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8

ON DIFFICULTIES

WHICH EXIST

IN ADMINISTERING

SOME OF THE

SANITARY ACTS OF PARLIAMENT.

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LONDON:
HARRISON, BOOKSELLER TO THE QUEEN AND H.R.H. THE PRINCE OF WALES,
59, PALL MALL.

KNIGHT AND CO., 90, FLEET STREET,
Publishers by Authority to the Poor Law Board, and to the Home Office, for the purposes of the Local Government Act, 1858.

1869.

PREFACE.

In consulting some of the Acts of Parliament which form part of our Sanitary Code, I found so much that seemed to be perplexing that I was induced to examine them carefully. The notes which I made in the course of that examination I have put together in the shape of the annexed paper, "On Difficulties which exist in administering some of the Sanitary Acts of Parliament."

I found that the Legislature had not, in all cases, distinctly directed what Department or Departments should see that the several Acts were carried into proper execution. It seemed to me that if Departmental action on the part of the two principal offices concerned* (the Privy Council

* In the early part of November, 1868 (as reported in the local newspapers) correspondence was going on between the Medical Department of the Privy Council Office and the Croydon Board of Health as to the existence of nuisances in one part of Norwood, and correspondence was also going on between the Local Government Act Office and the same Local Board as to the existence of another nuisance of a similar description in another part of Norwood. In each case it was the fear that disease and sickness would result from the existence of the nuisance which induced the complainant to make application for Governmental interference.

Office and the Home Office) had been advisedly allotted by Parliament, and such division rigidly adhered to, much of the fragmentary legislation which has been one cause of the present intricate and perplexing state of the Sanitary Code would probably not have taken place; and, so long as the present want of a good system continues, there will be, it is feared, but little hope of sanitary matters being dealt with in the manner which their great importance to the country demands.

The annexed paper is not intended to be an exhaustive one, nor to set forth all the perplexities of the various sanitary enactments; but merely to call attention to some instances which give rise to the perplexities and doubts which surround much of the action of sanitary authorities, and to some omissions which would appear to have been made by the Legislature.

J. B. H.

Privy Council Office,
January 14, 1869.

On Difficulties which Exist in Administering some of the Sanitary Acts of Parliament.

In order to bring clearly into view the very intricate state in which the law is with reference to the powers of local authorities for the removal of nuisances, for the provision of proper drainage and water supply, and for the doing of other matters and things intimately connected with the public health, it is necessary that some account should be given of the earlier provisions of the legislature on these matters, as by that means, perhaps, a reader might be able to understand, with less difficulty, the various phases through which this part of sanitary legislation has, at different times, passed. How Parliament has, at one time, put the authority to remove nuisances into the hands of Vestries; how it has at another time taken it out of the hands of Vestries and placed it in the hands of Boards of Guardians and Local Boards of Health; and how it has again taken a portion of it out of the hands of Boards of Guardians and replaced it in the hands of Vestries, are matters which, to those unacquainted with the peculiar complication of the various Health Acts, must appear incredible. These may be taken

as illustrations of the confusion arising from the want of some definite guiding principle.

The first Act which was passed with the view of procuring the abatement of nuisances was in the year 1846. By that time it had become an acknowledged fact that many epidemic diseases were much aggravated, if not, in some instances, actually caused by a state of filth, such as was then, and even now is, constantly to be met with, and the absence of an efficient system for generally regulating the sanitary circumstances of places and persons. The reports of the various Commissions which had, in previous years, made inquiry into the sanitary and social conditions of numerous districts in this country may undoubtedly be assigned as one reason of the Legislature moving in this matter. But, probably, the action of Parliament was hastened by the fear of another visitation by that much dreaded pestilence, Asiatic Cholera. The fact to which people commonly had persisted in shutting their eyes was then seen, viz., that our best protection against cholera lay in the removal of filth. The consequence was, that the Government of that day prepared a measure which subsequently became the Act of Parliament, 9 and 10 Vict., cap. 96. The provisions of this Act were of temporary application only, but, before its expiration, a permanent Act, the Nuisances Removal Act of 1848 (11 and 12 Vict., cap. 123), was passed.

Previous to the passing of the 11 & 12 Vict.,

cap. 123, but in the same session of Parliament, another Act relating to health matters had been passed. This was the 11 & 12 Vict. cap. 63, well known as the Public Health Act, 1848. By this Act a new Department of the Government was established, having cognizance of matters relating to the public health. This Department was called the General Board of Health, and was invested with various powers, as the preamble to the Act says, "for improving the sanitary condition of towns and populous places in England and Wales," and for placing, as far as practicable, "the supply of water to such towns and places, and the sewerage, drainage, cleansing, and improving thereof, under one and the same local management and control." The powers of this Board were only of temporary duration, but they were periodically renewed, with various modifications, until the year 1858, when the Board was abolished, certain of its powers being vested in the Privy Council, and certain other powers being transferred to a new branch of the Home Office, which was called the Local Government Act Office.

This Local Government Act greatly extended the powers which Parliament had given to centres of populations to execute their own sanitary works; but, it left numerous other less populated places which were in equal need of the execution of sanitary works, without any provision for their wants. This was partly remedied by the Sewage Utilization Act, 1865, and the Sanitary Act, 1866,

though certain places were even then shut out from the advantages to be derived from being able to supply themselves with good drainage and good water. By the Sewage Utilization Act of 1867, however, these powers were extended in the fullest manner to every place in England, and now no place is without a Local Authority for sewers and water supply, as well as for the removal of nuisances.

It will not be necessary to consider the 11 and 12 Vict., cap. 123 ("The Nuisances Removal and Diseases Prevention Act, 1848") and its amending Act, 12 and 13 Vict., cap. 111, as both of these Acts, in so far as England was concerned, were repealed on the 14th August, 1855, by the 18 and 19 Vict., cap. 121, which last Act, with those which have since been passed, and with one which had passed both Houses of Parliament a short time previously (the 18 and 19 Vict., cap. 116*) are those which, at the present time, are in force for the objects of preventing disease and of procuring the removal of nuisances. The Acts are:—

"The Public Health Act, 1848" (11 and 12 Vict., cap. 63).

* It is a strange fact that the Act which repealed the old Nuisances Removal and Diseases Act was not passed until after a new Code of Regulations for a portion of those Acts (viz., for the prevention of disease) had received the sanction of Parliament, so that there were two Acts co-existent. However, no inconvenience resulted from this, as both Acts received the Royal assent on the same day (August 14, 1855).

"The Diseases Prevention Act, 1855" (18 and 19 Vict., cap. 116).

"The Nuisances Removal Act for England, 1855" (18 and 19 Vict., cap. 121).

"The Local Government Act, 1858" (21 and 22 Vict., cap. 98).

"The Nuisances Removal and Diseases Prevention Act Amendment Act, 1860" (23 and 24 Vict., cap. 77).

"The Local Government Act, 1861" (24 and 25 Vict., cap. 61).

"The Local Government Act Amendment Act, 1863" (26 Vict., cap. 17).

"The Sewage Utilization Act, 1865" (28 and 29 Vict., cap. 75).

"The Sanitary Act, 1866" (29 and 30 Vict., cap. 90).

"The Sewage Utilization Act, 1867" (30 and 31 Vict., cap. 113).

"The Sanitary Act, 1868" (31 and 32 Vict., cap. 115).

I purpose to treat briefly of some of the more important points which arise under these Acts, dividing the consideration of the subject into five parts, as follows:—

I.—Local Authorities, who they are.

II.—The Duties of Local Authorities.

III.—Examples of the Anomalous Effects of some of the Acts in their practical administration.

IV.—Want of Principle in the Allotment of Supervising Powers to Departments of the Government.

V.—Conclusion. Some points for consideration in future legislation.

I.—Local Authorities, who they are.

