitioner liable in the sum of of modified expenses, and decerns.

¹ Insert, as the case may be, "watercourse," "ditch," "gutter," or "drain."

² Insert, as the case may be, "public road," "street," or "lane."

³ Describe the road, street, or lane by its name (if any) and by its position.

⁴ Describe the premises by their position and by their name (if any).

⁵ Specify owner or owners.

⁶ Specify occupier or occupiers.

⁷ Insert, as the case may be, "sewer," or whatever "other structure," is required.

⁸ Insert, as the case may be, "sewer as aforesaid," or "structure as aforesaid."

⁹ Specify the point from which, and the point to which, the sewer or other structure is to run.

¹⁰ Insert, as the case may be, "sewer," or "structure."

No. 4.

[Forms for Minute and Notice for laying down Sewers, § 24.]

Form A.

MINUTE.

Whereas a¹ along the side of a² being³ is used or partly used for the conveyance of water, sewage, or other matter from the premises at⁴ owned by⁵ and occupied by⁶ and cannot, in the opinion of the Local Authority of be rendered free from foulness or offensive smell without the laying down of a⁷ the said Local Authority do hereby resolve to apply for the approval of the Board of Supervision, in terms of § 24 of the Public Health (Scotland) Act, 1867, to the laying down of a⁸ from⁹ to⁹ as indicated by a line on the plan which is marked as relative hereto, the said¹⁰ being within the limits of the district of the said Local Authority.*

Signed by order and on behalf of the Local Authority of .

(Place)

(Date)

* 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 the¹ of¹ 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 a² 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 the³ day of³ and they will be transmitted to the Board of Supervision along with the application.

¹ Insert a day not less than three weeks nor more than six weeks after the date of notice.

² Insert, as the case may be, "sewer," or "structure."

³ Insert a day not less than three weeks after the date of notice.

(Place)

(Date)

(Copy minute to be subjoined.)

[*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 person 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 deliverance 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.

The Sheriff appoints the foregoing petition and this deliverance to be served on [Place and Date.]
 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.

See also form of petition for destruction of unsound meat, p. 168.

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 communica-
ting 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, ETC.

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 School-house, 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 school-house 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 an Hospital or Place for the reception of the Sick exists, with Procedure thereon, § 42, or for removal of other persons.]

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

I hereby certify, on soul and conscience, that _____ [Place and date.] 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 AN HOSPITAL OR PLACE FOR THE RECEPTION OF THE SICK EXISTING WITHIN THE DISTRICT OF THE LOCAL AUTHORITY OF _____

I, _____ [Place and date.] [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.

I, Sanitary Inspector of the district of [Place and date.] 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,

I, Sanitary Inspector of the district of [Place and date.] 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.

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. [Place and date.]

OR,

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. [Place and date.]

No. 11.

[Certificate by a legally qualified Medical Practitioner for the removal of a dead body where a place for the reception of the dead has been provided, with order thereon, § 43.]

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

I hereby certify, that [Place and date.] 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.

I, [Sheriff, magistrate, or justice], hereby, in terms of § 43 of the Public Health (Scotland) Act, 1867, order the before mentioned dead [Place and date.]

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 dwelling-places is prohibited from and after the date hereof, under the penalties provided by the said Act. This notice given on the _____ day of _____ 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 service, § 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], otherwise 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, delivering it to him personally at the premises, &c.] in presence of the undersigned 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, ETC.

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 with-
held 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 Lord-
ship 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 pro-

poses], 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 betwixt [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 personally at _____, &c., see § 110], in presence of the undersigned witness, 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 propriety 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 mentioning 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.

GENERAL FORM—PETITION TO RECOVER PENALTIES OR OTHER SUMS DUE TO LOCAL AUTHORITY UNDER THE PUBLIC HEALTH (SCOTLAND) ACT, 1867.

Under the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

Unto the Honourable (Sheriff, Magistrates, or Justices ; must be to the Sheriff if under § 16, heads (h), (i), (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 § 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 (where a sum of money is sought to be recovered, substitute here 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") to convict him of the foresaid contravention or offence, and to adjudge him 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.

FORM OF PETITION FOR DESTRUCTION OF UNSOUND MEAT, § 26.

Unto the Honourable the Sheriff of the county of

The petition of A. B., clerk of the magistrates and council of acting under the General Police and Improvement (Scotland) Act, 1862, being the Local Authority for under the Public Health (Scotland) Act, 1867.

