

**The nuisances removal, diseases prevention, and sewage utilization acts, with introductory comments, cases, forms, and index / by D. D. Keane. Sixth edition by W. Cunningham Glen.**

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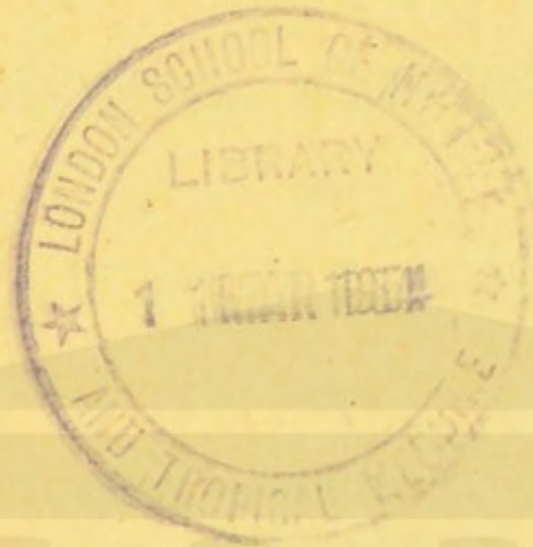




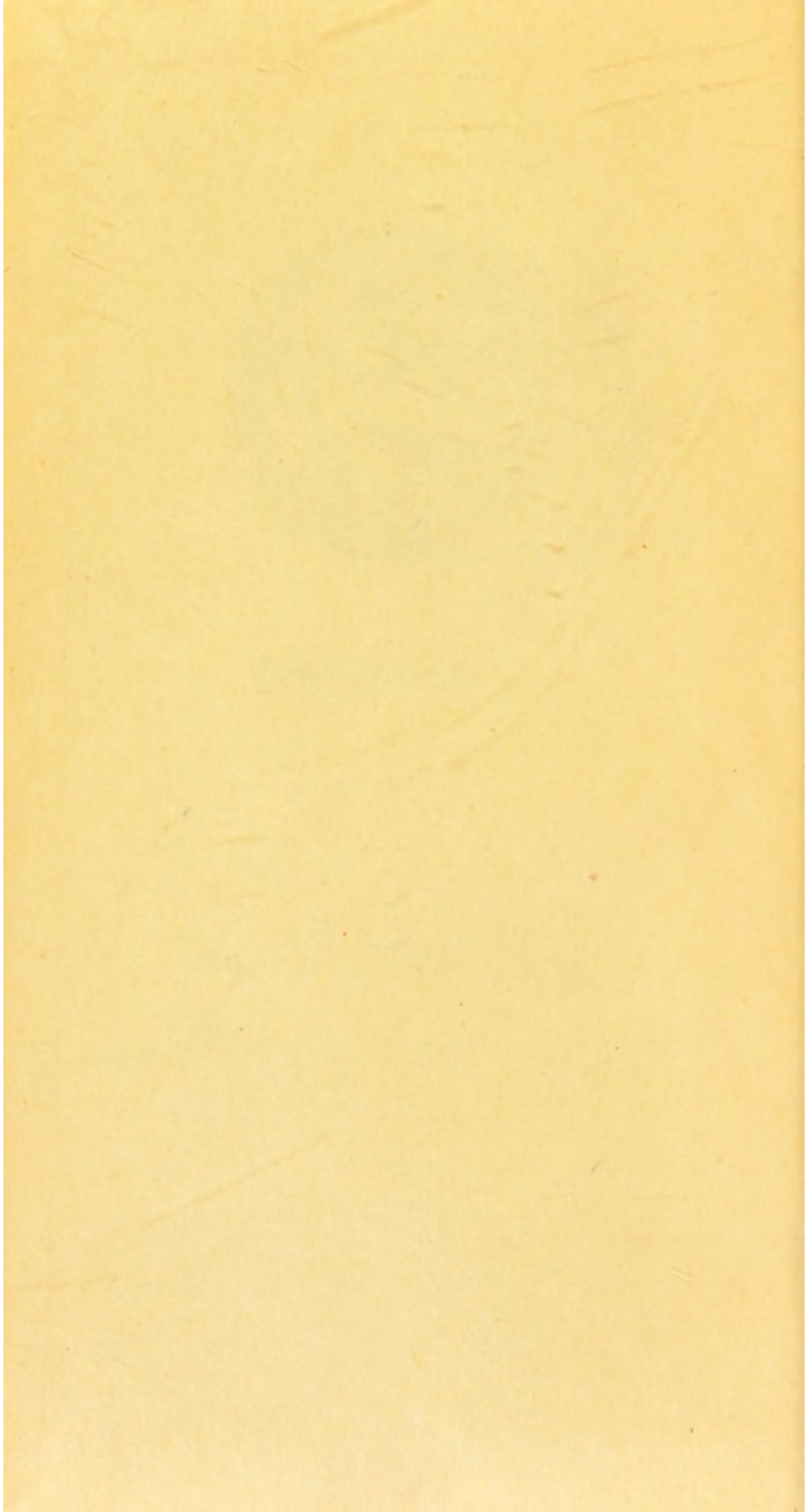
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THE  
**Nuisances Removal,**  
DISEASES PREVENTION,  
AND  
SEWAGE UTILIZATION ACTS,  
WITH  
INTRODUCTORY COMMENTS, CASES, FORMS,  
AND INDEX.

BY  
D. D. KEANE, Esq.,  
ONE OF HER MAJESTY'S COUNSEL.

Sixth Edition  
BY  
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BARRISTER-AT-LAW.

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## PREFACE.

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THE important and numerous amendments made to the Nuisances Removal Acts by the Sanitary Act, 1866, has necessitated the entire revision of this work. The opportunity has been taken to incorporate in it the decisions of the Courts upon the interpretation of the Acts since the former edition.

In order to enhance the usefulness of the work the several Sewage Utilization Acts have been added; and the law in reference to those Acts has been treated of in the manner adopted with regard to the Nuisances Removal Acts.

No pains have been spared to make the work useful to the Local Authorities whose duty it is to enforce the Acts, as well as to all those—owners of property and others—whose interests may be affected by the proceedings of the Local Authorities.

TEMPLE,  
*April, 1870.*



The first part of the paper is devoted to a general  
discussion of the subject. It is shown that the  
theory of the subject is of great importance  
and that it is necessary to have a clear  
understanding of the subject before proceeding  
to the more detailed study of the subject.

The second part of the paper is devoted to a  
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THE  
END

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# NUISANCES REMOVAL ACTS.

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## INTRODUCTION.

It is proposed to consider in the following pages the provisions of "The Nuisances Removal Act for England, 1855," (18 & 19 Vict. c. 121,) and the Acts to amend the same, (23 & 24 Vict. c. 77, and 29 & 30 Vict. cc. 41, 90).

The 18 & 19 Vict. c. 121, is composed of a preamble, two introductory sections, and 44 enacting sections.

The preamble declares the defectiveness of the provisions of "The Nuisances Removal and Diseases Prevention Acts, 1848 and 1849;" the expediency of repealing them as far as relates to England; and the expediency of substituting other provisions more effectual for the objects of the recited Acts.

The preamble of the 23 & 24 Vict. c. 77, declares that the provisions of the 18 & 19 Vict. c. 121, are defective, and that it is expedient that it should be amended.

The first of the introductory sections to the 18 & 19 Vict. c. 121, repeals former Acts and determines the effect of the repeal. The second of the intro-

ductory sections defines the meanings of the words and expressions used in the Act.

The 44 enacting sections are divided into three parts.

The first part comprises sections 3, 4, 5, 6, 7, 8, 9, 10, and 11; provides for the constitution of a local authority to execute the Act, and for the expenses of executing it; describes the nuisances that may be dealt with under the Act, and confers powers of entry for the purposes of the Act.

The second part comprises sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, and provides for the removal of nuisances.

The first twenty sections of the Act deal with private nuisances only, and the proceedings and costs incidental to their abatement. The Act then proceeds to deal with public nuisances: ditches near any highway (sec. 21); open ditches (22); allowing washings in the manufacture of gas to flow into streams (sec. 23); selling unwholesome meat (sec. 26); noxious trades (sec. 27).

The third part treats of procedure under the Act, and comprises the fifteen sections, commencing with the 31st and ending with the 45th.

The 46th section is the last, and provides for citing the Act as "The Nuisances Removal Act for England, 1855."

The schedule contains eleven forms, marked, according to their order, by the first eleven letters of the alphabet.

The 23 & 24 Vict. c. 77, amends both the Removal of Nuisances and the Diseases Prevention Acts. It repeals ss. 3, 6, 7, and 9, of the 18 & 19 Vict. c. 121; and declares what public bodies shall in future be the local authorities for executing the

Acts, and provides for the funds out of which their expenses shall be defrayed. It contains further provisions, which will be hereafter adverted to.

The Sanitary Act, 1866, (29 & 30 Vict. c. 90, Part II.,) amends the Nuisances Removal Acts in certain important particulars, and will also be adverted to hereafter. But in this place it is important to observe that the 46th section of the Act incorporates nuisance authorities to be designated by such names as they shall usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on the nuisances authority. By the 14th section the expression "Nuisances Removal Acts," shall mean the 18 & 19 Vict. c. 121, 23 & 24 Vict. c. 77, and Part II. of the 29 & 30 Vict. c. 90, *i.e.* ss. 14 to 34. By s. 15 "nuisance authority" shall mean any authority empowered to execute the Nuisances Removal Acts. The last amending Act is the 31 & 32 Vict. c. 115, to be cited as the Sanitary Act, 1868.

### *Meaning of Terms.*

The second section of 18 & 19 Vict. c. 121, enacts as follows:—

In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meaning be repugnant to or inconsistent with the context; (that is to say,) the word "place" includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word "guardians" includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter

or any part of the matter requiring the cognizance of any such officer arises ; the word " borough," and the expressions " mayor, aldermen, and burgesses," " council," and " borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough-reeve, or other chief officer, and burgesses, or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies ; the expression " Improvement Act " means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes ; the word " owner " includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery or under any order thereof, or who would receive the same if such property were let to a tenant ; the word " premises " extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private ; the word " parish " includes every township or place separately maintaining its poor, or separately maintaining its own highways ; the expression " quarter sessions " means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough ; the word " person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole ; and the expression " two justices," shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district (sec. 2.)

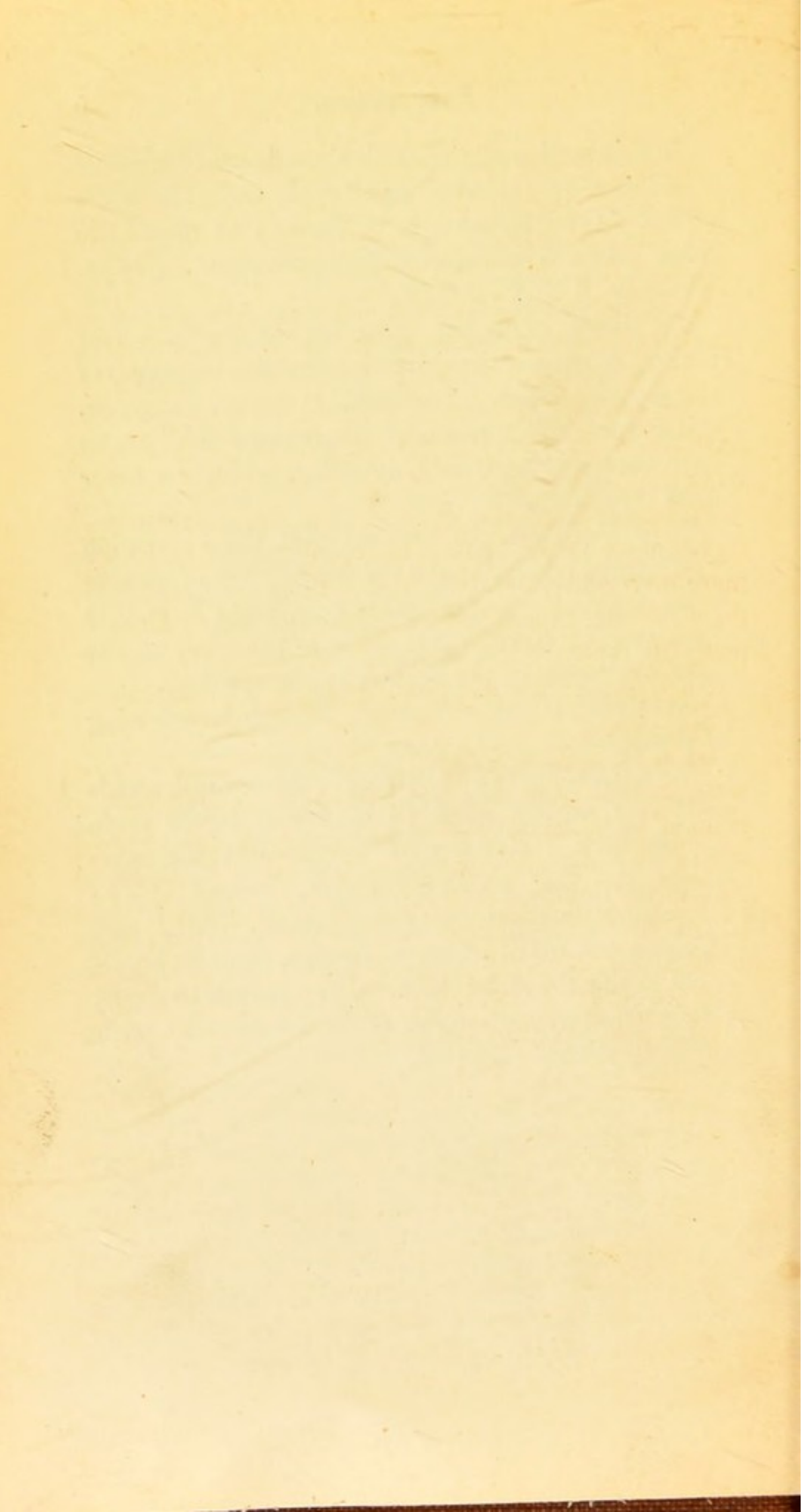
In this section the operative words are, "means," "includes," "extends," and "apply to." The effect of the word "means" is to limit, that of all the other words to enlarge the interpretation. *Reg. v. Kershaw*, 6 E. & B. 1007.