The body which had to deal with sanitary matters, either in the shape of the removal of nuisances or the provision of drainage, &c., in any place for which such powers are conferred, was called the "Local Authority," and there was but one such local body for all sanitary purposes, as contemplated by the Public Health Act, 1848. It is true that the Local Authority was not in some places endowed with so much power as was the Local Authority in other places; but still whatever powers could be exercised for sanitary purposes were exercised by one body only. The Sewage Utilization Act of 1865, however, following the precedent set by the Diseases Prevention Act of 1855 (a measure of only temporary application on particular occasions) divided the hitherto single responsibility by assigning the execution of one set of sanitary works in a locality to one Local Authority, called the "Sewer Authority," and leaving the execution of another set of sanitary works in the same locality to another Local Authority, the "Nuisance Authority;" and in most cases this

TABLE showing what Bodies have been, and now are, empowered by Law to execute the Nuisances Removal Acts, and the Sewage Utilization Acts; and also showing the Different Changes made, and the Years in which they have been made respecti

	1846.	1848.	1849.	1855.	1860.	1865.	1866.	1867.	1868.
NUISANCES REMOVAL AUTHORITY *whose powers, now in some respects disputed, may be illustrated by an instance about which there has never been any doubt, the removal of stinking pigs.*	Any Town Council or other like Body, having jurisdiction within any Corporate Town, Borough, City, or Place; or any Trustees or Commissioners, or other like Officers acting under the provisions of any Act of Parliament, for the Drainage, Paving, or Cleansing, or managing or directing the Police in any Town, Borough, City, or Place, or for any of the above purposes; or in case there shall be no such Town Council or other like Body, or no such Trustees or Commissioners having jurisdiction or acting as aforesaid, in any Town, Borough, City, or Place, then the Guardians of the Poor, upon receiving a certificate in writing, signed by two duly qualified Medical Practitioners.	The Town Council, or any Trustees or Commissioners for the Drainage, Paving, Lighting, or Cleansing, or managing or directing the Police of any City, Town, Borough, or Place; or any other Body of a like nature; or any Commissioners of Sewers or Guardians of the Poor; on receipt of a notice in writing, signed by two or more inhabitant householders of the parish or place to which the notice relates.	The Guardians, Directors, Wardens, Governors, or Overseers of the Poor, or Parochial Board, or other like Officers having the management of the Poor, or acting under the authority of any local Act of Parliament for the Paving, Cleansing, Drainage, or Lighting any Town or Parish {*so far as prosecutions are concerned*}.	In any place within which the Public Health Act is or shall be in force, the Local Board of Health. In any other place wherein a Council exists or shall exist, the Mayor, Aldermen, and Burgesses by the Council, except in the City of London and the liberties thereof, where the local authority shall be the Commissioners of Sewers for the time being; and except in the City of Oxford and Borough of Cambridge, where the local authority shall be the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough. In any place in which there is no Local Board of Health or Council, and where there are or shall be Trustees or Commissioners under an Improvement Act, such Trustees or Commissioners. In any place within which there is no such Local Board of Health nor Council, body of Trustees or Commissioners, and where there is or shall be a Board for the repair of the highways of such place, that Board. In any place where there is no such Local Board of Health, Council, Body of Trustees, or Commissioners, nor Highway Board, a Committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the Surveyor or Surveyors of Highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the Vestry on the same day as the Overseers or Surveyors of Highways, and the first of such Committees may be chosen at a Vestry to be specially held for that purpose; And such Committee may consist of such number of members as the Vestry shall determine, not being more than twelve, exclusive of such Surveyor or Surveyors, and of such Committee three shall be a quorum. In any place wherein there is no such Local Board of Health, Council, Body of Trustees or Commissioners, Highway Board, or Committee appointed as aforesaid, and wherein there is or shall be a Board of Inspectors for Lighting and Watching under the Act 3 & 4 Wm. IV, c. 90, that Board with the Surveyors of Highways. In any place in which there is no such Local Board of Health, Council, Body of Trustees, or Commissioners, nor Highway Board, nor Committee appointed as aforesaid, nor Board of Inspectors for Lighting and Watching, the Guardians and Overseers of the Poor, and the Surveyors of the Highways in and for such place.	In any place within which the Public Health Act is or shall be in force, the Local Board of Health. In any other place wherein a Council exists or shall exist, the Mayor, Aldermen, and Burgesses by the Council, except in the City of London and the liberties thereof, where the local authority shall be the Commissioners of Sewers for the time being, and except in the City of Oxford and Borough of Cambridge, where the local authority shall be the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough. In any place in which there is no Local Board of Health or Council, and where there are or shall be Trustees or Commissioners under an Improvement Act, such Trustees or Commissioners. In any place within which there is no such Local Board of Health, Council, Body of Trustees, or Commissioners, if there be a Board of Guardians of the Poor for such place, or for any Parish or Union within which such place is situate, such Board of Guardians; and if there be no such Board of Guardians, the Overseers of the Poor for such place, or for the Parish of which such place forms part. In addition to the above Bodies, Highway Boards and Nuisances Removal Committees were empowered by section 3 of the statute 23 and 24 Vic., c. 77, to take action under the Nuisances Removal Acts. The section is as follows:— "That in any Place where a Highway Board or 'The Nuisances Removal Committee' chosen by the Vestry in pursuance of the said Act is subsisting, and at the time of the passing of this Act employs or joins with other Local Authorities in employing a Sanitary Inspector or Inspectors, such Highway Board or Nuisances Removal Committee may continue to act, and a like Committee may be annually chosen by the Vestry for such Place in the same manner as if this Act had not been passed; but in case in any year the Nuisances Removal Committee be not chosen for such Place in manner provided by the said Act, or if the Highway Board or Committee now subsisting or hereafter chosen fail for two months in any year to appoint or employ a Sanitary Inspector or Inspectors, the authority of such Highway Board or Committee shall cease, and no like Committee shall be chosen for such Place, and the same Body or Persons shall thenceforth be the Local Authority for the Place as if no such Highway Board or Committee had been appointed therein."	Same as in 1860	[The "Sanitary Act" passed in this year made an alteration in the local authorities for nuisance purposes. Section 17 of the Act directs that all powers vested in any Highway Board or "Nuisance Removal Committee" under the Nuisances Removal Acts shall determine. The effect was, that from and after August 7, 1866, Nuisance Removal Committees and Highway Boards ceased to be Nuisance Authorities, and the only Authorities having power under the Acts are as follows:—] In any place within which the Public Health Act is or shall be in force, the Local Board of Health. In any other place wherein a Council exists or shall exist, the Mayor, Aldermen, and Burgesses by the Council, except in the City of London and the Liberties thereof, where the local authority shall be the Commissioners of Sewers for the time being, and except in the City of Oxford and Borough of Cambridge, where the local authority shall be the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough. In any place in which there is no Local Board of Health or Council, and where there are or shall be Trustees or Commissioners under an Improvement Act, such Trustees or Commissioners. In any place within which there is no such Local Board of Health, Council, Body of Trustees, or Commissioners, if there be a Board of Guardians of the Poor for such place, or for any Parish or Union within which such place is situate, such Board of Guardians; and if there be no such Board of Guardians, the Overseers of the Poor for such place, or for the Parish of which such place forms part.	Same as in 1866	Same as in 1866; and, for o[…] the "Local Authority" und[…] Act, 1868.
SEWER AUTHORITY .. .. *whose functions, varying with each successive piece of legislation since the term was first used in 1865, may be illustrated by the typical power of sewer-construction.*	.. ..	.. ..	.. ..	.. ..	.. ..	In Boroughs, with the exception of the Boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board. — The Mayor, Aldermen, and Burgesses, acting by the Council. In the Boroughs of Oxford and Cambridge, and in any town or place not included within the above descriptions, and under the jurisdiction of Commissioners, Trustees, or other persons intrusted by any Local Act with powers of Improving, Cleansing, Lighting, or Paving any Town. — The Commissioners, Trustees, or other persons intrusted by any local Act of Parliament with powers of Improving, Cleansing, Lighting, or Paving the Town. In Parishes not within the jurisdiction of any Sewer authority hereinbefore mentioned, and in which a Rate is levied for the maintenance of the Poor. — The Vestry, Select Vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a Vestry or Select Vestry.	Same as in 1865	In Boroughs, with the exception of the Boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board. — The Mayor, Aldermen, and Burgesses, acting by the Council. In the Boroughs of Oxford and Cambridge, and in any town or place not included within the above descriptions, and under the jurisdiction of Commissioners, Trustees, or other persons intrusted by any Local Act with powers of Improving, Cleansing, Lighting, or Paving any Town. — The Commissioners, Trustees, or other persons intrusted by any local Act of Parliament with powers of Improving, Cleansing, Lighting, or Paving the Town. In Parishes not within the jurisdiction of any Sewer authority hereinbefore mentioned, and in which a Rate is levied for the maintenance of the Poor. — The Vestry, Select Vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a Vestry or Select Vestry. N.B.—*The term "Parish" includes any Township or other place in which a separate Rate is levied for the relief of the Poor.* Local Boards. Any Collegiate or other Corporate Body required or authorized by any Act of Parliament to divert its Sewers or Drains from any river, or to construct new Sewers. Any Public Department of the Government. Any person appointed by the Secretary of State, in pursuance of the forty-ninth section of the Sanitary Act, 1866, to perform the duty of a Sewer Authority, that has been guilty of a default as therein mentioned, so far as shall relate to the performance of such duties, and the purposes thereof. {*For section 27 only of the Sanitary Act.*} Local Boards.	Same as in 1867.
LOCAL AUTHORITY .. .. *(Under Sanitary Act of 1866.)*	.. ..	.. ..	.. ..	.. ..	.. ..	.. ..	.. ..	.. ..	Local Boards. Sewer Authorities.