Humbly sheweth,—

That the petitioner has been duly empowered by the said Local Authority for , to make complaints and take all proceedings

on their behalf under the said Public Health (Scotland) Act 1867.

That C. D. the sanitary inspector for appointed and acting under the said Act, on the day of in virtue of the powers conferred on him by said Act, particularly § 26 thereof, entered the public slaughter-house, situated in Street, being "premises" within the meaning of the said last mentioned Act, where carcases of animals were exposed for sale, or which there was probable cause for believing to be intended for human food, and then and there inspected, examined, and seized, one of said carcases—viz., the carcase of a bullock, belonging to or found in custody of E. F., wholesale butcher, Street, and residing at No. Street, which appeared to him, the said sanitary inspector, to be unfit for such food.

May it therefore please your Lordship to grant warrant to cite the said E. F. to appear before you to be heard in answer to this petition; and if it appear to your Lordship that said carcase is unfit for the food of man, by a writing under your hand to 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, all in terms of the said Public Health (Scotland) Act, 1867.

According to justice, &c.

(Signed) A. B.

BYE-LAWS RECOMMENDED BY THE BOARD OF SUPERVISION FOR REGULATING THE DUTIES OF SANITARY INSPECTORS AND INSPECTORS OF COMMON LODGING HOUSES.—(28th July, 1873.)

1. The sanitary inspector shall attend, if required, meetings of the Local Authority, and committees thereof.
2. The sanitary inspector shall make all such investigations and reports relating to nuisances and common lodging houses, or as to the execution of the Public Health Act, as may be ordered by the Local Authority or the Board of Supervision.
3. The sanitary inspector shall from time to time prepare such special reports as to the sanitary condition of the parish or burgh or district to which he may be appointed, and also as to the condition of all common lodging houses within the said parish or burgh or district, as may be required by the Local Authority or the Board of Supervision.
4. The sanitary inspector shall insert in a book, to be kept for the purpose (per 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.

5. The sanitary inspector shall personally, or by an assistant to be appointed by the Local Authority, visit and enquire as to the sanitary state of all parts of the parish or burgh or 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.

6. The sanitary inspector shall personally, or by an assistant to be appointed by the Local Authority, visit and enquire as to the condition of each common lodging house within the parish, burgh, or 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.

7. The sanitary inspector shall report in writing to the Local Authority all unregistered common lodging houses.

8. In addition to the stated periodical visits and inspections required by these bye-laws, the sanitary inspector shall make such investigations and visits as may be requisite, in order to ascertain the actual sanitary condition of any house or place, or premises, or lodging house, within his parish, burgh, or district, and record the fact and the result in his journal.

9. 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 (per Forms Nos. 2 or 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.

10. 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 bye-law) has taken place, he shall immediately make inquiry, and report the result in writing to the Local Authority.

11. 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. But if there be no medical officer, he shall, on his own responsibility, adopt such measures for the care and proper treatment of such patient or patients as may, with the advice of a medical man, be deemed necessary, to be reported without delay to the Local Authority.

12. 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.

13. The sanitary inspector shall, if necessary, call upon the police to aid him in the execution of his duty.

14. It shall be the duty of the sanitary inspector to report without delay to the Board of Supervision and Local Authority, the existence of any disease of an infectious or contagious kind within the district of the Local Authority, which, in the opinion of the medical officer, threatens to become dangerous or epidemic within the district.

[TABLE.]

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 outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, the medical officer shall visit the spot without delay, and inquire into the causes and circumstances of such outbreak, 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 lawfully authorised, assist in the execution of the same.

6. The medical officer shall immediately report to the sanitary inspector, for the information of the Board of Supervision and Local Authority, the existence of any disease of an infectious or contagious kind in his district, which in his opinion threatens to become dangerous or epidemic.

7. 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 over-crowding 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.

8. The medical officer shall perform all the duties imposed upon him by any bye-laws 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.

9. 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.

10. 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.

11. The medical officer shall at least once in every half-year report, in writing, to the Local Authority, his proceedings and the measures which in his opinion should be adopted for the improvement or protection of the public health in the district, and he shall append to each such report a statement as to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

12. 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.

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 bed-clothes 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 bed-clothes 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, 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.

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.

THE DAIRIES, COW-SHEDS, AND MILK-SHOPS ORDER OF 1885.

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, Cow-Sheds, 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 30th day of June, 1885.