In places where the Acts for the regulation of municipal corporations are in operation, the words of the second section, "borough," "mayor, aldermen, and burgesses," "council," "borough fund," are to have the meanings, and no other, which in those Acts they have,

It is clear from the context that the expression "governing bodies" points at depositories of powers more large and general than are conferred by statute for a specific object only, such as the relief of the poor, the repair of the highways and the like.

An Union is not a "place" within the meaning of the Act.

By s. 15 of 23 & 24 Vict. c. 77, the several words used in that Act shall be construed in the same manner as is declared with reference to the same words in the above-cited Act, termed "The Nuisances Removal Act for England, 1855," and all the provisions therein contained, shall be applicable to the 23 & 24 Vict. c. 77, except so far as they are repealed thereby, or be inconsistent with anything therein provided.



## PART I.

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- Nuisances Defined*, p. 7.  
*The Local Authorities*, p. 14.  
*Powers of Local Authority*, p. 18.  
*Disinfection of Premises*, p. 34.  
*Hospitals, &c.*, p. 37.  
*Mortuaries*, p. 38.  
*Removal of infected Persons from Ships*, p. 39.  
*Quarantine*, p. 39.  
*Cellar Dwellings*, p. 40.

Departing from the order observed in the Acts themselves, let us first discover the description of nuisances that may be dealt with under them.

The eight section of the 18 & 19 Vict. c. 121, is in these words:—

The word “nuisances” under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health :



Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby.

By the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 19, the word "nuisances" under the Nuisance Removal Acts shall include—

1. Any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates :

2. Any factory, workshop, or workplace not already under the operation of any general Act for the regulation of factories or bakehouses, 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, that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein :

3. Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used in such fireplace or furnace, and is used within the district of a nuisance authority for working engines by steam, or in any mill, factory, dyehouse, brewery,

bakehouse, or gaswork, or in any manufactory or trade process whatsoever :

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

Provided, first, 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 :

Secondly, that where a person is summoned before the justices in respect of the nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the justices may hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if they are satisfied that such fireplace or furnace is constructed in such manner as to consume, as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

The eighth section of 18 & 19 Vict. c. 121, professes to describe what the word "nuisances" shall include, and not merely what the term shall mean. The effect of the section, therefore, is to prevent any doubt about the applicability of the Act to the several species of nuisance expressly set forth in it. With regard to other species of nuisance, it will be material to recollect always that

the title of the Act contains the expressions "nuisances removal" and "diseases prevention," and that as the averting injury to the health is the real object, its powers ought not to be applied except for that purpose. The preservation of the public health had been considered by the legislature of such paramount importance as to justify enactments containing enormous arbitrary powers; and it was to prevent the abuse of these powers that the checks provided by the statute now under discussion were interposed (see per Sir J. Stuart, V. C., *Tinkler v. Wandsworth*, 3 Jur. (N. S.) 1294; 21 J. P. 757, s. c.; 27 L. J. Ch. 342; De G. & J. 261; 4 Jur. 293. This position, that the powers of the Act ought not to be applied except for averting injury to health, is fortified by the proviso introduced for the protection of commercial establishments. "Any accumulation of deposit which is a nuisance,"—which it may be by mere offensiveness, "or injurious to health," is included in the word "nuisances," and is, in general, punishable under the Act. Such accumulation or deposit, however, may be "necessary for the effectual carrying on of any business or manufacture." If it is so necessary, it shall not be punishable under this Act if it be made out to the satisfaction of the justices, 1st, "that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture;" and 2nd, "that the best available means have been taken for protecting the public from injury to health thereby." They, therefore, who have to comply with the first condition, must bear in mind that the keeping must be necessary, and not merely convenient or advantageous. In endeavouring to satisfy the second

condition, the manufacturer must consider that he is to purchase immunity from summary proceedings under this Act by using "the best available means" to protect the public from injury to health. It will not be enough to adopt such precautions only as are used in the place or district among persons carrying on the same business or manufacture, if it has been ascertained that there are better, which are available. The best available means must be adopted, for it is not enough that the precautions ordinarily adopted in the particular trade or manufacture have been observed. *Scholfield v. Schunk*, 19 J. P. 84.

In interpreting the word "available," it is probable that magistrates will pay more attention to scientific than pecuniary difficulties. Let it not be supposed, however, that the proviso to the eighth section confers a conditional permission to have on the premises of a manufacturer, for the effectual carrying on of his business or manufacture, an accumulation or deposit which is a nuisance, or injurious to health. The proviso only determines the condition by compliance with which the manufacturer is to be dispunishable under the Act. All other liabilities remain as before. (18 & 19 Vict. c. 121, s. 43.)

It will be observed that the word "premises" is used. It must be interpreted by the second section, that is, as extending to "all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private." The word "tenements," moreover, must not be forgotten, when it becomes necessary under other sections to

determine who is occupier, and whether occupier or owner is to be proceeded against.

Now, by the Sanitary Act, 1866, section 32, any ship or vessel lying in any river, harbour, or other water shall be subject to the jurisdiction of the nuisance authority of the district within which such river, harbour, or other water is, and be within the provisions of the Nuisances Removal Acts in the same manner as if it were a house within such jurisdiction, and the master or other officer in charge of such ship shall be deemed, for the purposes of the Nuisances Removal Acts, to be the occupier of such ship or vessel; this provision, however, does not apply to any ship or vessel belonging to Her Majesty or to any foreign government.

The eighth section of 18 & 19 Vict. c. 121, uses several times the expression "injurious to health." The proviso has the phrase "protecting the public from injury to health." It is to public nuisances, therefore, that the Act applies, that is, to nuisances which, more or less, obtrude on and affect every one within range of their operation. *Soltau v. De Held*, 2 Sim. N. S. 133.

The remedy given by the Act is, of course, in many instances cumulative. Thus, keeping swine and pigstyes so as to be a nuisance to the inhabitants was a matter for which 11 & 12 Vict. c. 63, s. 59, gave a remedy as well as this Act. *Digby v. West Ham*, 22 J. P. 304.

The following is an illustration of what is a nuisance within the meaning of section 12 of the 18 & 19

Vict. c. 121. The appellant, claiming to be owner of the markets and fairs held in the town of Crewkerne, erected a sheep-pen in front of a house in the town, and took toll for sheep exposed for sale therein. After the removal of the sheep their droppings and urine remained, and a complaint was lodged against the appellant by the respondent (who was the inspector of nuisances) in respect thereof. For fifty-five years the inhabitants of the houses, before which the sheep were penned, had been in the habit of clearing away the droppings, except in cases where houses, before which the pens were placed, were unoccupied. The justices being of opinion that the appellant was a person by whose "permission or sufferance" the nuisance was created, and that the ground inclosed by the appellant with hurdles for penning the sheep was "lands or tenements" within the meaning of section 12, and that the nuisance was a recurring nuisance within the Act, issued their prohibition to the appellant. On a case stated under the 20 & 21 Vict. c. 43, s. 2, the Court of Common Pleas held that the justices were right. *Draper app., Sperring, resp.*, 10 C. B (N. S.) 113; 30 L. J. (N. S.) M. C. 225; 4 L. T. (N. S.) 365.

The machinery devised for carrying the Act into execution is called "The Local Authority." It varies in different districts; and there is a corresponding variation in the fund out of which the charges and expenses incurred in executing the Acts, and not recovered, may be defrayed.

On collating the second and fourth sections of the 23 & 24 Vict. c. 77, and ss. 17 and 33 of the Sanitary Act, 1866, it will appear that the several local authorities, districts, and corresponding funds

out of which the expenses are to be paid, are as follows

District.	Local Authority.	Fund.
Place within which the Public Health Act is or shall be in force.	Local Board of Health.	General District Rates.
Place wherein a Council exists or shall exist, except city of London and the liberties thereof, the city of Oxford, and the borough of Cambridge.	Mayor, Aldermen and Burgesses, by the Council.	Borough Fund or borough rate.
City of London and the liberties thereof.	Commissioners of Sewers for the time being.	Rates and funds administered by the Commissioners of Sewers for the city and liberties.
City of Oxford - -	Commissioners acting in execution of the Local Improvement Act in force.	Fund out of which expenses of cleansing the streets are payable, as annual charges and expenses.
Borough of Cambridge	Ditto - - -	Ditto.
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.	Rates levied for the purposes of improvement under the Improvement Act.
Place in which there is no Local Board of Health, Council, Body of Trustees or Commissioners, if there be a Board of	Such Board of Guardians.	Where a Board of Guardians for a union is the local authority for the whole of the union, the charges and ex-

District.	Local Authority.	Fund.
<p>Guardians of the poor for such place, or for any parish or union within which such place is situate.</p>		<p>penses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor :</p> <p>Where the Board of Guardians for a union is the local authority for two or more places maintaining their own poor, but not for all the places in the union, the charges and expenses shall be paid out of the poor rates of the places for which the Board is the local authority :</p> <p>Where the Board of Guardians for a union is the local authority for a single place maintaining its own poor, and where the Board of Guardians for any such single place are under the Act the local authority for such place, the charges and expenses shall be defrayed out of the rates for the relief of the poor thereof :</p> <p>Where the Board of Guardians for a</p>



District.	Local Authority.	Fund.
<p>If there be no such Board of Guardians in such place as last aforesaid.</p> <p>Place where the Metropolis Local Management Act shall be in operation (18 &amp; 19 Vict. c. 120, s. 134.)</p>	<p>The overseers of the poor for such place, or for the parish of which such place forms a part.</p> <p>Vestry or district board.</p>	<p>union is under the Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, the Board shall apportion the charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such Board is the local authority shall be defrayed out of a rate to be levied in the same manner as a poor rate.</p> <p>The rates for the relief of the poor; and in divided parishes a separate rate.</p> <p>Rates or other funds applicable to purposes of vestry or district board.</p>

But 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 the said sections of the Public Health Act, 1848, (*i. e.*, ss. 51 and 54), and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with sufficient sewers. 31 & 32 Vict. c. 115, s. 4.

Where the guardians are the nuisance authority for part of any parish only, and shall require to expend money on account of such part, in execution of the provisions of the Nuisance Removal Acts, the overseers of the parish shall upon receipt of an order from the guardians, raise the requisite amount from the persons liable to be assessed to the poor rate therein by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate, when made, and shall account to the auditor of the district for the receipt and disbursement of the same in like manner, and with the same consequences as in the case of the poor rate made by them. 29 & 30 Vict. c. 90, s. 33.

In proceeding under the Nuisance Removal Act the extent of the area of the jurisdiction of the local authority must be carefully considered, for the proceeding before justices given by the twelfth section for the removal and prevention of nuisances is confined to cases where both the cause and effect of such nuisances exist within that area. *Reg. v.*

*Cotton*, 1 E. & E. 203; 28 L. J., M. C. 22. See also *Reg. v. Warner*, 27 L. J., M. C. 144; 6 E. & B. 395.

Moreover, the twelfth section of the Act applies to all nuisances caused by the acts of an individual, and which that individual has the power to remove in the manner contemplated by the Act. *Reg. v. Gee*, 33 L. T. 181.

A. was the owner of property on which certain cesspools existed, which contained the sewage from several houses also his property. This sewage, together with the sewage for houses belonging to other persons, flowed over the cesspools in rainy weather and passed through pipes, laid under the highway, into an open ditch on a field belonging to B., where the sewage first became a nuisance. On evidence of these facts the justices refused to make an order on A. for the abatement of the nuisance; and to prevent its recurrence, and on a case stated, it was held that the justices were right; but the case was remitted to the justices for the addition of further facts; and per Blackburn, J.: An owner *quá* owner is not necessarily liable, but his tenant may be liable; or if the owner is occupier he may be liable. *Hendon v. Bowles*, 17 L. T. (N. S.) 597.

In another case, B. was the owner of a brewery, and sent the refuse and sewage from his premises on to the land of A., where also it met the refuse from other sewers and caused a nuisance on the land of A., but no nuisance was caused on the land of B.; but B.'s contribution of refuse was the main cause of the nuisance. B., under such circumstances, was held liable for the nuisance as the person by whose "act, default, permission, or sufferance" the nuisance arose within the meaning of 18 & 19 Vict. c. 121,

s. 12. *Brown v. Bussell*, 32 J. P. 196 ; 37 L. J. (M. C.) 65 ; 18 L. T. (N. S.) 19 ; L. R. 3, Q. B. 251. Per Cockburn, C. J., if a nuisance arises from a joint contribution of different persons, of such a nature that the contribution of each person is not in itself a nuisance, but the nuisance is caused by these contributions in the aggregate, I should hesitate very much to hold that it would be competent to the justices to make an order prohibiting each separate contributor from draining his sewage into a separate drain. But in the present case, independently of the subsequent contribution, there is a quantity of refuse poured into the drain by the applicant which in itself creates a nuisance.

Where a nuisance existed on a common, which was managed by a committee of the copyholders, the committee, and not the lord of the manor, are the persons by whose act and default the nuisance arises, and are the persons to be proceeded against. *Richmond v. Dean and Chapter of St. Paul's*, 32 J. P. 374 ; 18 L. T. (N. S.) 522.

C. was the owner of certain houses, for the use of which he had constructed a drain under a private road, and thence leading to a stream in the lands of A. The refuse polluted this stream, and caused a nuisance on the lands of A., though none was caused on the lands of C. In this case, also, C. was held to be liable for the nuisance on the lands of A., as the person by whose act it was caused, though C. claimed to discharge his refuse as a easement. *Francomb v. Freeman*, 32 J. P. 196 ; 37 L. J. (M. C.) 65 ; 18 L. T. (N. S.) 19.

With regard to the execution of the Act in extra-parochial places, it is enacted by 20 Vict. c. 19, s. 1, that every place entered separately in the report

of the registrar-general in the census of 1851, which then was or was reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for all the purposes of (amongst other things) the removal of nuisances, be declared a parish for such purposes, and shall be designated by the name which is assigned to it in such report.

A place so situate will therefore come within the definition of a parish, and be liable to all the incidents of a parish in respect of the removal of nuisances injurious to health.

Now the 31 & 32 Vict. c. 122, deals with certain extra-parochial lands, the sea-shore, accretions from the sea and the banks of rivers, and provides for the incorporation of every such place with the next adjoining parish. The enactment is as follows:— From the 25th day of December next, every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for the year 1851 or not, for which an overseer has not been then appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish, shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value. 31 & 32 Vict. c. 122, s. 27.