"Nuisance Authority" corresponded with the body which had previously had sole jurisdiction and responsibility.

"The Nuisances Removal Act for England, 1855" (18 and 19 Vict., cap. 121) introduced into the code of Sanitary Legislation the generic term "Local Authority." It spoke of the "Local Authority" as the authority for executing the provisions of that Act. The term Local Authority thus became familiar to all those having anything to do with sanitary matters. But though the public knew the term meant some authoritative body, they were quite at a loss to understand how, in one place, it applied to one body, and how, in other places, which seemed exactly the same, it applied to a different body, or how again, in a third place, the powers which would be exercised by a single body, would be divided between two or more bodies, though in each case the same powers only would be exercised.

It will be of assistance in the consideration of this paper, if some account be given of the different Local Authorities which are endowed with powers under the several Acts.

After various vicissitudes (as shown in the accompanying Table, which sets forth what bodies have at different times been Local Authorities for the purposes of the Nuisances Removal, and some other, Acts), the following will be found to be a pretty accurate statement of the various bodies which now

are Local Authorities under the several Acts relating to sanitary measures, and also of the different powers which these bodies possess under the Acts.

There are several Local Authorities. There is, in some places, one Local Authority for dealing with some nuisances, and there is another Local Authority for dealing with other nuisances; and again, in other places, there is but one Local Authority for dealing with all nuisances. There is a Local Authority for the execution of the Local Government Act; and this authority is a Sewer Authority, a Nuisance Authority, a Water Supply Authority, and a Hospital Authority. There is a Local Authority for the purposes of the Sewage Utilization Acts (such as providing sewers and a water supply), which authority is termed the "Sewer Authority." There is a Local Authority for the purposes of the Sanitary Act, 1866, which authority may be either a Local Authority for nuisance purposes or a Local Authority for sewerage purposes. And there is a "Local Authority" for the purposes of the Sanitary Act, 1868, which body must be either a "Local Board" or a "Sewer Authority."

By the Nuisances Removal Act of 1855 various bodies were constituted the Local Authorities for the removal of nuisances; but in 1860, by the 23rd and 24th Vict., cap. 77, fresh bodies were named who should see to the execution of the Act, and, with the exception of Nuisance Removal Committees and Highway Boards, which were abolished,

for the purposes of the Nuisances Removal Acts, by section 17 of the Sanitary Act, 1866, those bodies are, at the present time, the Local Authorities for the Act.

By an Act passed last Session (Vict. 31 and 32, cap. 115), a new authority, named the "Local Authority," was created for executing duties* analogous to some of those hitherto performed by the Nuisance Authority under the Nuisances Removal Act of 1860, but it must not be placed in the category of "Nuisance Authorities." Before the first-mentioned Act was passed the term "Local Authority" was understood to mean any body of persons charged with the local execution of general sanitary and such like measures. But this wide meaning must now, I suppose, be restricted in its application, for the Act in question has given an express definition to the term "Local Authority," and declared it to mean either a Sewer Authority or a Local Board, and not, for instance, a Board of Guardians, acting as a Nuisance Authority.

The Local Authorities are as follows:—

Under the Nuisances Removal Acts.

1. In the Metropolis,—the Vestries and District Boards, acting in execution of the Act for the better Local Management of the Metropolis.

* The duties here referred to are the provision of earth-closets instead of water-closets, and the making of regulations for their construction and use.

2. In places where the Public Health Act, 1848, is in force, or where the Local Government Act, 1858, has been adopted,—the Local Boards elected for the purposes of those Acts, respectively.

3. In Corporate Towns, except the City of London, Oxford, and Cambridge,—the Town Council.

4. In the City of London,—the Commissioners of Sewers.

5. In Oxford and Cambridge,—the Improvement Commissioners.

6. In places where Local Improvement Acts are in force,—the Commissioners or Trustees for the execution of such Acts.

7. In places where none of the above-mentioned authorities exist,—the Board of Guardians for the Union, or, if there be no such Board, the Overseers of the Poor.

Under the Diseases Prevention Act.

1. In the Metropolis,—the Vestries and District Boards acting in execution of the Act for the better Local Management of the Metropolis.

2. In all Extra-Metropolitan places,—the Boards of Guardians for the Unions, or, if there be no such Boards, the Overseers of the Poor.

Under the Public Health and Local Government Acts.

1. The Local Boards formed under the provisions of those Acts.

2. Any person appointed by the Secretary of State in pursuance of the 49th Section of the Sanitary Act, 1866, to perform the duties of a Local Board that has been guilty of a default, as therein mentioned, in the performance of such duty, and for the purposes thereof.

Under the Sewage Utilization Act, 1865.

(The Local Authority under this Act is termed the Sewer Authority).

1. In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board.	The Mayor, Aldermen, and Burgesses acting by the Council.
2. In the boroughs of Oxford and Cambridge, and in any town or lace not included within the above descriptions, and under the jurisdiction of Commissioners, Trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, lighting, or paving any town.	The Commissioners, Trustees, or other persons intrusted by any Local Act of Parliment with powers of improving, cleansing, lighting, or paving the town.
3. In parishes not within the jurisdiction of any sewer authority herein-before mentioned, and in which a rate is levied for the maintenance of the poor.	The Vestry, Select Vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a Vestry or Select Vestry.

N.B.—*The term "parish" includes any township or other place in which a separate rate is levied for the relief of the poor.*

4. Any Collegiate or other Corporate Body required or authorized by or in pursuance of an Act of Parliament to divert its sewers or drains from any river, or to construct new sewers.

5. Any Public Department of the Government.

6. Any person appointed by the Secretary of State in pursuance of the 49th Section of the Sanitary Act, 1866, to perform the duty of a Sewer Authority that has been guilty of a default as therein mentioned in the performance of such duty.

Under the Sanitary Act, 1866.

There are two classes of Local Authorities under this Act: (1) Nuisance Authorities; and (2) Sewer Authorities.

1. The Nuisance Authorities are those stated above for the Nuisances Removal Acts.

2. The Sewer Authorities are,

a. The same as stated above for the Sewage Utilization Act, 1865, and numbered 1, 2, and 3.

b. For the 37th Section of the Act,—Local Boards.