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, Cow-Sheds, 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, dairyman, 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 cow-shed 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 dairyman 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 dairyman, 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, dairyman, or purveyor of milk, and need not, by reason thereof, be registered.

Construction and Water Supply of New Dairies and Cow-Sheds.

7. (1.) It shall not be lawful for any person following the trade of cow-keeper or dairyman to begin to occupy as a dairy or cow-shed 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 cow-shed.

(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 Cow-Sheds.

8. It shall not be lawful for any person following the trade of cow-keeper or dairyman to occupy as a dairy or cow-shed 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 a 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 cow-shed 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 cow-sheds 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 cow-shed, 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, Cow-sheds, and Milk-shops Order of July, 1879, or any Order revoked thereby, and in force 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, Cow-sheds, 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.

CIRCULAR ISSUED BY BOARD OF SUPERVISION
RELATIVE TO THE CONTAGIOUS DISEASES (ANI-
MALS) ACTS, 1878-1886.

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 milkshops, in terms of § 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 circular of the Board, dated 16th August last, indicated in a general way the purposes of the Act and of the Order. 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 registration, 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 entrusted 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.

II. 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, sir, your obedient servant,

JOHN SKELTON, *Secretary*.

* *I.e.*, the Amending Order issued by the Board of Supervision in 1887. Its provisions are these, viz. :—

And 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, Cow-sheds, 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 27th day of January, in the year 1887.

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.

DOVER HOUSE, WHITEHALL,
8th February, 1887.

OPINION OF COUNSEL OBTAINED BY THE BOARD, FEBRUARY, 1872.

QUERIES ON SECTION 16.

I.

Reference is made to section 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 section 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.

II.

Reference is made to section 16, subdivision (*e*), 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.

QUERIES ON SECTION 30.

1. When consent to the establishment of a trade or business under section 30 of the Public Health Act has been *refused* by a Local Authority, can the party dissatisfied competently bring the resolution of the Local Authority under the review of the Board of Supervision?
2. Can the Board competently reverse a resolution of the Local Authority 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 Local Authority 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 Local Authority; 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; 2nd, The locality, as entitled to protection or not; and 3rd, 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 Local Authority 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

(Signed)

GEORGE YOUNG.
E. S. GORDON.
GEO. MONRO.

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APPENDIX II.



44 & 45 VICTORIÆ, c. 37.

An Act to consolidate the Alkali Acts, 1863 and 1874, and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved.—[11th August 1881.]

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:

§§ 1-3.

Preliminary.

Short title.

1. This Act may be cited as the Alkali, &c., Works Regulation Act, 1881.

Commencement of Act.

2. This Act shall (save as otherwise provided in this Act) come into operation on the first day of January 1882, which date is hereinafter referred to as the commencement of this Act.

PART I.

Alkali Works and Alkali Waste.

Condensation of muriatic and other acid gases in alkali works.

3. Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector—

(a.) Of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(b.) Of the acid gases of sulphur and nitrogen which are evolved in the process of manufacturing sulphuric acid or sulphates

in the work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke or gases, escaping into the chimney or into the atmosphere, does not exceed what is equivalent to four grains of sulphuric anhydride.

§§ 3-5.

The owner of any alkali 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.

4. In addition to the condensation of acid gases as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

Best practicable means to be used for preventing discharge of noxious and offensive gases in alkali works.

If the owner of any alkali work fails, in the opinion of the Court having cognisance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

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.

Acid drainage and alkali waste to be kept apart.

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.

39 & 40 Vict. c. 75.

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

§§ 5-9.

be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or discharge of alkali waste.

6. Alkali waste shall not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom.

Any person, who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section, shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Prevention of nuisance from alkali waste already deposited or discharged.

7. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and, if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof, he shall be liable to a fine not exceeding twenty pounds, and, if he does not proceed to use such means within such time as shall be limited by the Court inflicting such fine, then he shall be liable to a further penalty of five pounds per day from the expiration of the time so limited.

PART II.

Sulphuric Acid Works and Other Specified Works.

Condensation of acid gases in sulphuric acid works.

8. Every sulphuric acid work as defined in the schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector, of the acid gases of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in such work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any sulphuric acid 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.

Best practicable means to be used for preventing discharge of noxious and offensive gases in scheduled works.

9. The owner of any work specified in the schedule to this Act (herein-after referred to as a scheduled work) shall use the best practicable means for preventing the discharge into the atmosphere

of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification, in the case of sulphuric acid works, that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

§§ 9-10.