And every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the said 25th of

December next shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary. *Ib.*

In a case, turning upon the 6th section of 18 & 19 Vict. c. 121, the question was raised whether the Act was applicable to an extra-parochial place where there were no inhabitants; and the Queen's Bench decided that it applied to all extra-parochial places, whether inhabited or not. The case referred to was stated upon a *mandamus* addressed to the defendants as the Nuisances Removal Committee of the township of Bootle-cum-Linacre, and the facts were these:—"The township is bounded towards the west by the sea-shore at the mouth of the Mersey, below Liverpool. There is no evidence to define the precise boundary between the township and the sea shore, or to rebut the ordinary presumption that the portion of the sea shore between high and low-water mark is extra-parochial. There is a covered sewer in the township which conveys water, filth and sewage from about fifty houses in the township, and the ditch, gutter, drain, or watercourse mentioned in the writ, and which is admitted to be a nuisance which cannot be rendered innocuous without laying down a sewer along the same or some part thereof, or instead thereof, runs from the mouth of the said covered sewer to the sea across the shore.

"The mouth of the covered sewer where the nuisance begins is situated at and on the line of high-water mark of ordinary spring-tides, and is one hundred and eighty yards above the line of the medium high tides between the springs and neaps,

and two hundred and fifty yards above the high-water mark of ordinary neap tides. The township of Bootle-cum-Linacre is the only adjacent place to this portion of the sea shore, *and there are no houses or inhabitants on the sea shore.*" It was held that the extra-parochial place in question must be considered as within the township of Bootle-cum-Linacre for the purposes of the Act; that it was the intention of the legislature that all the extra-parochial places in the kingdom should be included in the jurisdiction given by the Act; and that a place where no population exists is within the provision applicable to an extra-parochial place where the population is less than two hundred. *Reg. (on the prosecution of the Earl of Derby) v. Gee and others*, 33 L. T. 183; 23 J. P. 374, s. c.; 1 E. & E. 1068.

In the case above, the *Attorney-General v. Chambers*, 4 De G., M. & G. 206; 23 L. J., C. C. 662, and *Reg. v. Musson*, 27 L. J., M. C. 100; 8 E. & B. 900, were recognized as deciding, the former the recognized boundary line upon the sea shore as between the crown and the subject; the latter case, that *primâ facie* land on the sea shore between high and low-water mark is extra-parochial.

The importance of this decision, by which many nuisances on the sea shore are brought within the jurisdiction of the Acts, is a matter to be appreciated by all frequenters of English watering-places.

The sewage from a lunatic asylum alleged to foul a brook so as to be a public nuisance, an information was filed to restrain the outpouring of such sewage so as to cause a nuisance. After standing over ineffectually for an arrangement for two years,

the case was argued, when the court directed a reference to an expert (who was agreed upon), under the 15 & 16 Vict. c. 80, s. 42, as to whether with reference to the health of the inhabitants, it was necessary that steps should be taken for purifying the brook, or whether the drainage should be diverted from the brook, and by what means. *Attorney-General v. Colney Hatch Lunatic Asylum*, 19 L. T. (N. S.) 44.

Power is given (18 & 19 Vict. c. 121, sec. 5) to the local authority to appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, two of such committee to be a quorum; and such local authority, or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints or take proceedings on their behalf. There seems, therefore, to be an implied authority for appointing a chairman, and this is borne out by the repealed provision in sec. 6 of 18 & 19 Vict. c. 121, for appointing a day in Easter-week for holding the election of members of the committee in extra-parochial places.

By section 5 of 23 & 24 Vict. c. 77, the board of guardians for a union may appoint a committee or committees of their own body, under sec. 5 of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority. Every committee so appointed shall have the full power of executing the Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment;



and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which the committee is appointed. Where a committee is appointed for any such place or places, the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed, shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee. Provided that where any one such committee is appointed for all the places for which the board is the local authority, its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if the committee had not been appointed.

When it is proposed to take proceedings under sec. 5 of 18 & 19 Vict. c. 121, an order in writing in each particular case must be obtained from the local authority or committee, as a previous general authority is not sufficient. See *Isle of Wight Ferry Company, apps., Ryde Commissioners, resps.*, 25 J. P. 454.

Local authorities may, for the purposes of the Acts, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors. (23 & 24 Vict. c. 77, sec. 9.) The salary of the inspector may be either an annual salary or a weekly salary, and may be paid at such periods as may be stipulated at the time of the appointment. *Hall v. Taylor*, 27 L. J., Q. B. 311.

The appointment need not be by an instrument under seal (*Smart v. West Ham*, 24 L. J. Exch. 201); and if the salary be not paid the officer may

recover it in an action for debt. *Hall v. Taylor*, 27 L. J. Q. B. 311; 22 Jur. 877.

To enable the local authority to discharge its duties, powers of entry on private premises for the purposes of the Act are conferred upon it. These powers are of three kinds: 1. To ground proceedings for the removal of nuisances; 2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act; 3. To remove or abate a nuisance in case of non-compliance with or infringement of an order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act (18 & 19 Vict. c. 121, sec. 11).

By the Sanitary Act, 1866, sec. 20, it shall be the duty of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of the Nuisance Removal Acts, and to enforce the provisions of such Acts 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; and any justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under sec. 11 of the Nuisances Removal Act, 1855.

By sec. 31, the power of entry given by sec. 11 of 18 & 19 Vict. c. 121, may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried

on. And any justice's order once issued under that section shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

Upon complaint before a justice by any inhabitant of any parish of the existence of any nuisance on any private premises in the same parish, such justice shall issue a summons requiring the person by whose act, default, permission or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises, to appear before two justices in petty sessions, who shall proceed to inquire into the complaint, and act in relation thereto as in cases where complaint is made by a local authority under sec. 12 of 18 & 19 Vict. c. 121; the justices, if they see fit, may adjourn the hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under section 11 of the Act. The costs in the case of every such application shall be in the discretion of the justices, and payment may be ordered and enforced as in other cases of summary adjudication by justices. Any order so made by justices shall be attended with the like penalties and consequences for disobedience thereof, and subject to the like appeal as any order made under section 12 of the Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or

prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority. 23 & 24 Vict. c. 77, sec. 13.

A notice under 29 & 30 Vict. c. 90, section 21, is not necessary previous to a complaint by an inhabitant being made under section 13 of 23 & 24 Vict. c. 77. *Coker v. Cardwell*, 33 J. P. 758; L. R. 5, Q. B. 17; 39 L. J. M. C. 38.

To ground proceedings the local authority must have reasonable grounds for believing that a nuisance exists on private premises (18 & 19 Vict. c. 121, sec. 11). It appears (sec. 10) that the first step towards establishing such grounds is a notice of nuisance to the local authority by any of the following persons:

Any person aggrieved by the nuisance:

The sanitary inspector, or any paid officer under the local authority:

Two or more inhabitant householders of the parish or place to which the notice relates:

The relieving officer of the union or parish:

Any constable or any officer of the constabulary or police force of the district or place:

And, in case the premises be a common lodging-house, any person appointed for the inspection of common lodging-houses.

In *Ex parte Bassett*, 7 E. & B. 280; 26 L. J. M. C. 64, s. c., which turns upon secs. 10, 12, and 14, it has been decided that where an order for abating a nuisance has been obtained, and the local authority are requested by a party aggrieved to

enforce the order, it is not obligatory upon them to do so.

It is to be observed, however, that, in *Ex parte Bassett*, the order, made upon the complaint of the sanitary inspector of the local authority in that case, directed them to cleanse a drain upon premises in the occupation of an individual; and the reason given for the decision is, that section 14 provides a specific remedy by imposing a penalty on the person disobeying the order. The same rule, therefore, does not seem to apply where the proceedings are under the 22nd section of the Act.

It has been decided that a notice under section 11 of 18 & 19 Vict. c. 121, is not necessary to find jurisdiction under section 12. *Amys, app., Creed, resp.*, 38 L. J. M. C. 22.

In *Reg. (on the prosecution of the Earl of Derby) v. Gee and others*, 28 J. P. 83, the contest in substance was, whether a sewer should be lengthened by the Earl, and at his expense, or by and at the expense of the Nuisances Removal Committee within the jurisdiction of which it existed. The Earl obtained a *mandamus*, which contained a recital, not denied by the Nuisances Removal Committee, that the nuisance in question could not and cannot, in the opinion of such committee, be rendered innocuous without the laying down of a sewer (see sec. 22 *post*, p. 64); and that the said committee had been required by the Earl, the owner of the land where the nuisance existed and of the houses drained by the existing sewer, to lay down such sewer; and commanded the committee to lay down, in compliance with the provisions of the Act, such a sewer or other structure as might be sufficient to render the nuisance innocuous, or

show cause to the contrary. The Nuisances Removal Committee resisted the writ; and it is to be inferred from the note of the case that, before the writ was applied for, an order of magistrates had been obtained under section 12, directing the Earl himself to abate the nuisance, and that, except in paying the costs, he had not obeyed that order. The Queen's Bench nevertheless held the return to be bad; and judgment was ultimately given for the crown. See *Reg. (on the prosecution of the Earl of Derby) v. Gee and others*, 33 L. T. 183, and 23 J. P. 374, referred to *ante*, p. 18, and *post*, p. 46.

The notice may be in Form (B.) in the schedule to the Act.

Before taking cognizance under the Act of any such nuisance, entry on the premises must be made as in the Act is provided, or in conformity with any improvement Act under which the inspector has been appointed (sec. 10.) The local authority, or any of their officers, having reasonable grounds for believing that a nuisance exists on any private premises, may make demand, by themselves or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening (sec. 11.) If admission be given, the inspection must be so conducted as to enable the local authority to determine whether the nuisance exists, or whether it existed at the time the notice was given, and, although the same may have been since removed or discontinued, is likely to recur or to be repeated on the same premises or any part thereof (sec. 12). And it has been held that a notice under section 11 of 18 & 19 Vict. c. 121, is not necessary

to find jurisdiction under section 12 of the same statute. *Amys, app., Creed, resp.*, 38 L. J. M. C. 22. If admission be not given, reasonable notice in writing of an intended application to a justice having jurisdiction in the place for an order under his hand, requiring the person having the custody of the premises to admit the local authority or their officer, should be given (sec. 11). The notice must be served at least twenty-four hours before the time at which it is proposed to make the entry. This notice may be in the Form (C.) to the Act, and may be served, where the person to whom the same is addressed does not reside at a distance of more than five miles from the office of the inspector, by delivering the same to or at the residence of the person to whom it is addressed, and when addressed to the owner or occupier of premises it may also be served by 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. If addressed to a person by name, and not to the owner or occupier of the premises, and the person resides at a distance of more than five miles from the office of the inspector, the notice may be sent by a registered letter through the post (sec. 31). The distance in all cases under section 31 is to be measured in a straight line from point to point, as on a horizontal plane,—*Lake v. Butler*, 24 L. J., Q. B. 273; *Stokes v. Grissell*, 14 C. B. 678; 23 L. J., C. P., 113; and *Reg. v. Saffron Walden*, 9 Q. B. 76; 15 L. J., M. C. 115—in familiar language, “as the crow flies.” On proof before such justice of the demand, refusal, and notice, and on oath made before him of belief

in the existence of the nuisance, he may, by order under his hand, require the person having the custody of the premises to admit the local authority or their officer (sec. 11). If no person having custody of the premises can be discovered, any such justice shall on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand, authorize the local authority or their officers to enter the premises between the hours aforesaid (sec. 11). The schedule to the Act furnishes (Form A.) a form of an order of justices for admission to private premises, when some person having custody of the premises can be found. The form may be easily adapted to the case in which no person having custody of the premises can be discovered.

The order of admission to inspect having been obtained, the inspection must be conducted for the purpose already mentioned, that is, to enable the local authority to ascertain whether a nuisance exists, or did exist at the time when notice was given, and whether, although the same have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof (sec. 12).

By the Sanitary Act, 1866, (sec. 16), in any place within the jurisdiction of a nuisance authority the chief officer of police within that place, by and under the directions of one of Her Majesty's principal secretaries of state, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceeding which the nuisance authority of such place might institute with respect to the removal of



nuisances. No officer of police shall, however, be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice of the peace, for the purpose of carrying the Act into effect.

Where complaint is made to a secretary of state that a nuisance authority has made default in enforcing the provisions of the Nuisances Removal Acts, such secretary, 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. If such duty is not performed by the time limited in the order, the secretary of state shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such court. 29 & 30 Vict. c. 90, s. 49.

The costs of this proceeding on the part of the secretary of state are provided for by the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 8.

By a subsequent Act 32 & 33 Vict. c. 100, s. 8, the secretary of state may, from time to time change the person appointed by him to perform the duty of a defaulting local authority.

By the Sanitary Act, 1866, (sec. 21), the nui-

sance authority or chief officer of police shall, previous to taking proceedings before a justice under the above section, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works and to do all such things as may be necessary within a time to be specified in the notice: Provided,

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, such notice shall be served on the owner;

Secondly, that where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, then the nuisance authority may itself abate the same without further order, and the cost of so doing shall be part of the costs of executing the Nuisances Removal Acts, and borne accordingly.

The power of entry for other purposes will be more advantageously considered in connection with the sections for removing nuisances, and preventing the recurrence or repetition of them.

It will be a safe course for the local authority formally and in writing to ascertain, after entry and inspection, the existence of the nuisance, or that it did exist at the time notice was given, and, although since removed or discontinued, is in their opinion likely to recur. This should be done by reference

to and as a conclusion from the report of their officers, or their own inspection, and the previous proceedings.

The reasonable costs and expenses incurred in giving notice, and obtaining the order of a justice, may be recovered under sec. 19, in the manner hereinafter mentioned.

*Disinfection of Premises.*

By the Sanitary Act, 1866, s. 22, if the nuisance authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious or contagious disease, they are to give notice in writing requiring the owner or occupier of such house or part thereof to cleanse and disinfect the same, as the case may require. 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 one shilling and not exceeding ten shillings 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. When the owner or occupier is from poverty or otherwise unable, in the opinion of the nuisance authority, effectually to carry out the above-mentioned requirements, they may, without enforcing the requirements on such owner or occupier, with his consent, at its own ex-

pense, cleanse and disinfect such house or part thereof, and any articles therein likely to retain infection.

By sec. 23 the nuisance authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge.

By sec. 24 it shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick or to his own home.

By sec. 25 if any person suffering from any dangerous infectious disorder shall enter any public conveyance without previously notifying to the owner or driver thereof that he is so suffering, he shall on conviction thereof before any justice be liable to a penalty not exceeding five pounds, and shall also be ordered by such justice to pay to such owner and driver all the losses and expenses they may suffer in carrying into effect the provisions of this Act. No owner or driver of any public conveyance shall be required to convey any person so suffering until they shall have been first paid a sum sufficient to cover all such losses and expenses.