Under the Sewage Utilization Act, 1867.

1. The same as for the Sewage Utilization Act, 1865.

2. Local Boards.

3. Joint Sewerage Boards.

Under the Sanitary Act, 1868.

1. Local Boards.
2. Sewer Authorities.

It will thus be seen how perplexing it must be to any one who is not well versed in the various Sanitary Acts of Parliament to define for practical purposes the term "Local Authority."

II.—Duties of Local Authorities.

It is necessary next to speak of the duties of Local Authorities under the several Acts. These duties are now as follows:—

Under the Nuisances Removal Acts.

To see to the part prevention and removal of nuisances.

Under the Public Health and Local Government Acts.

To see to the removal of nuisances.

To the provision, maintenance and repair of sewers, drains, &c.

To provide a proper water supply.

Under the Sewage Utilization Act, 1865.

To provide, maintain and repair sewers.

To take proceedings for preventing water-courses being polluted.

Under the Sanitary Act, 1866.

There are two authorities under this Act: (1) the Nuisance Authority; and (2) the Sewer Authority.

1. The duties of the Nuisance Authority are:—

To make periodical inspection of its district for the purpose of taking proceedings for the removal of all nuisances.

To cause the disinfection of premises and things when infected by any dangerous disease.

To provide for the disinfection of clothing and bedding free of charge.

To provide carriages for the conveyance of infected persons between their houses and hospitals.

To provide for the removal to hospital of infected persons not properly housed.

To provide mortuaries and post-mortem houses.

To make regulations as to lodging-houses.

To provide for the periodical removal of manure from mews, &c.

And the Nuisance Authorities in the metropolis have, in addition to the above duties—

To provide hospital accommodation.

2. The duties of the Sewer Authorities are:—

To compel the draining of houses into sewers.

To provide proper water supply.

To provide hospital accommodation in extra metropolitan places.

Under the Sewage Utilization Act, 1867.

The duties under this Act are the same as those under the Sewage Utilization Act of 1865, but of a more widely extended application.

Under the Sanitary Act, 1868.

Under this Act there are three authorities concerned: (1), the "Local Authority," *i.e.*, Local Boards or Sewer Authorities; (2), the Sewer Authority; and (3), the Nuisance Authority in the Metropolis.

1. The duties of the "Local Authority" are:—

To see to the provision of earth-closets in certain cases.

To make regulations for the construction and use of earth-closets.

2. The duties of the Sewer Authority are:—

To see that new houses have a sufficient water-closet or privy and ash-pit.

To see that drains, water-closets, privies, and ash-pits within its district do not become a nuisance.

To see to the removal of house refuse from premises, to the cleansing of privies, ash-pits and cesspools, and, as far as these matters are concerned, to become the Nuisance Authority of the district.

To make provision for the temporary supply of

medicines and medical assistance for the poor in extra metropolitan places.

3. The duties of the Nuisance Authority in the metropolis are :—

To make provision for the temporary supply of medicines and medical assistance for the poor.

III.—Examples of the Anomalous Effects of some of the Acts in their Practical Administration.

In the Preface to my (second) Edition of the Sanitary Act 1866, I called attention, in the following words, to a duplication of authority which was given in several instances :—

"From the law, in its present state, it is quite possible (and, perhaps, probable), that considerable inconvenience may result with regard to the water supply and sewerage of those places which have adopted since June 29, 1865, or shall hereafter adopt, the Local Government Act. If that Act shall be adopted in its entirety, the local Board would have conferred upon it, by Sections 29, 30, and 31 of the Act, full powers as to sewerage, and by Sections 51, 52, and 53 of the Act, full powers as to water supply. But its jurisdiction in these matters would not be a sole jurisdiction, as the vestry of the parish within which the district is situated would, as the law stands, still retain its jurisdiction over the same matters.

"Should both those authorities choose to put into force the powers with which they are respectively endowed, and be determined to assert their powers antagonistically, there is no knowing to what serious consequences this dual empowerment might lead.

"If this duality of power is to be preserved, the only way in which it will be possible to avoid collision in these matters is, either to give to the Secretary of State, on the adoption of the Local Government Act by any place in which there is already a Sewer Authority under the Sewage Utilization Act, 1865, and the Sanitary Act, 1866, power to disallow the adoption of those sections of the Act which relate to sewerage and water supply,* or else to enact that, on the adoption of the Act by a place, all the powers, &c., of all Sewer Authorities within the district shall become vested in the Local Board."

This conflict of authority and jurisdiction was rendered still more perplexing by another Sewage Utilization Act passed in 1867, and, in my preface to a third and enlarged edition of the Sanitary and Sewage Utilization Acts, I pointed this out in the following words :—

* Another way in which this difficulty might, perhaps, be met, would be for Parliament, instead of giving power to the Secretary of State to disallow the adoption of certain parts of the Act, to enact that, in such places as I have referred to, those portions of the Act which relate to matters over which the Vestry as the primary Sewer Authority has had jurisdiction, shall not be put in force by the Local Board.

"By the Act of 1865 the duplication of authority might be brought about. But the new Act [The Sewage Utilization Act, 1867, 30 and 31 Vict., cap. 113], in making 'all Local Boards' into 'Sewer Authorities' will, in certain places, and under certain circumstances, establish two different governing Bodies, having actually the same designation of 'Sewer Authority,' and acting for the same purposes within the same area. For, if a parish, no part of which is under the Local Government Act (and in which, consequently, the Vestry is the Sewer Authority), should at a future time adopt the Local Government Act, there will then be two legally constituted and legally named Sewer Authorities—the Vestry and the Local Board*—for the Act does not direct that the powers of a Vestry, as a Sewer Authority, shall cease on the Local Government Act being adopted."

* I may give one illustration of the working of this. The Local Government Act, 1858, was, in the beginning of 1867, adopted by the ratepayers of the parish of Bromley in Kent, and came into operation in April of that year. A Local Board was accordingly elected, and now acts in the parish in all such matters as are provided for by that Statute, and is a "Sewer Authority." But immediately on the passing of the Sewage Utilization Act, 1865 (June 20, 1865), the Vestry of the parish had become the "Sewer Authority."

Here, then, we have two co-existing Sewer Authorities,—the Vestry of the parish, in virtue of the "Sewage Utilization Act, 1865," and the Local Board, in virtue of the "Sewage Utilization Act, 1867."

The state of things above described still exists.

But this is not all: for there arises another complication of the question, apart from the difficulty of saying what Body is the Sewer Authority. It being beyond doubt that, in some places, there are two Sewer Authorities, it has to be considered which of these two Sewer Authorities is the one which should exercise the particular powers required, or whether the two Authorities should not act conjointly in the matter. There can be no question as to the mischief of this state of the law, in furnishing excuses to people who are averse to sanitary works. It is certain that the opponents of sanitary works, wishing to do nothing and yet not to confess their inaction, would profess their anxiety to execute all necessary works, having all the time a full conviction that their duties could not be brought home to them. The Local Board would, in all probability, say the Vestry was the proper authority, as that Body was in existence before the Board; and the Vestry would assert that the Local Board was the proper authority, because it had been formed at a more recent date, and had, therefore, superseded the Vestry.

On the other hand, each body might assert its right to execute works, independently of the other, —a course of proceeding equally objectionable; and so a place might have two sewers running side by side (like the lines of opposition railways) and, it might happen, both bodies compelling their unfortunate constituents (perhaps in addition to

providing the money to execute the works) to cause their drains to run into each of these rival sewers; and it would be difficult to prove that such should not be the case, for each of these two bodies is created by Act of Parliament a Sewer Authority, and endowed with compulsory powers.