If the owner of any such work fails, in the opinion of the Court having cognisance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

10. An inspector may from time to time inquire whether, in any works in which the extraction of salt from brine is carried on, herein-after called salt works, means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of sulphurous and muriatic acid gases evolved in such works, or either of such gases, or for rendering such gases, or either of them, harmless or inoffensive when discharged; also whether in any works in which aluminous deposits are treated for the purpose of making cement, herein-after called cement works, such means, as aforesaid, can be adopted with respect to the noxious or offensive gases evolved from such works.

Provisional Order
to prevent dis-
charge of certain
gases in salt
works.

Where it appears to the Local Government Board that such means can be adopted at a reasonable expense, the Board may from time to time, by order, require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount or proportion, in the case of salt works, of sulphurous or muriatic acid gas, and in the case of cement works, of any noxious or offensive gas, which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they see fit.

An order made under this section shall be provisional only and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act," when used in this Act shall be deemed to include an Order so confirmed, so far as is consistent with the tenor of that Order.

The Board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them under this section before any Bill for confirming the same is introduced into Parliament.

An order made, under this section, may impose fines for a breach

§§ 10-16. of its provisions of like amount as any fines imposed by this Act for offences against this Act.

* * * *

(ii.) *Inspection.*

Appoint-
ment 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.

26 & 27 Vict. c.
124.
37 & 38 Vict. c.
43.

The inspector appointed before the commencement of this Act under the Alkali Acts 1863 and 1874, shall be deemed to be the first chief inspector under this Act, and the sub-inspectors appointed under those Acts before the commencement of this Act shall be deemed to be inspectors appointed under this Act. A person holding the office of chief inspector (other than the person at the commencement of this Act discharging the duties thereof), or inspector shall not be employed in any other work except by or with the sanction of the authority appointing him to such office.

Disqualification
of certain
persons for
inspectors.

15. A person who acts or practises as a land agent, or who is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act, or who is employed in or about or in connection with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act.

Powers of
inspectors.

16. For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture,

enter and inspect any work to which this Act applies, and examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with; and may enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste; and generally may inquire into all matters and processes which tend to show compliance or non-compliance with such of the provisions of this Act as are for the time being applicable to the work or place entered, or which seem necessary or proper for the execution of his duties under this Act.

§§ 16-19.

An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any experiments he may think proper for the purpose of the execution of his duties under this Act.

17. The owner of any work to which this Act applies shall, on the demand of the chief inspector, furnish him within a reasonable time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on.

Facilities for inspection.

The owner of every such work and his agent shall render to every inspector all necessary facilities for an entry, inspection, examination, and testing, in pursuance of this Act.

Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds.

18. The chief inspector shall on or before the first day of March in every year make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, who shall furnish him with a detailed account of the number of inspections of works in their districts, and the recorded escapes of acid gases from such works during the preceding year, and a copy of such report shall be laid before both Houses of Parliament.

Annual report to Local Government Board.

19. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake

Additional inspector on application of sanitary authorities.

§§ 19-22.

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.

* * * *

(iv.) *Procedure.*

Provision as to
calculation of
acid.

21. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases, shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Recovery of fines
for offences
against Act in
county court.

22. The following regulations are hereby enacted with respect to the recovery of fines for offences other than offences against a special rule:

Every such fine shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed:

The action shall be brought, with the sanction of the central authority, by the chief inspector, or by such other inspector as the Local Government Board may in any particular case direct, within three months after the commission of the offence, and for the purposes of such action the fine shall be deemed to be a debt due to such inspector:

The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant:

The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

If either party in any action 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 on by both parties or their solicitors, and if they cannot agree, to be settled by the judge of the county court on the application of the parties or their solicitors :

§§ 22-23.

The court of appeal may draw any inference 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 High Court of Justice, or any division or judge thereof, on such appeals, shall apply to an action for a fine 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 :

Within the city of London and the liberties thereof the Sheriff's court, established by a Local Act passed in the eleventh year of the reign of her present Majesty, chapter seventy-one, intituled an Act for the more easy recovery of small debts and demands within the city of London and the liberties thereof, shall be deemed to be the county court for the purposes of this Act :

In Scotland the court of the Sheriff or sheriff substitute of the county in which the offence is committed shall be the county court for the purposes of this Act, and may award costs to either party, and may sentence the offender to imprisonment for any period not exceeding six months, unless the fine and costs be previously paid ; and any decision or sentence of such Sheriff or sheriff substitute shall be subject to review and appeal according to law :

In Ireland such fines as are in this section mentioned may be recovered by civil bill, in the manner and with the appeal directed by an Act passed in the fourteenth and fifteenth years of Her present Majesty, chapter fifty-seven, or any Act or Acts amending the law relating to civil bills.