By sec. 38 any person suffering from any dangerous infectious disorder who wilfully exposes himself, without proper precaution against spreading the disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any

owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of the owner or driver, conveyed any such sufferer, and any person who without previous disinfection 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 any justice, be liable to a penalty not exceeding five pounds. No such proceedings shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having them disinfected.

By sec. 39, if any person knowingly lets any house, room, or part of a house, in which any person suffering from any dangerous infectious disorder has been, to any other person, without having the house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner as tested by a certificate given by him, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of the section the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into the inn.

The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund. 23 & 24 Vict. c. 77, s. 14.

*Hospitals.*

By sec. 26 where a hospital or place for the reception of the sick is provided within the district of a nuisance authority, any justice may, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the nuisance authority, of any person suffering from any dangerous contagious or infectious disorder, being without proper lodging or accommodation, or lodged in a room occupied by more than one family, or being on board any ship or vessel.

By sec. 37 of the Sanitary Act, 1866, in the metropolis the nuisance authority may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick. Such authority may also build such hospitals or places of reception, or make contracts for the use of any existing hospital or part of a hospital, or for the temporary use of any place for the reception of the sick, or 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 its district, on payment by the sewer authority (*sic*) of such annual or other sum as may be agreed upon.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, and all expenses incurred by such authorities in procuring such hos-

pital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of the Sanitary Act, 1866.

*Mortuaries.*

By sec. 27 any nuisance authority may provide a proper place for the reception of dead bodies, and any justice may, in certain cases, on a certificate signed by a legally qualified medical practitioner, order a dead body to be removed to such proper place of reception, at the cost of the nuisance authority, and direct the same to be buried within a time to be limited in such order. 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 relieving officer to bury such body at the expense of the poor rate, but any expenses so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

By sec. 28 any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as above provided for) for the reception of dead bodies for and during the time required to conduct any post-mortem examination ordered by the coroner of the district or other constituted authority. Where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such post-mortem examination and the removal of such body. The costs of removal and

re-removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner.

*Removal of Infected Persons from Ships.*

By sec. 29 any nuisance authority may, with the sanction of the Privy Council, lay down rules for the removal to any hospital to which such authority is 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 or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

By sec. 30, for the purposes of the Act, any ship, vessel or boat that is in a place not within the district of a nuisance authority shall be deemed to be within the district of such nuisance authority as may be prescribed by the Privy Council, and until a nuisance authority has been prescribed, then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line, but nothing in the Act contained shall enable any nuisance authority to interfere with any ship, vessel, or boat that is not in British waters.

*Quarantine.*

By the Sanitary Act, 1866, sec. 52, every vessel having on board any person affected with a danger-



ous or infectuous disorder shall be deemed to be within the provisions of the Quarantine Act, 6 Geo. 4, c. 78, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom. Her Majesty's Privy Council may, by order or orders to be by them from time to time made, make such rules, orders, and regulations as to them shall seem fit, with a view to the treatment of persons affected with cholera and epidemic, endemic, and contagious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom and on the high seas within three miles of the coasts thereof, as on land; and to declare and determine by what nuisance authority or authorities such orders, rules, and regulations shall be enforced and executed; and any expenses incurred by such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisances Removal Acts.

By sec. 51 all penalties imposed by the 6 Geo. 4, c. 78, 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.

*Cellar Dwellings.*



By the Public Health Act, 1848, sec. 67, it shall not be lawful to let or occupy, or suffer to be occupied, separately as a dwelling any vault, cellar, or underground room built or rebuilt after the passing of the Act, or which shall not have been so let or

It applies to the Metropolitan Police Act 1848, sec. 120. Sec. 103.

occupied before the passing of the Act ; and it shall not be lawful to let or continue to let, or to occupy or suffer to be occupied, separately as a dwelling, any vault, cellar, or underground room whatsoever, unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, nor unless the same be at least three feet of its height above the surface of the street or ground adjoining or nearest to the same, nor unless there be outside of and adjoining the same vault, cellar, or room, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part, nor unless the same 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, nor unless there be appurtenant to such vault, cellar, or room the use of a watercloset or privy and an ashpit, furnished with proper doors and coverings kept and provided according to the provisions of this Act, nor unless the same have a fireplace with a proper chimney or flue, nor unless the same have an external window of at least nine superficial feet in area clear of the sash-frame, and made to open in such manner as shall be approved by the surveyor, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash-frame. Whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied,

for hire or rent, any vault, cellar, or underground room, contrary to the Act, shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the nuisance authority (Sanitary Act, 1866, sec. 42,) in this behalf: provided always that in any area adjoining a vault, cellar, or underground room there may be steps necessary for access to such vault, cellar, or room, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room, a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window; provided also, that every vault, cellar, or underground room in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of the Act; and all churchwardens and overseers of the poor shall from time to time cause public notice of the provisions of the Act with respect to the letting and occupation of vaults, cellars, and underground rooms to be given in such manner as may appear to them to be best calculated to make the same generally known.

By the Sanitary Act, 1866, sec. 42, the above is applied to every place in England where such dwellings are not regulated by any other Act of parliament, and in applying the section to places where it is not in force at the time of the passing of the Act, the expression "this Act" shall be con-

strued to mean the "Sanitary Act, 1866," and not the Public Health Act, 1848. In construing the sixty-seventh section as applied by the Sanitary Act, 1866, Nuisance Authority shall be substituted for the Local Board.

Where two convictions against the provision of any Act relating to the occupation of a cellar as a separate dwelling place shall have taken place within the period of three months, whether the persons so convicted were or were not the same, it shall be lawful for any two justices to direct the closing of such premises for such time as they may deem necessary, and, in the case of cellars so occupied, to empower the nuisance authority to permanently close the same, in such manner as they may deem fit, at their own cost. 29 & 30 Vict. c. 90, s. 36.

## PART II.

## REMOVAL OF NUISANCES.

The powers and duty of the local authority to proceed under the Act to the removal of a nuisance arise, when, by the proceedings in Part I. of the Nuisances Removal Act which must be taken (sects. 10—12), the local authority has ascertained—

That the nuisance complained of actually exists,  
or,

That the nuisance did in their opinion exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises, or any part thereof.

In either of these cases it is the duty of the local authority to cause a complaint thereof to be made before a justice of the peace, whose duty it is thereupon to issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises or continues, or, if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices in petty sessions assembled, at their usual place of meeting, or one stipendiary or police magistrate acting at any police court for the district. At the return of the summons, the justices or justice are to inquire into the complaint, and if it be proved to their satisfaction,

That the nuisance exists,

Or, did exist at the time when the notice was given,

Or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated.

The justices shall make such an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as in a subsequent section is mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance (sec. 12).

An order under sec. 12 may be made upon a person who claims an easement to drain through land of A. into a watercourse on land of B., as where the owner of six houses, let to yearly tenants, made a drain for them by leave of the owner of adjoining land through his land into a watercourse on the land of W. where the drainage became a nuisance. In that case the order was rightly made on F. *Francomb, app., Freeman, resp.*, 9 B. & S. 2.

An order may also be made under sec. 12 upon a person who causes a nuisance, though it arises at a distance from his premises; again, where several persons drain into one place an order under sec. 12 may be made upon one whose drainage by itself causes a nuisance. But if, though the aggregate drainage is a nuisance, the drainage of each is not by itself enough to cause a nuisance, it would, per Blackburn, J., be for the local authority to determine whether an order should be made under sec. 12, or a sewer be laid down under sec. 22. *Brown v. Bussell*, 9 B. & S. 2.

As regards the jurisdiction of justices under the

Nuisances Removal Acts, see 29 & 30 Vict. c. 41, s. 2, in the Appendix, *post*.

In *Reg. v. Cotton*, 28 L. J., M. C. 22; 22 J. P. 768, s. c., a rule for a distress warrant was discharged. Upon the argument the attention of the court was directed to secs. 8, 10, 11, 12, 30, and 35, and it was held that the proceedings before justices given by the 12th section is confined to cases where the cause and effect of such nuisances exist within the area of the local authority. In that case *Ind, Coope, and Company*, brewers, at Romford, poured their refuse into a river at that place, and the consequential result of that act was the pollution of the water of the river at Dagenham; the local authority for Dagenham proceeded before the justices for the abatement of the nuisance, and it was held, that as the cause of the nuisance arose out of the jurisdiction of the local authority, the justices had no power to hear and determine the question.

In *Reg.* (on the prosecution of the *Earl of Derby*) *v. Gee and others*, the contest was whether the nuisance in that case was one which the Earl could be required under sec. 12 to abate, or whether he was entitled to a *mandamus* to compel the Nuisances Removal Committee to abate it. It was ultimately held, that, as it was a nuisance within the 22nd section, a *mandamus* ought to issue to the committee. The facts of the case are stated, *ante*, p. 28.

The schedule has a form of complaint (D.), which, varied as circumstances require, will be sufficient. The form provides, first, for the case of a summons to the owner or occupier of the premises

on which the nuisance arises, and next for that of a summons to the person by whose act, default, permission, or sufferance the nuisance arises or continues. It is, however, only if the person by whose act, default, permission, or sufferance the nuisance arises or continues cannot be found or ascertained, that the summons ought to issue to the owner or occupier.

By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises, which are a nuisance or injurious to health, or such part thereof as the justices may direct, in their order, or to drain, empty, cleanse, fill up, amend or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works 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; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the



judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable from the date of which other order such house may be let or inhabited (18 & 19 Vict. c. 121, sec. 13.)

As the order is to be made at the time the complaint is heard, and the local authority is empowered in case of default (sec. 14) to enter and do whatever may be necessary in execution of the order, and charge the cost to the person on whom the order is made, it will be material in all cases to be prepared at the hearing of the complaint to point out specifically the very things that are to be done, and the manner and time of doing them. In a case, upon a local improvement Act, it was held that the notice of the works required to be done was not sufficiently specific. *Parkinson, appellant, v. The Mayor of Blackburn, respondent*, 23 J. P. 294. The advice above is offered to both parties; for defendants must bear in mind that there is no appeal against orders for the abatement of a nuisance, except so far as they may direct the execution of structural works (sec 16). *Ex parte The Mayor of Liverpool*, 8 E. & B. 539; 27 L. J., M. C. 89, s. c. *post*, pp. 51, 92, 94. The second power of entry conferred by sec. 11, seems to have been in part intended for this purpose. The power is given to the local authority to enter on the premises, by themselves or their officers, between the hours of 9 A. M. and 6 P.M., for the purpose of examining premises whenever under the provisions of this Act a nuisance has been ascertained to exist, or where an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the

course of a drain, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be. With respect to the prohibitive powers, it seems to result from collating the words of the section with the Form of Order (E.) in the schedule, that the power to prohibit recurrence in general and not confined, as the 12th section would suggest, to the case of a nuisance removed or discontinued since the notice, but likely to recur. No form is provided for declaring habitable a house which justices may have forbidden to be used for human habitation; but such an order may easily be framed from Forms (E.) or (F.) by reciting an order in one of those forms, and adding the words following, or others to the same effect:—

“ Now we, being satisfied that the said house or building has been rendered and is fit for human habitation, do hereby declare such house or building habitable. Given, &c.”

The order may be made by two justices in petty sessions assembled at their usual place of meeting, or one stipendiary or police magistrate acting at any police court for the district, and need not be made by the same two justices or magistrate who imposed the prohibition.

The order of prohibition, or prohibitive part of an order, may be appealed against (sec. 15) in manner prescribed by the 40th section, which will be commented on hereafter. At present it will suffice to remark that, as the prescribed conditions of appeal do not limit the grounds of appeal, the judgment of the justices may be impeached generally. There is nothing in the Act to suspend the legal force of the

prohibition during the pendency of the appeal, and the prohibition, therefore, during such pendency, must be respected. *Kendall v. Wilkinson*, 24 L. J., M. C. 89.

It may sometimes appear to the justices that the execution of structural works is required for the abatement of a nuisance. They are in such case empowered to direct such works to be carried out under the direction, or with the consent or approval of, any public board, trustees or commissioners having jurisdiction in the place in respect of such works. The whole legal force of such an order may, however, be suspended until after the determination of, or the ceasing to prosecute, an appeal against it, if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided by the Act, and shall appeal accordingly. The grounds of appeal must be confined to the part of the order which relates to the execution of structural works (18 & 19 Vict. c. 121, sec. 16.)

Where a local board have ordered works to be done to abate a nuisance, and the person upon whom the order is made does works, but not to the extent or in the manner ordered, the justices, on an application of the board to enforce the order, have no power to dismiss the complaint if they are of opinion that all that was really necessary to be done has been done, but are bound to enforce execution of the order of the board. *Hargreaves v. Taylor*, 38 L. T. 241; 3 B. & S. 613; 32 L. J. (N. S.) M. C. 111.

It is to be observed that the sixteenth section applies to structural works required in respect of private nuisances, to which alone the first twenty

sections of the Act relate. See per Erle, J., *Reg. v. Middleton*, 28 L. J., M. C. 45.

An order was made by two justices upon the mayor, aldermen and burgesses of Liverpool, upon the complaint of an officer of a Nuisance Removal Committee on behalf of the committee. It recited that in and upon the premises nuisances existed, arising from sewage and filth flowing from a gaol and certain open ditches and watercourses, and from accumulations of sewage, and ordered the parties "to abate and discontinue the said nuisance, and to do such works and acts as are necessary to abate the said nuisance, so that the same shall no longer be a nuisance;" and if the order was not complied with the committee were authorized to enter upon the premises and do all such works, matters or things as might be necessary for carrying the order into execution. It was held that this was an order for abatement, and not an order for the execution of structural works so as to be subject to appeal; and that a penalty might be imposed under sec. 14 for disobedience of the order; though it was deposed (upon the application for a *certiorari* and *mandamus* to compel the sessions to hear an appeal) that the only proper and convenient mode of abating the nuisance was by constructing an underground drain, 800 feet in length. *Ex parte Mayor of Liverpool*, 8 E. & B. 539; 27 L. J., M. C. 89; and 22 J. P. 562, s. c.

Any person not obeying the order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than 10s. per day during his default. Any person knowingly and willingly acting contrary to

the order of prohibition shall be liable for every such offence to a penalty not exceeding 20s. per day during such contrary action (18 & 19 Vict. c. 121, sec. 14). See *Ex parte Mayor of Liverpool sup.*

These penalties can only be inflicted on the persons named or described in the order. They can be enforced notwithstanding an appeal against a prohibition; but cannot be enforced in respect of an order for the execution of structural works pending an appeal against it.