Then there is another difficulty. Supposing the Vestry is supine, and the Local Board carries into effect the provisions of the Sewage Utilization Acts, how are the expenses to be defrayed? One would naturally assume that the Board would be empowered to pay the amount out of its ordinary funds; but it is not clear that such is the case, for the funds authorized to be raised under the Local Government Act are directed by the Act to be expended only for certain objects contemplated by that Act, and not for the execution of any works under the authority of the Sewage Utilization Acts. But although it seems to be doubtful whether, in places where there is not this duplication of authority, a Local Board has any right to expend money in executing works under the Sewage Utilization Acts (there not being any direction in those Acts as to the fund out of which the expenses of a Local Board are to be defrayed, the Acts having simply enacted that Local Boards shall become Sewer Authorities), in places where it does exist, the Board would appear to be undoubtedly debarred from raising the money required.*

* The parish of Bromley, referred to in the foot note on page 22, is an illustration of the difficulty here adverted to.

Section 17 of the Sewage Utilization Act of 1867, directs that when the Sewer Authority of a district is a Vestry, the expenses of executing the Sewage Utilization Acts shall be met by a separate rate to be levied by the overseers, which rate shall be "deemed to be a rate levied for the relief of the poor." It seems, therefore, that, in cases where a Vestry has power under the Sewage Utilization Acts, the expenses incurred under these Acts must be met by a separate rate, which the Local Board does not appear to be empowered to levy: so that, whatever doubts may exist in other cases, it seems pretty clear that, in cases where a Vestry has power, under the Acts, the Vestry alone has power to levy a rate to defray the expenses of carrying the Acts into execution. This view is partly borne out too by the Sewage Utilization Act of 1865, which directed the expenses to be paid out of the poor rate; and by section 16 of the Act of 1867, which directs that the word "'parish,' in the schedule to the Sewage Utilization Act, 1865, shall include any township or other place in which a separate rate is levied for the relief of the poor." And this view would appear to be further strengthened by a reference to the 43rd section of the Sanitary Act, 1866, which empowers Local Boards to adopt the Act for the encouragement of the establishment of public baths and washhouses, and which, at the same time, directs out of what fund the expenses, incident to such adoption, are to be defrayed.

Another peculiarity of the Sewage Utilization Act of 1867 is, that it constitutes "any Public Department of the Government" a Sewer Authority. The effect of this is most extraordinary, for it converts into Sewer Authorities such Public Departments as the following:—the Civil Service Commissioners, the Charity Commissioners, the Mint, the Public Record Office, the Registrar of Friendly Societies, &c.; Departments which it is hardly possible to conceive could be expected, or be called upon, to undertake the provision of sewers and a water supply, seeing that their sanitary jurisdiction cannot extend beyond the limits of the premises which they respectively occupy. With such an example of the sweeping applicability (as is provided by Section 2 of the Sewage Utilization Act of 1867) of the term "Sewer Authority," it is perhaps scarcely to be considered a matter of surprise that, in the public mind, much doubt should exist as to what bodies are, and what bodies are not, Sewer Authorities.

Sewer Authorities have no power given to them to appoint officers, not even a Clerk, although the existence of such an officer is contemplated by section 7 of "The Sanitary Act, 1866," which Act enacts that "the production of a newspaper containing . . . a certificate under the hand *of the Clerk or other officer performing the duties of Clerk, for the time being, of the Sewer*

Authority which passed the resolution forming the district, shall be evidence of the formation of such district." It seems doubtful, also, whether a Vestry-clerk can act as Clerk to a Vestry in its capacity of Sewer Authority, or be called upon by the Sewer Authority to act as its Clerk; because the Act (13 and 14 Vict., cap. 57) which authorizes the appointment of Vestry-clerks, also enumerates the duties which they shall have to perform, and because they are to some extent under the jurisdiction of the Poor Law Board, as, for instance, in the matter of salary. The salary of the Vestry-clerk is payable out of the Poor Rate, whereas the salary of the Clerk to a Sewer Authority would not be payable out of the Poor Rate: and this alone would make it appear that the Vestry-clerk and the Clerk to the Sewer Authority must be different officers, though, if the Sewer Authority had power to make such an appointment, the two offices might be held by the same person.

The power of appointing and paying officers is specially given to Local Boards by the 37th section of the Public Health Act, 1848, and also to Vestries, as shown above. It would therefore seem that, for an Authority to have power to make appointments and to pay the appointees, it is necessary that express permission for these purposes should be given by the Legislature. If this is so, it is quite apparent that any moneys expended by Sewer Authorities in the shape of salaries to officers is not warranted by law, and is therefore illegal. And I assume that it

would be the duty of the Auditor to disallow any such payment which may have been made. It is very clear that such could not have been the intention of the Legislature, but, as the law now stands, there seems to be an absence of authority for such expenditure, and any person who should authorize such a payment to be made would be liable to be called upon to repay to the funds of the Sewer Authority the amount which he shall have authorized to be expended.

If it be considered that the power of appointing and paying officers is inherent in Sewer authorities, why should not the same power have been possessed by Local Boards and Vestries, and not have been expressly given to them by Act of Parliament?

But, perhaps, one of the strangest of the provisions which have been passed by Parliament with the intention of promoting the performance of sanitary works, and so securing to places a proper system of drainage and water supply, is a private Act passed in 1867, the 30 & 31 Vict., cap. 173, which makes a corporate company of a body of persons, under the style of "The Towns Drainage and Sewage Utilization Company," and empowers Sewage Authorities, Commissioners of Sewers, Local Boards, Corporations, Trustees, or other bodies having under any Act authority to carry out, promote, or make contracts for sanitary improvements or works, "to delegate or grant to the Com-

pany any of the powers and privileges, or property, given to or vested in them respectively by any Act of Parliament, provided that any such delegation or grant be made with the consent of the Inclosure Commissioners, and for such periods and subject to such conditions or restrictions as they may think fit;" and enacts that, "subject as aforesaid, the Company may use and execute all powers and privileges so delegated or granted as aforesaid, in the same manner and to the same extent and effect as the delegating or granting parties respectively could do of themselves, acting with their full powers and privileges." The effect of this statute would appear to be to enable Sewer and such like Authorities to shift to a private Company the responsibility of doing work which the Legislature has, by public Act, required them to perform.

This power given to Sanitary Authorities of delegating their functions to a private Company is likely, as is shown below, to act most adversely, both to the progress of sanitary improvement and to the interests of the public.

First, as affects the progress of sanitary improvement:—This Private Act would seem to relieve Local Authorities, who avail themselves of it, from the operation of section 49 of the Sanitary Act, 1866, and of the subsequent provisions for rendering more effectual the compulsory power of Government in requiring the execution of sanitary works. Suppose the following case, for instance:—

Complaint is made of the want of proper sewers in a place, the Sewer Authority of which has delegated its powers to this Private Company; the Sewer Authority is directed to execute the necessary works under threat of enforcement, by the Secretary of State, of the powers given under section 49 of the Sanitary Act, 1866: and the Sewer Authority pleads that, under section 20 of the Private Act, 30 & 31 Vict., cap. 173, it has delegated its functions to "The Towns Drainage and Sewage Utilization Company," which, by section 4 of an Amending Private Act passed in 1868, is empowered to "give all requisite notices, and take all necessary steps, for carrying out within the district or jurisdiction of such Sewer Authority the works which the said Sewer Authority is or may be empowered to execute under or by virtue of any Act of Parliament, law, custom, prescription or otherwise;" that its responsibility, therefore, ceases in the absence of express legislative enactment to the contrary,* it having, in this matter, complied with the provisions of an Act of Parliament authorizing the delegation of the authority, and that the Company is not liable to

* It is noteworthy that, though a similar delegatory power (to Committees) is given to certain Sewer Authorities by section 4 of the Sanitary Act, 1866, it is expressly provided that the delegated body shall only act as the agent of the Authority, and "the appointment of such Committee shall not relieve the Sewer Authority from any obligation imposed on it by Act of Parliament or otherwise."

the operation of section 49 of the Sanitary Act, 1866, because that section relates to the default of a Sewer Authority, as defined by the Sewage Utilization Act, 1865, which definition does not include "The Towns Drainage and Sewage Utilization Company," and because the arrangement between the Company and the Authority is subject to the control of the Inclosure Commissioners and not of the Secretary of State. In such a case as this it seems very doubtful whether the intervention of Government, under section 49 of the Sanitary Act, 1866, could be exercised : whether there is any other speedy method of compelling the execution of sanitary works under the circumstances described, is a question that it would be very difficult to answer satisfactorily.