23. In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule—

Further provisions as to recovery of fines in county court.

(a.) It shall be sufficient to allege that any work is a work to which this Act applies, without more ; and

(b.) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing

§§ 23-26.

to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognisance of the matter.

A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

Application
of fines.

24. All fines recovered under this Act, except in respect of offences against a special rule, shall be paid into the receipt of Her Majesty's Exchequer.

Discharge of
owner on con-
viction of actual
offender.

25. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent, servant, or workman, whom he shall charge by name as the actual offender, without his knowledge, consent, or connivance; in which case such agent, servant, or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof, and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case in which it is made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge, consent, or connivance of the owner, and in contravention of his orders.

Service of notices.

26. Any notice, summons, or other document under this Act may be in writing or print, or partly in writing and partly in print.

Any notice, summons, or document required or authorised for the purposes of this Act to be delivered to, or served on, or sent to the owner of any work, may be served by delivering the same to the owner, or at his residence or works; it may also be served or sent

by post by a prepaid letter, and if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and the same shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.

§§ 26-29.

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.

Complaint by sanitary authority in cases of nuisance.

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.

The expression "sanitary authority" in this section includes as regards the Metropolis, except the City of London, any vestry or district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the City of London shall mean the Commissioners of Sewers of the said city.

18 & 19 Vict. c. 120.
38 & 39 Vict. c. 55.

28. Where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured by such nuisance may proceed against any one or more of such persons, and may recover damages from each person made a defendant in proportion to the extent of the contribution of such defendant to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section shall not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of this Act have been complied with, and were complied with when the nuisance arose.

Actions in case of contributory nuisance.

(v.) *Definitions; Repeal; Saving.*

29. In this Act, unless the context otherwise requires—

Interpretation of terms.

§§ 29-31.

"Alkali work" means every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and for the purpose of this definition the formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda.

"Noxious or offensive gas" does not include sulphurous acid arising from the combustion of coal.

"Owner" means the lessee, occupier, or any other person carrying on any work to which this Act applies.

"Prescribed" means prescribed from time to time by the Local Government Board, and the "Local Government Board" means the Local Government Board established by the Local Government Board Act, 1871.

"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.

"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.

"Person" includes a corporation.

34 & 35 Vict. c.
70.

38 & 39 Vict. c.
55.
30 & 31 Vict. c.
101.
41 & 42 Vict. c.
52.

Repeal of 26 & 27
Vict. c. 124,
31 & 32 Vict. c.
36, and 37 & 38
Vict. c. 43.

30. The following Acts, that is to say—

The Alkali Act, 1863 (26 & 27 Vict. c. 124),

The Act to make perpetual the Alkali Act, 1863 (31 & 32 Vict. c. 36), and

The Alkali Act, 1874 (37 & 38 Vict. c. 43),

are hereby repealed without prejudice to anything done or suffered before the commencement of this Act, or to the recovery of any penalty incurred before or proceedings pending at the commencement of this Act; and any such penalty or proceeding may be recovered or continued as if this Act had not been passed.

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.

SCHEDULE.

List of Works.

- (1.) Sulphuric acid works, that is to say, any works in which the manufacture of sulphuric acid is carried on (not being alkali

works within the meaning of the foregoing Act, and not being works in which the manufacture of sulphuric acid is carried on in conjunction with the extraction of copper or other metals from ore);

- (2.) Chemical manure works, that is to say, any works in which the manufacture of chemical manure is carried on ;
- (3.) Gas liquor works, that is to say, any works in which gas liquor is used in any manufacturing process ;
- (4.) Nitric acid works, that is to say, any works in which the manufacture of nitric acid is carried on ;
- (5.) Sulphate of ammonia works and muriate of ammonia works, that is to say, any works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on ; and
- (6.) Chlorine works or works in which chlorine, bleaching powder, or bleaching liquor is made.

§ 31.
—



41 VICTORIÆ, c. 16.

*An Act to consolidate and amend the Law relating to
Factories and Workshops.*—[27th May 1878]

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 :

§§ 1-3.

Preliminary.

Short title.