Where an order to abate a nuisance by removing offensive privies, &c., was directed to "the owner or to the Nuisances Removal Committee," the owner being directed to remove the same within seven days, and if such order were not complied with, the committee were authorized and required to enter and remove the nuisance complained of, and the seven days elapsed without the owner or the committee having removed the nuisance, it was held that the justices had power to fine the owner, under sec. 14, for disobedience of the order, notwithstanding that it was directed to the committee as well as to him. *Tomkins v. Great Stanmore*, 29 J. P. 117; 12 L. T. (N. S.) 118.

Penalties imposed by the 14th section of the 18 & 19 Vict. c. 121, for disobeying an order to abate a nuisance under section 13, cannot be enforced without previously summoning the offender under section 20 of the Act. *Reg. v. Jenkins*, 32 L. J. (N. S.) M. C. 1; 7 L. T. (N. S.) 272; 3 B. & S. 116.

The local authority *may* enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and

charge the cost to the person on whom the order is made, as in the Act is provided (sec. 14). It is to be observed that this section enacts that the local authority "may" enter, and it has been decided that they have a discretion. The sanitary inspector for the local authority (Local Board of Health) of Ham obtained an order upon an occupier of premises within the district to cleanse a drain proved to their satisfaction to be a nuisance, but it was not enforced. One Bassett was interested in the removal, as the drain which ran past his premises was injurious to health; and after causing a copy of the order to be served by the clerk of the justices upon the party against whom it had been obtained, and serving notices upon the sanitary inspector and the chairman of the local authority, applied for a *mandamus* ordering the local board of Ham to take steps for enforcing the order. It was held not obligatory upon the local authority to do so, and the *mandamus* was refused. *Ex parte Bassett*, 7 E. & B. 280; 26 L. J. M. C. 64, s. c. But see the observations made upon this case, and *Reg.* (on the prosecution of the *Earl of Derby*) v. *Gee and others*, ante, p. 28; and as to the interpretation to be given to "may" in a statute, *Crake v. Powell*, 2 E. & B. 211. *Macdoughall v. Patteson*, 11 C. B. 759; and *Jones v. Harrison*, 6 Ex. 332.

The entry is to be made under the powers and conditions of entry conferred by the 11th section; and where the powers of the Act have been exceeded, the Court of Chancery has granted an injunction.

The Board of Works of the Wandsworth district passed a resolution that no privies or cesspools should be allowed in that district, and in January,

1857, served a notice on the owner of cottages requiring him within fourteen days to convert privies into water-closets, and threatening compulsory proceedings in case of neglect. In the following June they served a second notice, which, like the former, was entitled in the Metropolis Local Management Act (18 & 19 Vict. c. 120.), and in the Nuisances Removal Act (18 & 19 Vict. c. 121.) stating that as the former notice had not been attended to, they should, within seven days, enter and enforce the provisions of those Acts against the owner. On the 7th of November they entered and commenced the works, whereupon the owner filed a bill for an injunction, which Stuart, V. C. granted. *Tinkler v. Board of Works for the Wandsworth District*, 3 Jur. (N. S.) 1292.) Upon appeal to the Lords Justices they affirmed the Vice Chancellor's decision, holding that the Board had exceeded its powers in coming to the resolution; that under the Nuisances Removal Act they had no authority to enter unless a previous order of justices of the peace had been obtained; and that the jurisdiction of the court of Chancery to interfere by injunction was not ousted by the 211th section of the Metropolitan Local Management Act giving an appeal to the Metropolitan Board of Works. *Tinkler v. Board of Works for the Wandsworth District*, 27 L. J. C. C. 342.

It is now enacted by the Metropolis Local Management Act, s. 81, "that if it appear to the vestry or district Board that any house is without a sufficient water-closet or privy and ashpit, they may require the owner or occupier to provide a sufficient water closet or privy and ashpit, or either of them, as the case may require;" and the Court of Queen's Bench have held that the section

authorizes the vestry or district Board to require a water closet to be provided for premises in lieu of a privy already existing thereon. *St. Luke, Middlesex, apps., Lewis, resp.* 31 L. J. M. C. 73.

Two of the powers of entry under the 11th section, and the conditions under which and the purposes for which they are to be exercised, have already been described. The third power is for the local authority or their officer from time to time to enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice, in order to remove or abate a nuisance in case of noncompliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour, under the powers and for the purposes of this Act.

Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the costs defrayed out of the rates or funds applicable to the execution of this Act (18 & 19 Vict. c. 121, sec. 17).

The schedule contains a Form (F) for the order.

Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or



sale of the matter or thing; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act, with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority to the owner of such matter or thing (18 & 19 Vict. c. 121, sec. 18.)

The local authority should apply for an order in writing for an immediate removal, destruction, or sale, and support the application by evidence that delay would be prejudicial to health.

By the Sanitary Act, 1866, sect. 53, where notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority, or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of twenty shillings per day, to be recovered in a summary manner, for every day during which such manure or other refuse matter shall be permitted to accumulate. This section, however, does not apply to any place where the board of guardians or overseers of the poor are the nuisance authority.

All reasonable costs and expenses from time to time incurred in making complaint or giving notice, or in obtaining an order of justices under this Act, or in carrying it into effect, may in general be recovered by the party by whom they were incurred

in an action for money paid for the use and at the request of the person on whom the order is made. In two cases, however, this is not so. If the order has been made on the local authority; or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given; the action is to be against the person by whose act or default the nuisance was caused (18 & 19 Vict. c. 121, s. 19). An order is to be made on the local authority under the 11th section, authorizing them or their officer to enter premises for the purpose of inspecting them, when there is no person having the custody of the premises; and under the 17th section when the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known, or cannot be found.

The Nuisances Removal Act, 1855, s. 19, only makes the expenses for carrying out an order of justices for the removal of a nuisance a charge upon the premises in the case of nuisances caused by the default of the owner of the premises. *Bird v. Elwes*, 18 L. T. (N. S.) 727; 37 L. J. Exch. 91.

“In case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rack-rent on the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local authority think fit, before any two justices of the peace, and the justices shall have power to divide such costs,

expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable" (sect. 19). The action will lie in the county court, though the title to land should come in question. *Hertford Union v. Kimpton*, 25 L. J. M. C. 41; *Reg. v. Harden*, 2 E. & B. 128. The recovery before justices of the peace seems, however, to be the better remedy, as they will have the right to apportion the costs, expenses, and penalties in the manner which to them shall seem reasonable; and the local authority ought, in all cases in which the nuisance arises from the act or default of more than one person, to recover the costs, expenses, and penalties, before justices.

In June an order of justices was made under the 18 & 19 Vict. c. 121, "on the owner" of certain premises to remove a nuisance, and in default the Local Board themselves commenced the necessary works for abating the nuisance, which were completed on the 7th of September following, and the expenses were then paid by the guardians acting as the local authority. The real owner of the premises was abroad, and on the 21st of May he executed a power of attorney to the defendant to receive the rents for him. This reached the defendant on the 22nd July, and the rent being payable yearly at Michaelmas, he received the past year's rent at the Michaelmas following:—on an appeal from the County Court of Suffolk, holden at Halesworth, it was held that the defendant was not liable, under the 19th section of 18 & 19 Vict. c. 121, to an action for money paid within the meaning of section 19 of 18 & 19 Vict. c. 121. *Blything v. Warton*, 32 L. J. (N. S.) M. C. 132; 7 L. T. (N. S.) 672; 3 B. & S. 352; 9 Jur. (N. S.) 867.

If it appears to the justices that a complaint made under the Act is frivolous or unfounded, they may order payment of the costs, or any part thereof, by the local authority or the person making the complaint (sect. 19.)

By the Sanitary Act, 1866, sect. 34, the nuisance authority, at their discretion, may require payment of any costs or expenses which the owner of any premises may be liable to pay under the Nuisances Removal Acts, either from the owner or from any person who then or at any time thereafter occupies the premises, and the same shall be recovered in manner authorized by the Nuisance Removal Acts. The owner in such case shall allow the 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 premises, as if the same had been actually paid to the owner as part of the rent: No such occupier shall, however, be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of the costs or expenses from the occupier, and after notice not to pay his landlord any rent without first deducting the amount of the costs or expenses, becomes payable by such occupier, unless he refuse, on application, truly to disclose the amount of his rent and the name and address of the person to whom it is payable. The burden of proof that the sum demanded from any occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon the occupier. No contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of

such house, building, or other property, or any contract whatsoever between landlord or tenant, shall be affected by the above provision.

By the Sanitary Act, 1866, sect. 45, if any person wilfully damages any works or property belonging to any nuisance authority, he shall be liable to a penalty not exceeding five pounds.

By the same Act, sect. 48, any nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisance Removal Acts or the Sanitary Act, 1866.

The mode of recovering before justices any costs, expenses, or penalties due to the local authority, under or in consequence of any order of justices, made in pursuance of the Act "as aforesaid,"—that is, in pursuance of anything contained in the first 19 sections of 18 & 19 Vict. c. 121, is by summons issued by one justice, upon the application of the local authority, requiring the person from whom the costs, expenses, or penalties are so due, to appear before two justices at a time and place to be named in the summons, and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the

justices shall think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale (sect. 20.)

Generally it may be observed with reference to the provisions of the statute with regard to the recovery of costs, that where a pecuniary obligation is created by a statute, and a remedy is expressly given for enforcing it, that remedy must be adopted. *St. Pancras v. Batterbury*, 2 C. B. (N. S.) 477; 26 L. J. (N. S.) C. P. 243.

The mode of recovery just described is not available for any other complainant, or for a party complained against, who becomes entitled to costs. By (sect. 38 of 18 & 19 Vict. c. 121) the mode of recovery before justices provided for them is under the provisions of 11 & 12 Vict. c. 43. And by the Sanitary Act, 1866, sect. 54, penalties and expenses directed to be recovered in a summary manner may be recovered before two justices under 11 & 12 Vict. c. 43.

A similar enactment is contained in the Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122, s. 103. By section 11 of 11 & 12 Vict. c. 43, complaints, where no time is otherwise limited by the Act, are to be laid within six months from the time when the matter of complaint arose. In a recent case the owner of a dangerous structure was required by the commissioners acting in pursuance of the Metropolitan Building Act to take it down, and having neglected to do so the commissioners took it down, and a demand of the expenses was made of the owner, who refused to pay them. A complaint

was laid within six months of the demand and refusal; but beyond six months from the completion of the works. It was held that the matter of complaint was the non-payment of the expenses; that the time of limitation ran from the demand and not from the completion of the works; and, therefore, that the complaint was in time. *Labalmondière, app. Addison, resp.*, 28 L. J., M. C. 25.

The 19th section of 18 & 19 Vict. c. 121, it will have been observed, contains a provision that "in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises. The expression "the said premises shall be and continue chargeable" is somewhat obscure. It can scarcely have been intended that these costs, expenses, and penalties should be a charge which might be enforced in equity. Looking at the 2nd section, it appears that the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of Chancery, or under any order thereof, or who would receive the same if such property were let to a tenant. Again, under sect. 20, the summons for enforcing payment of costs is to go "to the persons from whom they are due," and payment by instalments may be received. In cases, however, of nuisances caused by the act or default of

the owner of premises, the original complaint and order will have been, at all events are intended to be, against "the owner of the premises" by that description, and not by his name (sec. 35). It is conjectured, therefore, that by the expression "the said premises shall be and continue chargeable, &c.," the legislature intended to make the costs, expenses, and penalties, to an amount not exceeding in the whole one year's rack-rent of the premises, recoverable from any owner for the time being of the premises, until that amount should be fully discharged.

All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways (18 & 19 Vict. c. 121, sec. 21.)

The "district surveyors" are those described in ss. 13 and 16 of the 5 & 6 Will. 4, c. 50. The amount to be paid for damages done is to be settled and ascertained by order of justices at a special sessions for the highways, 5 & 6 Will. 4, c. 50, s. 54. The holding of special sessions of the highways is regulated by the 49th section of 5 & 6 Will. 4, c. 50. The power extends to any lands or grounds "adjoining or lying near to any highway;" the right to damages arises only in case the lands or grounds are not waste or common. The words "upon paying," &c., do not make payment a condition precedent. *Peters v. Clarson*, 7. M. & G. 548. *Lister*



v. *Lobley*, 7 A. & E. 124. The duty to pay does not arise until after the justices have ascertained the amount of satisfaction.

Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King *William* the Fourth, intituled "An Act for consolidating and amending the Laws relating to Highways in *England*;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be

part of the law relating to highways in *England*: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any (18 & 19 Vict. c. 121, sec. 22.)

To justify the exercise of the powers conferred by the 22nd section, the existence of a nuisance within the meaning of this Act must be ascertained by the means pointed out in the first part. The local authority must then, on evidence duly laid before them, formally resolve that the ditch, &c. cannot, in their opinion, be rendered innocuous without the laying down of a sewer, or of some other structure along the same or part thereof, or instead thereof. Then, by the 5 & 6 Will. 4, c. 50, s. 67, they may, within their own jurisdiction, make, scour, cleanse and keep open all ditches, gutters, drains, or watercourses, and also make or lay such trunks, tunnels, plots, or bridges, as they shall deem necessary, in and through any grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials are by sec. 54 of the same Act directed to be paid. The words "upon paying," &c., do not make payment a condition precedent. The effect of the 68th section of the 5 & 6 Will. 4, c. 50, on the 22nd section of the 18 & 19 Vict. c. 121, will be to make any owner,

occupier, or other person who shall alter, obstruct, or in any manner interfere with any sewer or other structure laid down under the last-named section, or any of the works necessary or used in laying it down, after they shall be made by or taken under charge of the local authority, without their authority or consent, liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and also to forfeit any sum not exceeding three times the amount of such charges and expenses.

Per Vice-Chancellor Wood, with reference to the above enactment, the only thing they (the local authority) have vested in them is a certain sewer, or right of preventing nuisances in their own parish, and that only by constructing sewers for the purpose of arresting the nuisance. The sewers are to be constructed in such a manner as will enable people to drain into them, and they have also power to compel people to drain into them if they think fit. *Attorney-General v. Richmond*, 12 Jur. (N. S.) 544.