Secondly, as affects the interests of the public :— The works of Local Boards and such like authorities under the public Acts are subject to the supervision and control of the Government, inasmuch as it is expressly enacted by Parliament that sanction shall be obtained before any such authority borrows money for the execution of works, and for the repayment of which the ratepayers are made liable ; and authorities, in order to obtain this sanction, are required to specify in detail the works for which the sanction of expenditure is sought. Now there does not appear to be, in the private Acts referred to, any such supervising power over the expenditure of the Company ; so that, unless the Inclosure Commissioners should see fit to exercise a power of this

kind, the Company would seem to be able to incur an expenditure both unlimited and unliable to audit. The delegating authority must pay; for the Towns Drainage and Sewage Utilization Act of 1867 says that such authorities shall from time to time, as occasion shall require, "levy any rates which they shall be empowered to levy for the purpose of promoting or carrying out any of the objects intended to be promoted by this Act, and which shall be required to enable them to pay to the Company such annual or other sums" as may be required.

In addition to the rates payable in ordinary cases (*i.e.*, where the authority borrows money and executes works) for the payment of interest and instalments on loans, there will be, as set forth in the printed "Prospectus" of the Company, in cases where the Company advances the money, and where the Company's officers superintend the execution of the works, an additional payment, in the shape of commission to the Company, of 5*l.* per cent. on the total outlay, and so an additional burden will be laid upon the ratepayers of the district. Thus, suppose 25,000*l.* are required, and the Company acts as contemplated above, there will be a charge of 1,250*l.* in addition to the charge which would have been made had the authority itself done the work.

The Nuisance Authority has power under certain sections of the Sanitary Act, 1866, to cause the

removal (on order of a Justice) to hospital of any person suffering from any dangerous, contagious, or infectious disorder, being improperly lodged, or on board any ship or vessel. It also has power to lay down rules, with the sanction of the Privy Council, for the removal to hospital of persons brought by ships; and, further, to provide carriages for the removal of persons to hospital. But while this is so, the duty of providing hospital accommodation in all places without the metropolis is imposed on the Sewer Authority, and not on the Nuisance Authority.

In the metropolis, however, it is the Nuisance Authority which has power to provide hospital accommodation; and thus, for the metropolis, there is, in this matter, no division of the Executive, like there is in places outside the metropolitan area.

Section 35 of the Sanitary Act, 1866, empowers the Nuisance Authority of certain places to make, with the approval of the Secretary of State, regulations for the prevention of overcrowding, and for the better ordering, registering, cleansing, ventilating, &c., of any "house, or part of a house, which is let in lodgings, or occupied by members of more than one family;" but there is no power given either to the Secretary of State or to the Nuisance Authority to rescind or amend any regulation which has once been passed. This power of amending and repealing bye-laws made under the

authority of Section 115 of the Public Health Act, 1848, is given by express statutory enactment to Local Boards, who make bye-laws of a like nature, though not perhaps with the same intent. And, if it was necessary to obtain authority from Parliament to enable Local Boards to repeal or amend their bye-laws, it seems but reasonable to suppose that, for the purpose of exercising a like power in the case of regulations (which are of a similar kind) under Section 35 of the Sanitary Act, 1866, the like Parliamentary authority is requisite. In many instances the operation of the regulations under this Section of the Sanitary Act has been limited to a period of twelve months; this is also a power which is not given by the Statute, and which, if necessary, should be provided for by statutory enactment.

Under Section 10 of the Sanitary Act of 1868, the Sewer Authority in extra-metropolitan places may, with the consent of the Privy Council, make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants.

Now precisely similar power is given to Boards of Guardians (who can never be the Sewer Authority) under the Diseases Prevention Act, for the Act 18 and 19 Vict., cap. 116, authorizes the Privy Council to make regulations for the "dispensing of medicines . . . . . and for affording to persons afflicted by, or threatened with, any such epidemic, endemic, or contagious disease, such medical aid . . . . . as may be required."

Here again is an instance of two different bodies having, under two different Acts, similar powers for the same object.*

The Sanitary Act of 1868 directs (section 4) that "where the Sewer Authority and the Nuisance Authority of a district are different bodies of men, the jurisdiction of the Nuisance Authority shall cease within such district in relation to all matters within the purview of sections 51 and 54 of the Public Health Act 1848."

But considerable doubt arises whether the intention of the Legislature to endow the Sewer authority with power under the 51st and 54th sections of the "Public Health Act, 1848," is not frustrated by the restriction placed upon the application of these sections; for the 4th section of 31 and 32 Vict., cap. 115, says that they shall only apply to the districts of those Sewer Authorities "in which there is no enactment of any public or private Act of Parliament to the like effect in force." Now the "Nuisances Removal Act" (18 and 19 Vict., cap. 121) is a "Public Act" which is always in force, and in which there is a provision to the "like

* There is this marked difference, however, between the *modus operandi* of the two Statutes. Under the Diseases Prevention Act of 1855 the Privy Council takes the initiative; whereas, under the Sanitary Act of 1868, the Sewer Authority is the body which moves first, and makes the regulations which must afterwards be sanctioned by the Privy Council.

effect" to the power given to Sewer Authorities by section 54 of the "Public Health Act, 1848." Section 7 of the first-mentioned Act empowers the local Nuisance Authority to deal with "any foul ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit, so foul as to be a nuisance or injurious to health;" and, though the Nuisances Removal Act does not particularize "waterclosets," a "privy" must be held to be the genus of which a "watercloset" is but one of the constituent species. Thus the Nuisances Removal Act, which, as stated before, is "an enactment to the like effect," and which is, *ipso facto*, in force everywhere, deals with the very matters with which it is sought to empower Sewer Authorities to deal. But it might be argued, with the view of reconciling these apparent discrepancies, that the Act is to be put in force by the Sewer Authority as a supervising power, and only so far as to see that those places "do not become a nuisance;" and that, should the Sewer Authority have neglected the supervision of them, and a state of nuisance have arisen, its action then ceases, and the action of the Nuisance Authority commences. If this is so, the confusion created is very great, and the result is that the growing nuisance and the existent nuisance (though it will be impracticable to draw the line of demarcation) are to be dealt with by two separate and distinct bodies in one and the same place. It, of course, in practice cannot be desirable that a state of things like this should

exist; for the real effect would be (provided, of course, that there were no legal difficulties or uncertainties in the case), to transfer this supervising portion of the duties of a Nuisance Authority from Boards of Guardians, who are often ignorant of their duties in this respect, to Vestries who are, if possible, more ignorant of, and unwilling to put in force, such powers as this Statute proposed to give to them.

With reference to section 51 of "The Public Health Act, 1848," the Nuisances Removal Act operates in the same way. For instance: if any Local Nuisance Authority is of opinion that a nuisance exists, or is likely to recur, it may take proceedings before Justices, who may by their order "require the person on whom it is made to provide sufficient privy accommodation, . . . or to do such other work or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified." Thus a Nuisance Authority has power (and without the intervention of a third person, as is required under section 54 of the Public Health Act) similar to that sought to be given by the Sanitary Act, 1868.

It will thus be seen that, in the words of the Act, there is an enactment of a public Act of Parliament to the like effect in force in every part of England, and therefore in the district of every Sewer Autho-

rity, and that, consequently, the 4th section of the Sanitary Act of 1868 is of no effect.

Another section (5) of the Sanitary Act, 1868, directs that "where the Sewer Authority and the Nuisance Authority are different bodies of men, the jurisdiction of the Nuisance Authority in such district shall cease in respect of all matters over which the Sewer Authority acquires power by this section," viz., the removal of house refuse from premises, and the cleansing of privies, ashpits, and cesspools.