1. This Act may be cited as the Factory and Workshop Act, 1878.

Commencement
of Act.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act : Provided that at any time after the passing of this Act, any appointment, regulation, or order may be made, any notice issued, form prescribed, and act done which appears to a Secretary of State necessary or proper to be made, issued, prescribed, or done for the purpose of bringing this Act into operation at the commencement thereof.

PART I.

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

(1.) *Sanitary Provisions.*

Sanitary condi-
tion 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.

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.

* * * *

PART II.

SPECIAL PROVISIONS RELATING TO PARTICULAR CLASSES OF FABRIKES AND WORKSHOPS.

(1). *Special Provisions for Health in certain 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.

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

§§ 4-34.

Notice by inspector to sanitary authority of sanitary defects in factory or workshop.

Limewashing and washing of the interior of factories and workshops.

Limewashing, painting, and washing of the interior of bakehouses.

§§ 34-61.

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.

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.

* * * *

Exception of
domestic factories
and workshops
and certain other
workshops from
certain provisions
of the Act.

61. The provisions of this Act which relate—

(1.) To the cleanliness (including limewashing, painting, varnishing, and washing) or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop; . . . shall not apply—

(a.) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is, by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there; or

(b.) To a workshop which is conducted on the system of not employing children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.

* * * *

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing), or to freedom from effluvia.

§§ 61-68.

* * * *

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, Powers of inspectors.

- (1.) To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop: and
- (2.) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and
- (3.) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and
- (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; and
- (5.) To enter any school in which he has reasonable cause to believe that the children employed in a factory or workshop are for the time being educated; and
- (6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and
- (7.) To exercise such other powers as may be necessary for carrying this Act into effect.

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

Every person who wilfully delays an inspector in the exercise of any power under this section, or who fails to comply with a requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or prevents a child, young

§§ 68-70.

person, or woman from appearing before or being examined by an inspector, or attempts so to conceal or prevent a child, young person, or woman, shall be deemed to obstruct an inspector in the execution of his duties under this Act: provided always that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night, twenty pounds; and where an inspector is so obstructed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or where the offence is committed at night, five pounds.

Restriction on entry of inspector into dwellings.

69. An inspector before entering, in pursuance of the powers conferred by this Act, without the consent of the occupier, any room or place actually used as a dwelling as well as for a factory or workshop, shall, on an affidavit or statutory declaration of facts and reasons, obtain written authority so to do from a Secretary of State, or such warrant as is hereinafter mentioned from a justice of the peace.

The affidavit or statutory declaration above mentioned may be inspected or produced in evidence in all respects the same as an information on oath before a justice.

A justice of the peace, if satisfied by information on oath that there is reasonable cause to suppose that any enactment of this Act is contravened in any such room or place as aforesaid, may in his discretion grant a warrant under his hand authorising the inspector named therein at any time within the period named therein, but not exceeding one month from the date thereof, to enter, in pursuance of this Act, the room or place named in the warrant, and exercise therein the powers of inspection and examination conferred by this Act, and the fines and provisions of this Act with respect to obstruction of an inspector shall apply accordingly.

Certificates of appointment of inspectors.

70. Every inspector under this Act shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop, shall, if required, produce to the occupier the said certificate.

Every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or personates the inspector named in any such certificate, or falsely pretends to be an inspector under this Act, shall be liable to be imprisoned for a period not exceeding three months, with or without hard labour.

* * * *

§§ 89-91.

(5). *Legal Proceedings.*

89. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Prosecution of offences and recovery and application of fines.

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.

* * * *

91. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:

Limitation of time and general provisions as to summary proceedings.

- (1.) The information shall be laid within two months, or where the offence is punishable at discretion by imprisonment, or is a breach of the provisions of this Act with respect to holidays, within three months after the commission of the offence:
- (2.) The description of an offence in the words of this Act, or in similar words, shall be sufficient in law:
- (3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant:
- (4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more:
- (5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by

§§ 91-105.

which the occupier employing persons in the factory or workshop is usually known :

- (6.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

* * * *

Application of
Act to Scotland.

105. In the application of this Act to Scotland—

* * * *

30 & 31 Vict.
c. 101.

- (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 :

* * * *

27 & 28 Vict.
c. 53.