The sewer to be laid down by the local authority in pursuance of 18 & 19 Vict. c. 121, s. 22, must be as nearly as possible in the same line or course, and upon the same site as the former sewer. Where the former sewer ran along the side of a field, it was held that the local authority was not, in the absence of proof that it was necessary to depart from the former line, justified in laying down a new one instead thereof across a field, although that might be the least expensive and most convenient mode of remedying the nuisance. It was also held that the power given by

the 67th section of the 5 & 6 Will. 4, c. 50, did not justify the local authority, *qua* surveyor, in making the new sewer across the field, although it was bounded on one side by a highway: and further, that though the local Act empowered the local authority to carry sewers, if necessary, through enclosed lands, making compensation to the owners, and giving twenty eight days' notice before commencing, such Act must be taken into consideration together with the general Act, 18 & 19 Vict. c. 121. *Earl of Derby v. Bury Improvement Commissioners*, 37 L. J. Exch. 64; 18 L. T. (N. S.) 147; L. R. 3, Exch. 121. But on appeal to the Exchequer Chamber, the judgment of the Court of Exchequer was however reversed, the court holding that the commissioners were justified in making the sewer, though not made in the line of the old sewer; and also that the confirmation clause in 5 & 6 Will. 4, c. 50, was applicable. *Earl of Derby v. Bury Improvement Commissioners*, 38 L. J. M. C. 100; L. R. 4, Exch. 222; 20 L. T. (N. S.) 927.

The duties of local authorities under this section can be enforced by *mandamus*. In *Reg. v. Gee and others*, 33 L. T. 183; 23 J. P. 374, s. c., where the defendants, a Nuisances Removal Committee, were of opinion that a nuisance, existing at an extra-parochial place on the sea shore, and arising from a sewer conveying sewage from houses, which, as well as all the surrounding land, were the property of the Earl, could not be rendered innocuous without laying down a sewer, or some other structure, and resisted a rule for a *mandamus* obtained by the Earl, calling upon them to make such sewer or structure, the Queen's Bench made the rule absolute.

It appears from the note of this case, 23 J. P. 84,

that before the rule was obtained, an order had been obtained against the prosecutor, under the 12th and early sections of the Act, requiring him to abate the nuisance in question; but that, except in paying the costs of the order, he had disobeyed it; and the ground of the decision may be inferred from the *obiter dicta* there of Crompton J.: "I think that the 22nd section must be held to include at the least a case in which a private person has a watercourse, into which the sewage from new buildings is made to flow to such an extent as to cause a nuisance requiring a remedy by structural works along the watercourse, or part of it or instead of it. To make the owner of the watercourse do such works would be a hardship. The intention is, therefore, that the community should do it, at the expense of those who get the benefit."

It follows from the ultimate decision of the Queen's Bench in this case (33 L. T. 183; 23 J. P. 374, s. c.) that many nuisances arising from open sewers discharging themselves upon the sea shore throughout the kingdom, for which hitherto there has been no remedy may now be abated. See the remarks upon this case, and *Ex parte Bassett, ante*, p. 28.

The expression "repair" in 18 & 19 Vict. c. 121, s. 22, does not mean the reconstruction of a sewer which has been originally defectively made, but the keeping the original sewer in proper repair. Therefore, to a *mandamus* requiring the defendants as the local authority to put a sewer within their district in good and serviceable repair, it was held a sufficient return that the sewer which had originally been constructed by another authority had been defectively made; that it was not such a sewer as was required by the Act, and that in consequence

of its defective structure it could not be put into good and serviceable repair. *Reg. v. Epsom*, 8 L. T. (N. S.) 383.

The local authority are not entitled on the ground of there being an ancient custom or privilege at various times and in various proportions of making a river or running stream carry off their sewage into drains, to collect the whole mass and pour it at one time in such a manner and quantity as that the river or running stream cannot perform its proper function of diluting the sewage on its passage down to the lower riparian proprietors, and thus cause a pollution of the stream and a nuisance. The court in such a case will restrain the local authority from doing so in future if the practice has become a nuisance. *Attorney-General v. Richmond*, 35 L. J. Ch. 597; 14 L. T. (N. S.) 398; L. R. 1, Eq. 306.

With regard to the assessment, it is to be observed that user, "for the purposes aforesaid," that is, for the conveyance of any water, filth, sewage, or other matter from any house, building, or premises, is the condition of liability, and that liability is the consequence of user. The payment may be immediate or annual, or distributed over a term of years, as the local authority shall consider just and reasonable. A collection by levy cannot take place until after fourteen days' notice at the least, left on the premises, that is, there must be not less than fourteen clear days between the notice and the levy. The section concludes by providing that the assessment is in no case to exceed a shilling in the pound on the assessment to the highway rate, if any.

The Queen's Bench were required to put a construction on this proviso in the case of *Reg. v. Middleton*, 28 L. J. M. C. 41; and held that it

limited the annual assessment only to one shilling in the pound on the rateable value as assessed to the highway rate, but did not prohibit the whole assessment of the premises in respect of one structure, to be distributed over several years, from exceeding that amount.

The words "after fourteen days" refer to the latter, and both days must be excluded in reckoning the fourteen days. *Reg. v. Middleton*, 5 Jur. (N. S.) 623; 28 L. J. (N. S.) M. C. 41; 32 L. T. 124; 1 E. & B. 98. *Reg. v. Shropshire, JJ.*, 8 A. & E. 173.

The local authority are empowered to assess every house, building, or premises, "then or at any time thereafter" using the ditch, &c., to such payment, "either immediate or annual, or distributed over a term of years, as they may think just and reasonable." But it will be observed that the Act gives the local authority no power to borrow money for the execution of the works if they should be of an extensive kind, and to charge the rates leviable under the Act with the repayment of the loan and interest. Moreover, a local authority who have rendered innocuous a drain passing through their district, conveying away the filth of houses in a higher district, have no power to assess the owners of those houses for payment of the expenses, though those houses use the drain. The power of assessment is confined to property within the district for which the local authority acts. *Reg. v. Tatham*, 8 E. & B. 915.

In *Reg. v. Warner*, 6 E. & B. 395, the local authority for Hornsey (the board for repair of highways under 5 & 6 Will. 4, c. 50, s. 18) for the purpose of rendering innocuous a ditch by which the filth

was conveyed from certain houses, and which constituted a nuisance, constructed a sewer, and under sec. 22 assessed the houses *then* using the ditch or sewer, at an annual sum amounting to sixpence in the pound on the assessment to the highway rate. By a separate resolution passed afterwards on the same day it was resolved, that the annual payment might be compounded for within two months after service of notice of assessment, by payment of the amount of four years annual payments; after one year from the date of the assessment, by payment of the amount of three and a half years annual payments; after two years, by payment of the amount of three years annual payments; after three or more years, by payment of the amount of two years annual payments; all arrears in every case having been first paid up; in default of such composition, the payment to be perpetual. Notice of the assessment, containing also, on the same paper, a notice of the subsequent resolution, was served upon the owners and occupiers. Payment being refused by an occupier, justices were applied to for a warrant of distress. They refused to grant it, stating in writing that they had so much difficulty in coming to a decision on the construction of the 22nd section that they had determined to refuse such warrant, but did not overlook 11 & 12 Vict. c. 44, s. 5, by which the parties might obtain the decision of a superior court. Upon motion for an order to the justices to issue the warrant the Queen's Bench made the order; and held that, supposing the resolution respecting the composition was illegal (and *semble* that it was not), it was a matter distinct from the rate, which, therefore, was not invalidated by it; that the rate was not bad for being confined to houses then using the ditch or sewer; and that it was not bad because it was not published



or allowed as required in the case of a highway rate by 5 & 6 Will. 4, c. 50, s. 27. "I think we should make this rule absolute, and so protect the justices in issuing their warrants; at the same time, I confess that I do not quite perceive the meaning of the Act," per Crompton, J., 6 E. & B. 404.

It seems, therefore, from the case last cited that the local authority may compound with parties assessed under the 22nd section; that it is proper to limit the assessment to houses in existence at the time; and that publication and allowance as required by the General Highway Act (*Sibbald v. Roderick*, 11 A. & E. 38) are unnecessary.

The local authority has no power to assess property situated beyond the area of their local jurisdiction. The drainage of two houses in the parish of St. Pancras was carried by a covered drain into an open ditch in the parish of Hornsey; this ditch being a nuisance was made into a covered sewer by the local authority, who under sec. 22, assessed the two houses as using the drain or structure so made; but upon cause being shown against a rule for a distress warrant, the rule was discharged upon the ground that the power of the local board was confined to so much of the premises as was included within the limits of their parish, *Reg. v. Warner*, 27 L. J. M. C. 144. "Parochiality seems to be contemplated throughout, as in the last proviso, that such assessment shall in no case exceed one shilling in the pound on the assessment to the highway rate. If the assessment by each authority is not confined to their own jurisdiction, difficulties would arise. Suppose a drain through two parishes, in which the highway rate is different, which highway rate is to be the guide? Whatever inconvenience, if any, may arise in a case like the present, must be

remedied by the legislature." Per Lord Campbell, C. J. *ib.* 146, 22 J. P. 594, s. c.

In the last cited case it was questioned whether the two houses *used* the structure within the meaning of the 22nd section, as they derived no benefit from the covering of the ditch, which was no nuisance to them.

With regard to the area of the jurisdiction of the local authority, it has been decided that proceedings before justices under the 12th section for removing nuisances are confined to cases where the cause and effect of such nuisances exist within it. *Reg. v. Cotton*, 28 L. J. M. C. 22.

The provisions of the 13 & 14 Vict. c. 99, "An Act for the better assessing and collecting the poor Rates and Highway Rates in respect of Small Tenements," though repealed as to poor rates by 32 & 33 Vict. c. 41, still apply to highway rates..

In case of default the local authority is to have the same power, remedies, and privileges as overseers of the poor in a parish had, by law, for the recovery of any rate made for the relief of the poor, (see 12 Vict. c. 14.)

The right of appeal is against the amount only. The appeal must be by the person or persons assessed. The manner of the appeal is prescribed by 5 & 6 Will. 4, c. 50, s. 105. By sec. 105 of that Act right is given to any person aggrieved by any rate to appeal to the quarter sessions, first giving to the opposite party notice within fourteen days after such rate shall have been made; and it has been held that the fourteen days for giving notice of appeal against an assessment under sec. 22 of the Nuisances Removal Act, 1855, runs from the service of the notice of assessment on the premises as-

sessed; and not from the time when the amount was fixed by the local authority. *Reg. v. Middleton*, 28 L. J., M. C. 41.

As the provisions of the 22nd section are to be deemed part of the law relating to highways in England, it follows that the law relating to highways must be administered in conformity with, and in respect of former statutes inconsistent with this, in subordination to this Act.

Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds (sec. 23).

Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, 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 (18 & 19 Vict. c. 121, sec. 24).

In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as afore-

said, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act (18 & 19 Vict. c. 121, sec. 25).

By the Local Government Act, 1858, 21 & 22 Vict. c. 98, section 28, every local board may, with the consent of the local board of any adjoining district, or with the consent of any adjoining place maintaining its own poor, do and execute in such adjoining district or place all or any of such works and things as the local board may do and execute within their own district, and upon such terms as to payment or otherwise as may be agreed upon between such local board and the local board of the adjoining district, or the local authority under the Nuisances Removal Act, 1855, in and for such adjoining place; and any sums agreed to be paid by the local board of the adjoining district, in pursuance of this section, shall be payable out of the rates leviable under the Public Health Act, 1848, and this Act; and any sums agreed to be paid by such local authority shall be payable out of the same rates as the expenses of executing the said Nuisances Removal Act; and the consent of any such place to any work or thing proposed to be done under this section shall be signified in the same manner in which the consent of a place to the

adoption of this Act is hereinbefore required to be signified; and where the expenses of any such work or thing would, if the same had been executed in a district under the powers of this Act, have been recoverable from the owners or occupiers, such expenses shall be recoverable by the local board or local authority of the district or place respectively from such owners or occupiers.

By section 31, in case any watercourse or open ditch lying near to or forming the boundary between the district of any local board and any adjoining parish or place shall be foul and offensive, so as injuriously to affect the district of such local board, any justice of the peace for the county, city, or borough in which such adjoining parish or place may be situate may, on the application of such local board, summon the local authority for the purposes of the Nuisances Removal Act, 1855, of such adjoining parish or place, to appear before the justices of the same county, city, or borough, to show cause why an order should not be made by the said justices for cleansing such watercourse or open ditch and for executing such permanent or other structural works as may appear to such justices to be necessary; and such justices, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such work shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such justices shall seem reasonable; and any sums ordered to be paid by any justices in pursuance of this section shall be a charge upon and be pay-

able out of the poor rates of such adjoining parish or place, as if the same were legally incurred in the relief of the poor of such parish or place, and in default of payment may be levied upon the goods and chattels of such overseers by distress and sale thereof.

The clauses against the corruption of water by gas washings are very stringent. The offence in the first part of 18 & 19 Vict. c. 121, s. 23, may be committed passively, by causing or suffering to be brought or to flow. To constitute the offence against which the latter part of the section is directed, there must be a "wilful" act. The words "full costs of suit," mean costs taxed as between party and party. As the penalty is not recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased, and the local authority cannot proceed in the case of a private injury, except in default of proceedings by the party injured, and after notice to such party of their intention to proceed, nor get themselves substituted for a private plaintiff who refuses to go on, it would seem that the person injured has the control.

By the Public Health Act, 11 & 12 Vict. c. 63, sec. 50, if it shall appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census, in which this Act shall not have been applied by order in council, or provisional order as aforesaid, assembled at a public meeting to be called as is hereinafter provided, that it would contribute to the health and convenience of the inhabitants—

That any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of

any drainage, filth, water, matter or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up,—

Or that a sewer should be made or improved, a well dug, or a pump provided, for the public use of the inhabitants,—

The churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works, or any of them, and shall lay the same before another public meeting of such rated inhabitants, to be called as hereafter provided ;

And if the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at such last-mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place :

Provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act, and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding five pounds for such offence,

and a further sum not exceeding twenty shillings for every day during which such offence is continued after written notice from the local authority in relation thereto; but this does not extend to any offence provided against by section 23 of the "Nuisances Removal Act," 23 & 24 Vict. c. 77, sec. 8.

All wells, fountains, and pumps provided under sec. 50 of the "Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under the Act for such place, who shall from time to time cause to be kept in good repair and condition, and free from pollution all wells, fountains, and pumps vested in them under the Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps, dedicated to or open to the use of the inhabitants of such place. 23 & 24 Vict. c. 77, sec. 7.

By the Sanitary Act, 1866, sec. 13, all property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by the 23 & 24 Vict. c. 77, sec. 7, shall vest in the sewer authority, under the Sewage Utilization Act, 1865, where the sewer authority supplies water to its district.