With regard to the powers given to Sewer Authorities by the section of the Sanitary Act, 1868, now under consideration, though the difficulty above adverted to does not exist, there appears to be great doubt whether this newly-created minor Nuisance Authority, or, as the Act names it, the "Sewer Authority," has any power to cause the removal of the contents of privies, ashpits, and cesspools.

The clause of the Local Government Act referred to in this section of the Sanitary Act, 1868, relates only to the "cleansing of privies, ashpits, and cesspools," and does not empower the Local Authority (*i. e.*, the Sewer Authority of other Acts) to remove any of their contents, or to enter upon any premises for that object. Neither does the Act of 1868 give to the Sewer Authority power of entry. The

only power of entry given to Sewer Authorities is by section 5 of the Sewage Utilization Act, 1865 (28 and 29 Vict. cap. 75), which invests the Sewer Authority with the same power which Local Boards possess under section 143 of the Public Health Act, 1848, and which are "for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries." Under these circumstances it appears that the only power conferred on the Sewer Authority, is an unenforceable power to require privies, ashpits, and cesspools to be cleansed, for there is no penalty or proceeding provided by the Act in cases of neglect to obey the requirements of the Sewer Authority in this behalf.

It is, then, almost without doubt that a Sewer Authority has no power of entry for the purposes of section 5 of the Sanitary Act, 1868, and without such a power it does not seem feasible for a Sewer Authority to undertake "the cleansing of privies, ashpits, and cesspools."

If this view of the law is correct the result is that, in places where there is a Sewer Authority which is a different body from the Nuisance Authority, the cleansing of privies, ashpits and cesspools cannot be accomplished at all; because, though the Act directs that the Sewer Authority shall do this work, it does not give to the Sewer Authority the necessary power; and because the Act directs

that, in such places, the jurisdiction of the Nuisance Authority in such matters shall cease.

There are two other matters to which it would, perhaps, be as well to direct attention.

First. Section 22 of the Sanitary Act, 1866, relates to the disinfection of houses and articles infected with any dangerous disease. It empowers the Nuisance Authority to require, by written notice, in certain cases, disinfection to be done, and it enacts that "if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty of not less than 1*s*., and not exceeding 10*s*., for every day during which he continues to make default; and the Nuisance Authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner." It must be observed that, though the Nuisance Authority, in cases where its notice is neglected to be obeyed, has power to cause the house to be disinfected, the Legislature has omitted to give the Authority power to deal with any articles of bedding, clothing, &c., which may be in such houses and require to be disinfected.

Secondly. The 11th section of the Sanitary Act, 1868, enacts that "in the construction of the first

part of the Sanitary Act, 1866, 'owner' shall have the same meaning as it has in the second part of the said Act. But as, in the second part of the Sanitary Act, 1866, there is no definition or meaning given to the word 'owner,' it is difficult to discover what is meant, or of what practical utility this section of the Sanitary Act, 1868, can be.

IV.—Want of Principle in the Allotment of Supervising Powers to Departments of the Government.

There is another matter connected with this subject which is worthy of notice, viz., the want of principle in allotting to various Departments of Government their functions in sanitary matters.

There are two Government Departments which, in ordinary cases, exercise a sort of supervision over Local Authorities in the execution of their sanitary duties, but there is a third Department* which exercises, in particular cases, a supervision over sanitary works. The next following paragraphs are devoted to the consideration of the functions of the two principal Departments which have habitual employment in the matter; while, on page 48,

* The Department referred to is the Inclosure Commissioners, who have in some instances a controlling power over the action of Local Authorities: how this arises, is explained on pp. 28 to 32.

reference is made to the supervision which, in certain contingencies, is exercised by the third Department.

The two Departments to which particular attention is now given are the Privy Council Office and the Home Office; and, broadly speaking, the line between the functions of the one Department and of the other Department might be supposed to be definable as follows:—The Privy Council Office, and its Medical Department, to exercise supervision over such functions as locally would fall under the cognizance of the local Medical Officer of Health and Sanitary Inspectors; the Home Office, and its Local Government Act Office, to exercise supervision over such functions as would belong to the Department of a Surveyor or Engineer to a Local Board.

For the sanitary operations of local authorities may (speaking in general terms) be divided into two classes, viz.:—Class I, those more directly relating to the prevention of disease,—such as the medical sanitary inspection of premises, the regulating of certain trades, the doing of disinfection, &c.; and Class II, those relating to territorial boundaries and public structural works, such as settling the boundaries of districts, building sewers, waterworks, &c., of which two classes of functions it will be observed that those of investigation most commonly precede those of structural works.

Now, as to the central supervision of local autho-

rities in executing these two classes of duties, it is a fact that the former class of local duty, which is more directly concerned with matters of health, is supervised by the more purely Medical Department of Government, the Medical Department of the Privy Council Office; and that the latter surveying or constructive class of local duty is supervised by the Department of Government that has engineering officers at its disposal, the Local Government Act Office. The Medical Department of the Privy Council Office engages the services of Inspectors who have received a medical education and training; and this specially qualified assistance is quite necessary for a Department which has to advise as to the prevention of diseases. While the Local Government Act Office has, as stated above, a staff of Civil Engineers for its Inspectors.

But, though there are these two Departments of Government, with functions apparently so naturally distinguishable, it would seem that recent legislation has not always kept the distinction in view. Thus section 49 of the Sanitary Act, 1866, enacts that "where complaint is made to one of Her Majesty's Principal Secretaries of State that a Sewer Authority or Local Board of Health has made default in providing its district with *sufficient sewers* or in the maintenance of existing sewers, or in providing its district with a *supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the*

existing supply of water, and a proper supply can be got at a reasonable cost, or that a Nuisance Authority *has made default in enforcing the Provisions of the Nuisance Removal Acts*, or that a Local Board has made default in enforcing the provisions of the Local Government Act, the said Secretary of State, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint."

The words in italics qualify the authority given in this section, and point to the Department which, in the absence of express direction to the contrary, would take action under it. It would appear that such a Department as the Privy Council Office, which has a medical adviser and staff, would be the proper one to inquire whether sufficient sewers existed; it will not be questioned that "sufficient" means "sufficient for health"—sufficient not only in quantity but also in particularity—for sewers in a place may, as an engineering work, be sufficient, and yet, in a health point of view, be totally insufficient and unadapted to the requirements of the place. The question of drainage (and the consequent reduction of the humidity of the atmosphere and wetness of the subsoil, and the thorough removal of excreta and their products), as it affects the localization of certain diseases, is one for the solving of which medical knowledge is required. This appears to be the proper definition of the term "sufficient

sewers." And with regard to the water-supply portion of the inquiries by the Home Secretary, that has especial reference to *cases where danger arises to the public health either on account of the insufficiency or unwholesomeness of the existing supply.* This also appears to be a matter especially requiring medical knowledge; for the unwholesomeness of water is, in many instances, only ascertainable by chemical treatment—the brightest to the eye, and most pleasant to the taste, often being that most hurtful in its effects upon the public health. So also as to the neglect of a Nuisance Authority. It is not sufficient, I take it, to the putting in force of the power given under this section that the Authority shall have allowed nuisances to exist in its district, but the nuisances must be such as are likely to militate against the health of the district; for the authority must make "default in enforcing the provisions of the Nuisances Removal Acts," and these Acts deal only with such nuisances as are "injurious to health." This would also seem to indicate the necessity for medical inquiry. It thus appears that the Privy Council Office (which is the guardian of the public health under the Public Health Act, 1858) would be pre-eminently the Department to make these inquiries, if it were not expressly directed in the Statute that the Home Office should undertake this particular duty.