- (6.) The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same :

- (7.) The expression "court of summary jurisdiction" means the sheriff of the county or any of his substitutes :

* * * *

- (9.) The expression "county court" means the sheriff court :

- (10.) All matters required by this Act to be published in the London Gazette shall (if they relate exclusively to Scotland), instead of being published in the London Gazette, be published in the Edinburgh Gazette only :

- (11.) The expression "information" means petition or complaint.

- (12.) The expression "informant" means petitioner, pursuer, or complainer :

- (13.) The expression "defendant" means defender or respondent.

- (14.) The expression "clerk of the peace" means sheriff clerk.

- (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 :

- (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 : § 105.
—
- (18.) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such inspector :
- (19.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction :
- (20.) All penalties imposed and recovered under this Act shall be paid to the clerk of the court, and by him accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of her Majesty's Exchequer, and shall be carried to the Consolidated Fund :
- (21.) All jurisdictions, powers, and authorities necessary for the purposes of this section are conferred on the Sheriffs and their substitutes :
- (22.) Any person may appeal from any order or conviction under this Act to the Court of Justiciary, under and in terms of the Act of the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, or under any enactment amending that Act, or applying or incorporating its provisions, or any of them, with regard to appeals, or to the Court of Justiciary at Edinburgh under and in terms of the Summary Prosecutions Appeal (Scotland) Act, 1875. 33 & 39 Vict.
c. 62.
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46 & 47 VICTORIÆ, c. 53.

An Act to amend the law relating to certain Factories and Workshops.—[25th August, 1883.]

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,—

§§ 1-16.

Short title.

1. This Act may be cited as the Factory and Workshop Act, 1883.

* * * *

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 watercloset, earthcloset, 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 watercloset;
- (iii.) No drain or pipe for carrying off fœcal 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.

§§ 16-19.

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.

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.

Enforcement of law as to retail bakehouses by local authorities.

(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.

(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.

18. This Act shall be construed as one with the Factory and Workshop Act, 1878; and in this Act, unless the context otherwise requires,

Construction of Act and definitions. 41 & 42 Vict. c. 16.

* * * *

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.

Application of Act to Scotland. 30 & 31 Vict. c. 101.

* * * *



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 :

§§ 1-2.

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 manufactory, 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.

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.

Prohibition as to drainage into streams of sewers.

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.

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.

Prohibition as to drainage into streams from manufactories.

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

§§ 4-6.

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
streams 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.

§§ 6-8.

PART IV.

ADMINISTRATION OF LAW.

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:

Sanitary authority to afford facilities for factories draining into 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.

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.

Power of sanitary authority to enforce Act.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly

§§ 8-11. 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 cost 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 persist 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 default 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.

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.

Certificate of
Inspector of Local
Government
Board as to best
practicable
means.

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 the 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.

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

Restriction on
proceedings for
offences.

§§ 13-20.

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 Govern-
ment 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.

* * * *

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 hereinafter 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, 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 discolouration :

“Sanitary authority” means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same ;

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

§§ 20-21.
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PART V.

APPLICATION OF THE ACT TO SCOTLAND.

21. In the application of this Act to Scotland the following provisions shall have effect :

Modifications of
Act in Scotland.

- (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 :
- (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

§ 21.

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 :
- (9.) 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 inquire 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.

* * * *



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 :

§§ 1-3.

1. This Act may be cited as the Infectious Disease (Notification) Act, 1889. Short title.

2. This Act shall extend—

- (a.) to every London district after the expiration of two months from the passing of this Act, and Extent of Act.
- (b.) to any urban, rural, or port sanitary district after the adoption thereof.

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 :—

Notification of infectious disease.

- (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

§§ 3-5.

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.

(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.

§§ 5-7.

(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.

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.

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.

Power to local authority to extend definition of infectious disease.

(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,

§§ 7-13.

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-disqualifi-
cation 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 borough, 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 district which nearest adjoins the place where such ship, vessel, or boat is lying. §§ 13-17.

(3.) This section shall not apply to any ship, vessel, or boat belonging to any foreign Government.

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. Saving for local Act.

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. Exemption of Crown buildings.

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 other person in charge thereof. Definitions.

17. In the application of this Act to Scotland—

The expression "Local Government Board" shall mean Board of Supervision : Application of Act to Scotland.

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.

* * * *



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ABBREVIATIONS USED IN THE INDEX.

C. C.	County Council.
D. C.	District Committee.
L. A.	Local Authority.
L. G. Act.	Local Government (Scotland) Act, 1889.
M. O.	Medical Officer.
P. H.	Public Health.
S. I.	Sanitary Inspector.

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