The 25th section of 18 & 19 Vict. c. 121, holds out a reward to the local authority and the private person injured for being first to give notice of the offence to the person or company offending, and so the motives for enforcing discontinuance are increased. The penalty under the 25th section is to be recovered "in the like manner" as that under



the 24th; that is, in the superior courts, and with full costs of suit. The limitation of six months, however, does not seem to apply. Indeed the continuance of the offence, after notice, is a new and aggravated offence, which may fairly be held to disentitle the offender from receiving the benefit of the limitation accorded to an offender who at once discontinues the cause of offence. The notice under section 25 may be served according to section 31 of this Act, on which some observations have already been made. (*Ante*, p. 77). In the case of a letter sent by post, the twenty-four hours will begin to run from the time when by the ordinary course of the post-office the letter would be received by the person to whom the notice is addressed. *Reg. v. Slaniston*, 16 Jur. 1066; 21 L. T. 145.

The provisions of the Nuisances Removal Act for England, 1855, with regard to the inspection and seizure of diseased and unwholesome meat, having been found defective, the twenty-sixth section of that Act was repealed by the 26 & 27 Vict. c. 117, s. 1, and the following enacted instead:

The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged. In case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be diseased, or unsound, or unwholesome, or

unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice. If it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed, or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom the same belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found, shall, upon conviction, be liable to a penalty not exceeding £20 for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months. 26 & 27 Vict. c. 117, s. 2.

In case any person shall in any manner prevent such medical officer of health or inspector of nuisances from entering any slaughter-house, shop, building, market or other place where such animal, carcase, meat, poultry, or fish is kept for the purpose of sale or of preparation for sale, or shall in any manner obstruct or impede him, or his servant or assistant, when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding £5. *Ib.* s. 3.

An open yard at the back of a house is a place within the meaning of sections 2 and 3 of the statute 26 & 27 Vict. c. 117. The word "place" is not to be limited to places, *ejusdem generis*, with slaughterhouse, shop, building, or market. *Young, app., Grattbridge, resp.*, W. N. 1868 p. 287; 38 L. J., M. C. 38.

Sections 27 and 28 of 18 & 19 Vict. c. 121, have been framed for the purpose of giving a power of initiating proceedings under this Act, to any medical officer, or any two legally qualified medical practitioners, or to any ten ratepayers of the place on a requisition in writing (29 & 30 Vict. c. 90, s. 18) for the suppression or mitigation, within the limits of any city, town, or populous district, of processes causing noxious effluvia in buildings or places used for any trade, business, or manufacture. The case of accumulation or deposit for purposes of business, has been provided for in earlier sections. The certificate of one such officer, or two such practitioners, as to the fact of the nuisance, or the injuriousness to the health of the inhabitants of the neighbourhood, is the foundation of the jurisdiction of the local authority to complain, and of the one justice to summon, and two, or a stipendiary or police magistrate in any police court within the district, to adjudicate. Then the place must be shown to be not without the limits of any city, town, or populous district. The substance of the complaint will be that the trade or business carried on by the person complained against is a nuisance or causes some effluvia injurious to the health of the inhabitants of the neighbourhood. The defendant may be the owner or occupier of the premises wherein

the trade or business is carried on, or a foreman or other person employed by such owner or occupier. The nuisance, or the causing injurious effluvia, must be proved, and some evidence must be adduced, though slight evidence will be sufficient, (14 C. B. 678, *Stokes v. Grissel*, 23 L J., C. P. 116,) by the complainant, that the defendant has not used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia (sec. 27). The party complained against may oust the justices of jurisdiction to proceed, if upon his appearance before them, in obedience to the summons, he object to have the matter determined by them, and enter into recognizances, with sufficient sureties, to be approved by the justices, to bide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of the complaint. Thereupon the local authority shall abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity, in Her Majesty's superior court, for preventing or abating the nuisance complained of (sec. 28). If the jurisdiction be not so ousted, and the justices are satisfied that the complaint has been proved, and that the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, have not been used, they may convict the defendant summarily, and he shall forfeit and pay a sum of not more than 5*l.*, nor less than 40*s.*: and upon a second conviction for such offence, the sum of 10*l.*, and for each subsequent conviction, a sum double the amount of the penalty imposed for the last preceding conviction; but the highest amount of such penalty shall not in any

case exceed the sum of 200*l.* The justices may, however, "suspend their final determination" on any such case upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as they shall judge to be practicable, and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if that person shall give notice of appeal in the manner provided by this Act (sec. 40), and shall enter into recognizances to try such appeal, and shall appeal accordingly. The expression "suspend their final determination," &c., seems to mean, suspend the taking any proceedings upon the conviction, until the determination of the appeal (sec. 27).

Upon an indictment for nuisance at common law in carrying on a trade, a summary conviction under 16 & 17 Vict. c. 128, s. 1, for carrying on the same trade so as to occasion effluvia without using the best practicable means is not admissible in evidence. *Reg. v. Faire*, 4 Jur. (N. S.) 300.

Any medical officer of health, (the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 40; Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 12,) if there be one, or if none, two qualified medical practitioners, by their certificate to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, may, if the inhabitants shall consist of more than one family, make it the duty of the local authority to cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such

overcrowding shall forfeit a sum not exceeding 40s. (18 & 19 Vict. c. 121, sec. 29). The certificate is the foundation of the jurisdiction. The offence to be proved will be an overcrowding dangerous or prejudicial to the health of the inhabitants of the house. Evidence must be given that the inhabitants consist of more than one family. The justices have absolute authority to order what they please; obedience to the order is to be enforced, it would seem, by indictment.

The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any person offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act. (18 & 19 Vict. c. 121, sec. 30).

Unless both the cause and effect of a nuisance exist within the area of the jurisdiction of the local authority, justices have no jurisdiction to entertain proceedings under sec. 12, to remove or prevent it. *Reg. v. Cotton*, 28 L. J., M. C. 22. Neither has the local authority power under sec. 22 to assess property situate out of their jurisdiction. *Reg. v. Warner*, 27 L. J., M. C. 144.

The audit of the accounts of the local authority will be conducted by the persons having power to audit the accounts of that body in another capacity. *Reg. v. Bristol*, 13 Q. B. 405 and 414.

As to the periodical removal of manure in mews, it is enacted by 29 & 30 Vict. c. 90, s. 53, that where

notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise) and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority, or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of 20s. 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. This, however, does not apply to any place where the board of guardians or overseers of the poor are the nuisance authority.

The provision of the statute, 18 & 19 Vict. c. 121, s. 29, which relates to the prevention of the overcrowding of houses containing more than one family are now to be noticed. Whenever the medical officer of health, if there be one, and if there be no such officer, then whenever two qualified (*i. e.*, duly registered) medical practitioners certify to the local authority that any house containing more than one family, is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, the local authority is to cause proceedings to be taken before the justices to abate such overcrowding, and the justices are thereupon to make such order as they may think fit, and the person permitting the overcrowding is to forfeit a sum not exceeding 40s.

By the Sanitary Act, 1866, s. 19, the word "nuisances" under the Nuisances Removal Acts shall include "any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates.

The Act gives no authority to appoint a medical officer of health; as to the appointment of such an officer, however, in places under local boards of health, see 11 & 12 Vict. c. 43, s. 40. In districts where no such officer exists, the provision can only be carried into effect on the certificate of two "duly qualified medical practitioners." The local authority cannot take any steps without the proper certificate; but when they receive a proper certificate, the Act is imperative in requiring that they *shall* cause proceedings to be taken to abate the overcrowding of the house named in it. The house need not be what is commonly understood by the term "common lodging-house;" for the Act applies to any house the inhabitants whereof shall consist of more than one family. The proceedings are to be taken before "the justices," who may make such order as they may think fit, that is, they may order whatever they consider the exigencies of the case require. It is not, however, very apparent what justices are referred to. In the case of a stipendiary magistrate no difficulty will arise in this respect; but generally it would be safest for the "justices" not to act except in petty sessions. The Act does not indicate the nature of the proceedings which are to be taken by the local authority; but as they would be in the nature of a complaint of an offence having been committed against the Act, it would seem that they should be taken under the 11 & 12 Vict. c. 43, the keeper or occu-



pier of the house being in the first instance summoned to answer the complaint of the local authority. A difficulty, however, will arise in enforcing whatever order the justices may make. So far as it may order the keeper or occupier of the house to pay a penalty, it may be enforced by distress and sale; but if it be disobeyed in any other respects, there appears to be no mode of enforcing it, except by indictment. Practically, therefore, the provision will be inoperative, except in so far as upon every fresh certificate proceedings may be had against "the person permitting the overcrowding," for cumulative, or rather successive penalties for successive offences in permitting the overcrowding.

As regards the overcrowding of common lodging-houses, and the means to be taken to prevent such overcrowding, see the Common Lodging-Houses Acts, 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41; the 11 & 12 Vict. c. 63, s. 66, and 29 & 30 Vict. c. 90, s. 41.

## P A R T I I I .

## PROCEDURE BEFORE JUSTICES.

THE service of notices, summonses, and orders under 18 & 19 Vict. c. 121, is provided for by sec. 31, on which sufficient observations have already been made.

To facilitate proof of resolutions the 32nd section enacts that "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, shall, unless the contrary be shown, be evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same." The meaning is, that papers purporting to be copies, &c., and to be signed by the chairman, shall be evidence, without proof, &c.

When one nuisance has been caused by the joint act or default of several persons, and proceedings are to be taken under this Act, in respect of it, by the local authority, all such persons may be included in one complaint, and in one summons, and the justices may make an order therein upon all or any of the persons included in the summons, and distribute the costs as to them may appear fair and reasonable (sec. 33). Proceedings under this Act against several persons shall not abate by reason of the death of any among the persons

so included, but all such proceedings may be carried on as if the deceased person had not been originally included (sec. 39). If, however, two or more persons are answerable, being owners or occupiers of premises, or partly the one or partly the other, in respect of their being such owners or occupiers, jointly, or in common, or severally, to any demand or complaint under this Act, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them (sec. 34). But nothing in the Act contained shall prevent the parties so—that is, without the other or others of them—proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law. *Ib.*

It will be sufficient in any proceeding under this Act, whether written or otherwise, in which it shall become necessary to mention or refer to the owner or occupier of any premises, to designate him as the “owner” or “occupier” of such premises, without name or further description (sec. 35). The designation without name or further description is to be preferred when applicable, the provisions of the previous section (sec. 34) making it quite safe.

Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds (18 & 19 Vict. c. 121, sec. 36).

On reference to the 11th section it will be perceived that when there is a person having possession

of the premises, the justices have not jurisdiction to authorize the local authority or its officers to enter the premises.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance (18 & 19 Vict. c. 121, sec. 37).

The schedule contains a form (G.) of an order on the occupier to permit the execution of works required to be executed, and from it the form of summons may be easily framed.

Penalties imposed by this Act for offences committed, and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act (18 & 19 Vict. c. 121, sec. 38).

The schedule contains forms (H. I. K.) of a summons, or for payment, and distress warrant, but they apply to sec. 20 only. Under the 38th sec.

tion the provisions of the 11 & 12 Vict. c. 43, are to be adopted.

No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included (18 & 19 Vict. c. 121, sec. 39).

The 39th section of 18 & 19 Vict. c. 121, taking away the writ of *certiorari* is, however, not applicable if the justices should act without jurisdiction and contrary to the Act. *Reg. v. Gosse*, 30 L. J. M. C. 41.

And it will be seen by the next section that a *certiorari* is allowed where the quarter sessions state a case.

In a case already referred to an appeal against an order of justices was entered and respited to the next sessions; but, when called on, the sessions held that they had no jurisdiction to hear it; and the justices, in petty sessions, subsequently made a second order upon the corporation to pay £20 and £50 penalties for disobedience under sec. 14. The Queen's Bench having held that the first order was not the subject of appeal, held that neither of the orders could be brought up by *certiorari* under sec. 39. *Ex parte the Mayor of Liverpool*, 8 E. & B. 539; 27 L. J. M. C. 89, s. c.

The language of the 39th section, "done or transacted in relation to the execution of this Act," is peculiar, but it is apprehended that it gives no protection to acts done without jurisdiction. In *Foster v. Hornsby*, 2 Ir. Eq. Rep. (N. S.) 420, an Act of parliament, under which certain commissioners derived authority, provided that it should not be lawful for any person whatever in any manner to question or appeal against or in respect of anything whatsoever done or omitted to be done by the said commissioners under the provisions of certain recited Acts and that Act, nor should any proceeding to be had or taken by or on behalf of the commissioners for the purposes of the said Acts, be removed or removable by *certiorari* into any of her Majesty's courts of record. *Held* (following the decision in *Sharpley v. Hornsby*, 4 Ir. Jur. 38), that the provision applied only to questions of procedure, and afforded no protection where the commissioners exceeded their jurisdiction.

Appeals are to be made to the court of quarter sessions held next after the making of the order appealed against, unless there be not time to give the notice and enter into the recognizance hereinafter mentioned, in which case the appeal may be made to the next sessions at which it can be heard. To entitle the appellant to be heard in support of the appeal, he must, within fourteen days after the making of the order appealed against, give notice in writing to the local authority, stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal; and at the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement. Within two days after

giving the notice the appellant must enter into a recognizance before some justice of the peace, with sufficient sureties, conditioned to try the appeal at the said court—that is, the next court of quarter sessions at which the appeal can be heard—and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as it shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons, to all intents and purposes whatsoever. The court of quarter sessions may, however, if it think fit, state the facts specially for the determination of the Court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said Court of Queen's Bench (18 & 19 Vict. c. 121, sec. 40.) This does not interfere with the power of stating a case by consent, after notice of appeal under the 12 & 13 Vict. c. 45.

Sunday is not to be excluded from the computation of the two days within which the appellant is to enter into recognizance, although Sunday happens to be the last of them: therefore, in a case where an appellant had given notice of an appeal on Friday, and did not enter into the recognizance till the following Monday, the sessions were held to be right in refusing to hear the appeal. *Ex parte Simkin*, 2 E. & E. 392; 29 L. J. (N. S.) M. C. 23; 6 Jur. (N. S.) 144.

In *Ex parte the Mayor of Liverpool*, 8 E. & B. 539, 27 L. J. M. C. 89, it was insisted for the cor-

poration that the order made in that case was for the execution of structural works, so as to be subject of appeal under sec. 16; but it was held that the order was merely to abate a nuisance, and that there was no appeal.