It is under this section that the Secretary of State is empowered to make inquiries as to the default of

local authorities, and if satisfied that default is made, to take proceedings for compelling them to obey the law. The power hereby given to the Home Secretary of instituting these inquiries has made it very difficult to state positively where the inspectorial functions of the Home Secretary and of the Privy Council respectively commence and stop; and this uncertainty has, doubtless, helped to create in the public mind, much confusion on the subject. In certain matters, such as inquiry into the outbreak of disease and the prevalence of epidemics, there can be no doubt as to which Department should put its power into operation; nor can there be any doubt, in matters relating to the building of sewers and other structural works, which Department should exercise supervision; but in many other matters, such as cleansing filthy ponds, removal of stinking pigs, &c., there may be doubt as to which Department should exercise its functions.

It will thus be seen that there are, so to speak, two kinds of official sanitary inquiries: (1) those made under the authority of the Public Health Act, 1858; and (2) those made under the authority of section 49 of the Sanitary Act, 1866; and so, at times, there arises a confusion as to which of these two sets of sanitary inquiries is referred to. The public have begun to use the term as applying to the work of both Departments,* and without realiz-

* While this Paper is passing through the press I observe the following paragraph in the "Lancet" of November 28:—

ing the fact that the inquiries made by the Privy Council, under the Public Health Act, 1858, should be looked upon as "primary" sanitary inquiries—as being made with the view to ascertain the causes of the declension of health in a locality; while the inquiries made by the Home Secretary, under the Sanitary Act, 1866, should be looked upon as "secondary" sanitary inquiries—as being made with the view to the execution of such works as may be necessary for removing any pre-ascertained causes of such declension.

Though most educated men are ready to admit that injury to health may result from defective local conditions, such is not the case with the poor and ignorant part of the population. And there can be but little doubt that more weight would attach to proceedings as to matters of health, and as to causes of sickness and death, taken by a Department whose Chief and Inspectors are members of the medical profession, than to proceedings taken by a Department whose Chief has

"Mr. Arnold Taylor, the Government Inspector, will open on Wednesday next, at Falmouth, an inquiry into the sanitary condition of that town, the unhealthiness of which has been already noticed." Mr. Taylor is one of the Engineering Inspectors of the Local Government Act Office. This illustrates the confusion which exists in the public mind as to the nature of the inquiries made by the Privy Council Office and the Local Government Act Office, for Mr. Taylor's inquiry had reference to matters of drainage only.

no medical knowledge, and whose Inspectors' qualification has reference to civil engineering.

Again, by some strange accident, the supervision of regulations for lodging-houses under Section 35 of the Sanitary Act, 1866, is left in the hands of the Local Government Act Office, when the regulations have only to do with the conditions necessary to health, and do not relate to works or questions requiring practical or theoretical engineering knowledge and skill.

There is, as I have already said, another Department of the Government which may, in some cases, exercise a sort of supervision over the doings of local authorities; this Department is the Inclosure Commissioners. By a private Act passed in 1867 (The Towns Drainage and Sewage Utilization Act, 1867), certain Local Authorities are, as before stated, authorized to delegate to "The Towns Drainage and Sewage Utilization Company," any of the powers which such Authorities possess for sanitary purposes; but the delegation must be made with the consent of the Inclosure Commissioners. It is thus possible that one set of works in a place will be sanctioned and supervised by the Local Government Act Office, while another set of works of a similar kind will be sanctioned and supervised by the Inclosure Commissioners. In short, if a Local Board itself executes any works, the consent of the Local Government Act Office will have to be obtained;

whereas if a Local Board delegates the execution of any works to this Company, the consent of the Inclosure Commissioners will have to be obtained. Here is another complication of jurisdiction which it is very desirable should be done away with as soon as possible.

V.—Conclusion. Some Points for Consideration in future Legislation.

In this Paper some points have been raised which would appear to be deserving of consideration in future legislation with a view to render more easy the local performance and central supervision of sanitary works; to remove much of the confusion which at present exists as to the authority whose duty it is to carry into force the various Sanitary Acts of Parliament; and to the adoption of some settled scheme whereby Governmental supervision of, and advice to, Local Authorities may be made on some definite plan, and thus the present undecided course of proceeding in such matters be avoided. The principal points are as follows:—

1. That, unless a new Sanitary Department be created, the supervision of, and the giving of advice to, Local Authorities on all sanitary matters be confined to the Privy Council Office (the Medical Department) and the Home Office

(the Local Government Act Office); and that a division of departmental responsibility in these matters be made on some such principle as follows:—

a. The matters referred to in Class I, page 42 of this Paper, being dealt with by the Medical Department of the Privy Council Office; and

b. The matters referred to in Class II, page 42 of this Paper, being dealt with by the Local Government Act Office.

2. That the Medical Department of the Privy Council Office conduct the preliminary inquiries necessary to the putting in force of section 49 of the Sanitary Act 1866, and that the Home Secretary take action under that section, on the report to, and motion of, the Privy Council, and without further inquiry, other than as to how the particular kind of works, which it may be requisite to carry out, shall be executed. The necessity, or not, for the execution of sanitary works, to be a matter for the decision of the Privy Council.*

* In most instances, the prevalence, or the fear of the outbreak, of some disease is the reason for putting in force section 49 of the Sanitary Act; and this being so, it would seem reasonable that the necessary preliminary inquiries should be made by the Privy Council and its Medical Inspectors, and not by the Home Office and its Engineering Inspectors. There is not, in the first instance, any question as to the manner of the execution of works; but only whether works are necessary or not. This is a plain matter of fact, and one which does not,

3. That in each place there be one Local Authority, and one only, for all sanitary purposes; and that the present (in some cases, very limited) areas of

of necessity, require the investigator to be possessed of any engineering knowledge. The adoption of such a plan of proceeding would simplify matters much, for then there would be but one inquiry, and that by the Department authorized by Parliament to make inquiries in any matter concerning the public health. If the Privy Council, on the report thus made, should consider it necessary for works to be done, the Council could then move the Home Secretary to take action, and to decide the manner of executing the works; and, if the Local Authority neglected the requirements of the Secretary of State, the Local Government Act Office could then appoint some one to carry out the requisite works. In some cases inquiry is now made by both the Departments; as, for instance, last year at Terling, where there was an epidemic of fever. The fact was reported to the Privy Council, and inquiry was directed to be made into the circumstances of the outbreak, when it was discovered that the Local Authorities had neglected their duties as to the removal of nuisances, and the provision of water and drainage. Upon this discovery, and upon the ascertainment that the Local Authority was not inclined to obey the law, the Secretary of State was moved to take action under section 49 of the Sanitary Act, 1866, and it became necessary for the Home Office also to make inquiry, in accordance with the provisions of that Statute. There evidently was not any non-legal necessity for the second inquiry, as the fact of neglect had already been ascertained. (For fuller particulars of this case, see Tenth Report of the Medical Officer of the Privy Council.)

If some such plan as that now proposed be adopted, and the law be altered, the necessity for the second inquiry, and its consequent delay and expense, will be avoided.

sanitary districts be much extended.* This alteration might, in the consequent details, be made to cover the other points hereafter referred to, and this course appears to be quite as practicable as the alternative, which is—

4. That the conflict of authority under the several Acts of Parliament† now in force relating to sanitary matters be at once removed; and express power given to Sewer Authorities to appoint and pay officers.

November 1868.

* The division which might, perhaps, be most conveniently made, would be to take the several counties of England, subdividing only the largest. There are obvious advantages derivable from this concentration of Local Authority, by improving the class of persons who would take action in sanitary matters, and by procuring the best professional assistance, with economy of offices, staff, &c. And, on the other hand, the objection that a whole county might be rated for the benefit of particular places, is scarcely worth discussing. For it would, of course, be proper that any enactment which imposed upon County Local Authorities, powers of rating for sanitary purposes, should also endow them with the power of making separate rates in particular places for merely local improvements from which other places could derive no benefit.

† A list of the principal Acts of Parliament is given on pages 8 and 9. But, in the event of such an arrangement as that proposed in No. 3 being ultimately carried into effect, other Acts would probably have to be added to the list.

PRINTED BY HARRISON & SONS, ST. MARTIN'S LANE.