The forms in the schedule, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended, (18 & 19 Vict. c. 121, sec. 41.)

The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being (*Ib.* sec. 42.) As the law now is, therefore, no writ or process shall be sued out against, or served upon, the local authority, or any officer or person under the authority and in execution, or intended execution, of this Act (see *Read v. Coker*, 13 C. B. 870), until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved, the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not after-



wards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act, and all special matter, in evidence thereunder; and any person to whom any such notice of action is given as aforesaid, may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted, may plead such tender in bar, and (by leave of the court) either the general issue or other plea or pleas; and if upon any issue joined upon any plea pleaded to the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinued, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the court, at any time before trial, pay into court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue, or other plea or pleas, any rule of court or practice to the contrary, notwithstanding (11 & 12 Vict. c. 63, s. 139.) No matter or thing done or contract entered into by the local authority, and any officer or person acting under the authority and in execution, or intended execution, of this Act, shall, if the matter or thing were done or the contract entered into *bona fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by the local authority, and any

officer or person acting under the authority, and in execution or intended execution, of this Act, shall be borne and repaid out of the rates levied under the authority of this Act (11 & 12 Vict. c. 63, s. 140.)

Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act intituled "An Act to abate the nuisances arising from the Smoke of Furnaces in the Metropolis, and from steam vessels above London Bridge," or the Common Lodging Houses Acts, the Act for the Regulation of Municipal Corporations, the Public Health Act, or any Improvement Act respectively, or any Acts incorporated with such Acts and authorities, may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any byelaws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Act, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act (18 & 19 Vict. c. 121, sec. 43.)

Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to

any such river or canal ; and the provisions of this Act shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and mineral, or to the manufacturing of the produce of such ores and minerals (18 & 19 Vict. c. 121, sec. 44.)

It has been contended before magistrates that this section exempts from the operation of this Act all nuisances occasioned by manufactories in which the produce of ores and minerals may be subjected to the action of labour, directly or indirectly manual. The cases went off without authoritative decision ; but it is apprehended that the legislature intended only to exempt processes for gaining directly the produce of ores and minerals, whether by fire or otherwise, and not processes for supplying such produce when gained.

No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir, stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person (18 & 19 Vict. c. 121, sec. 45.)

In citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for England, 1855" (18 & 19 Vict. c. 121, sec. 46).

The last form in the schedule (Form L.) is one of a return by the local authority of proceedings under the Act. The return is to be signed by the chairman of the local authority. The duty of making the return, or of preserving the materials for making it, is not expressly imposed, neither is it stated to what authority the return is to be made.

As regards the jurisdiction of justices, the 29 & 30 Vict. c. 41, s. 2, enacts, that no justice shall be incapable of acting because he is a member of the body authorized to execute the Act or liable to contribute.

Finally, with reference to the Nuisances Removal Acts, the Sanitary Act, 1866, s. 55, enacts, that all powers given by that Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of parliament, law, or custom ; and such authority may exercise such other powers in the same manner as if the Act had not passed.

## PART IV.

## PREVENTION OF DISEASES.

WHENEVER any part of England appears to be threatened with, or is affected by any formidable epidemic, endemic, or contagious disease, Her Majesty's Privy Council may, by order or orders to be by them from time to time made, direct that the provisions contained in the Diseases Prevention Act, 1855, for the prevention of diseases, be put in force in England, or in such parts thereof as in the order or orders respectively may be expressed. The order of council is to be in force for six calendar months, or for such shorter period as shall be expressed in it, and the order may at any time be revoked or renewed. The order, certified under the hand of the clerk of the council, shall be published in the London Gazette, and such publication is to be conclusive evidence of the order to all intents and purposes. Orders in council so issued may extend to parts and arms of the sea lying within the jurisdiction of the Admiralty; they are to be laid before parliament forthwith upon the issuing thereof, if parliament be then sitting; if not, within fourteen days next after the commencement of the then next sessions of parliament. (18 & 19 Vict. c. 116, ss. 5, 10, 11.)

After the provisions of the Act have been put in force, the Privy Council may issue directions and regulations

For the speedy interment of the dead :

For house to house visitations :

For the dispensing of medicines :

Guarding against the spread of disease :

And affording to persons afflicted by or threatened with epidemic, endemic, or contagious diseases, such medical aid and such accommodation as may be required.

If the order in council extend to parts and arms of the sea lying within the jurisdiction of the Admiralty, the Privy Council may also issue directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea, as upon inland waters.

All powers which were vested in the General Board of Health, under the " Diseases Prevention Act, 1855," are now vested in the Privy Council, and the provisions of that Act having reference to the General Board of Health and the regulations and directions issued by them, are to be construed as referring to the Privy Council and the regulations and directions issued by them. The powers vested in the Privy Council are to be exercised by any three or more of the lords and others of the council, the vice-president of the committee of council on education being one of them; and all orders, regulations, directions and acts of the council under the Act, shall be sufficiently made and signified by a written or printed document signed by one of the clerks of the council, or such officer as may be appointed by the council in that behalf.

Whosoever wilfully obstructs any person acting

under the authority, or employed in the execution of the Act, and whosoever wilfully violates any direction or regulation issued by the Privy Council shall be liable for every such offence to a penalty not exceeding £5, to be appropriated in or towards defraying the expenses of executing the Act.

The following are the Local Authorities for the execution of the Diseases Prevention Act, and the fund out of which the expenses are respectively payable :—

District.	Local Authority.	Fund.
Unions and parishes under separate Boards of Guardians	The Board of Guardians	Common fund of union.
Parishes for which there is no Board of Guardians	The overseers of the poor	The poor rate.
The parts of the metropolis which are under the Metropolis Local Management Act	The vestries and district boards respectively	General rates.
The city of London	The Guardians of the city and East and West London Unions respectively	The common fund.

Every board of guardians shall, for the execution of the Act, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner as is provided where such a board is the local

authority for the execution of the Nuisances Removal Act.

In any place where, under the 23 & 24 Vict. c. 77, the local authority for executing the Nuisances Removal Act is any other body than the board of guardians or the overseers of the poor, the Privy Council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act.

If another local authority should be substituted for the guardians, there is no fund apparently out of which their expenses can be defrayed.

By the Sanitary Act, 1866, sec. 40, where in any place two or more boards of guardians or local authorities have jurisdiction, the Privy Council may, by any order made under the Diseases Prevention Act, 1855, authorize or require such boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof. The marginal note to the above is as follows:—"Guardians and overseers of the poor to be the Local Authorities for executing Diseases Prevention Act." Both section and note are equally unintelligible.

The local authority and their officers shall have "power of entry" for the purposes of the Act, and for executing or superintending the execution of the regulations and directions of the Privy Council.

Whosoever wilfully obstructs any person acting under the authority or employed in the execution of the Act, and whosoever wilfully violates any direction or regulation issued by the Privy Council,



shall be liable to a penalty not exceeding five pounds.

The local authority shall superintend and see to the execution of the directions and regulations of the Privy Council, and they are empowered to appoint and pay such medical or other officers or persons, and to do and provide all such matters and things as may be necessary for mitigating any epidemic, endemic, or contagious disease, as well as for executing or for superintending or aiding in the execution of those directions and regulations.

The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any direction and regulation of the Privy Council; that is, the local authority is to take proceedings before the justices for the recovery of a penalty not exceeding five pounds from whosoever shall wilfully obstruct any person acting under the authority or employed in the execution of the Act, or shall wilfully violate any direction or regulation of the Privy Council.

Proceedings for the recovery of any such penalty are to be taken in the same manner as for the recovery of penalties under the Nuisances Removal Act, 1855, and the provisions of that Act with regard to the service of notices, and the proof of orders or resolutions of the local authority are extended to the 18 & 19 Vict, c. 116,

#### *Carriages for Conveyance of Infected Persons.*

The local authority for executing the Diseases Prevention Act may provide and maintain a car-

riage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and convey such sick and diseased persons as may be residing within the locality to any hospital or other place of destination, and the expense shall be deemed to be an expense incurred in executing the Act.

The Privy Council may appoint a medical officer, with a salary, and from time to time employ such other persons as they deem necessary for the purposes of the Public Health Act, 1858.

Such medical officer shall from time to time report to the Privy Council in relation to any matters concerning the public health, or such matters as may be referred to him for that purpose, also in or before March in each year, report to the Privy Council the proceedings had and taken under the Act during the preceding year ending on the 31st day of December; his report is to be laid before parliament within fourteen days after the making thereof, if parliament be sitting, and if not, then within fourteen days after the next meeting of parliament, together with all other reports made by the medical officer under the Act, during the period to which the annual report relates.

The Privy Council may from time to time cause to be made such inquiries as they see fit in relation to any matter concerning the public health in any place or places, and to the observance of the regulations and directions issued by them under the "Public Health Act, 1858."

The guardians of any union or parish not within a union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any

part thereof, and pay a reasonable compensation for the same out of their common fund.

Besides the regulations which the Privy Council may make for the purposes mentioned in the 18 & 19 Vict. c. 116, s. 6, they are empowered to make regulations for the supply of medical aid to sick persons on board vessels. When such regulations are in force, and whenever in compliance with them, any medical officer appointed under the poor laws shall perform any medical service on board any vessel, 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 union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick.

If any charges made by the medical officer be disputed, the dispute may, where the charges do not exceed 20*l.*, be determined summarily, at the place where the dispute arises, as in cases of seamen's wages not exceeding 50*l.*, according to the provisions of the law in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made. As regards the recovery of seamen's wages, the Merchant Shipping Act, 1854, enacts that any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the

seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seamen or apprentice, not exceeding 50*l.*, over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable. Every order made by justices in the matter is final, and the time for commencing the proceeding for the recovery of the money is limited to six months after the cause of complaint arises. If the money be not paid, it may be recovered by distress and sale of the ship, her tackle, furniture, and apparel. Further, with regard to sick on board vessels, see *ante*, p. 39.

## PART V.

## SEWAGE UTILIZATION.

## INTRODUCTION.

The Acts which form the subject of this portion of the work do not extend to any part of the metropolis as defined by the 18 & 19 Vict. c. 120. (28 & 29 Vict. c. 75, s. 2.)

The first part of the Sanitary Act, 1866, shall be construed as one with the Sewage Utilization Act, 1865, and the expression "The Sewage Utilization Act, 1865," shall mean the said Sewage Utilization Act, 1865, as amended by the Sanitary Act, 1866. (29 & 30 Vict. c. 90, s. 3.)

The expression "sewer authority" means the persons or bodies of persons referred to in the first column hereunder; the term "district," in relation to a sewer authority, as respects each authority, means the place in that behalf referred to in the second column. 28 & 29 Vict. c. 75, s. 3; 29 & 30 Vict. c. 90, s. 2; 30 & 31 Vict. c. 113, s. 2.

The expression "sewer authority" in the Sewage Utilization Act, 1867, has the same meaning as in the Sewage Utilization Act, 1865, and in addition shall include a local board, and shall in both Acts include any collegiate or other corporate body required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers, and any public department of the government. Any person appointed by the secretary of state in pursuance of

the 49th section of 29 & 30 Vict. c. 90, to perform the duty of a sewer authority or local board that has been guilty of a default as therein mentioned, shall, in the performance of such duty and for the purposes thereof, be invested with all the powers of the sewer authority or local board in default, except the power of levying rates.

For the purposes of the Sewage Utilization Act, "parish" in the schedule to the Act shall include any township or other place in which a separate rate is levied for the relief of the poor.

## SEWER AUTHORITIES.

The following are the sewer authorities under the Act:—

Description of local authority.	Description of places.	Rate or fund out of which expenses to be paid.
The mayor, aldermen, and burgesses, acting by the Council. 28 & 29 Vict. c. 75, sch.	In boroughs with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board.	The borough fund or borough rate.
The Commissioners, trustees, or other persons intrusted by any local Act of Parliament with powers of improving cleansing, lighting, or paving the town. <i>Ib.</i>	The boroughs of Oxford and Cambridge, and 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.	Any rate leviable by the Commissioners, trustees, or other persons.

Description of local authority.	Description of places.	Rate or fund out of which expenses to be paid.
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. <i>Ib.</i>	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 poor rate (30 & 31 Vict. c. 113, s. 17.)
Local Board, Collegiate or other corporate body, required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers. 30 & 31 Vict. c. 113, s. 2.	—	
Any public department of the Government. <i>Ib.</i>	—	
Persons appointed by the Secretary of State, under 29 & 30 Vict. c. 90, s. 40. <i>Ib.</i>	—	

The provisions of the Public Health Act, 1848, relating to private improvement expenses, as amended by any subsequent Act of Parliament, shall be deemed to be incorporated with the Sanitary Act, 1868, so far as may be required for carrying into effect any provision of the Act. 31 & 32 Vict. c. 115, s. 6.

Sewer authorities, if not already incorporated, shall 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 the several Acts conferring powers on sewer authorities. 29 & 30 Vict. c. 90, s. 46.

Any sewer authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, "and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisance Removal Acts or this Act." *Ib.* s. 48.

#### COMMITTEES OF SEWER AUTHORITIES.

Any sewer authority may from time to time, at any meeting specially convened for the purpose, form one or more committee or committees consisting wholly of its own members, or partly of its own members and partly of such other persons contributing to the rate or fund out of which the expenses incurred by such authority are paid, and qualified in such other manner as the sewer authority may determine. *Ib.* s. 4.

The sewer authority may delegate, with or without conditions or restrictions to any committee so formed, all or any powers of such sewer authority, and may from time to time revoke, add to, or alter any powers so given to a committee. *Ib.*

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for



holding the same, the members present shall choose one of their number to be chairman of such meeting. *Ib.*

A committee may meet and adjourn as it thinks proper. *Ib.*

The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members. *Ib.*

Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes the chairman shall have a second or casting vote. 29 & 30 Vict. c. 90, s. 4.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members. *Ib.*

A sewer authority may from time to time add to or diminish the number of the members or otherwise alter the constitution of any committee formed by it, or dissolve any committee. *Ib.*

A committee of the sewer authority shall be deemed to be the agents of that 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. *Ib.*

The above provisions are perhaps not required in boroughs or places under Local Improvement Acts; but they are very necessary in the case of a suburban parish, or in any parish not under a town council or improvement commissioners, as they enable such a parish to adopt a standing administrative body for drainage purposes. *Ib.*

## RATES IN DRAINAGE DISTRICTS.

Where the sewer authority of a district is a 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, such authority shall for the purpose of defraying any expenses incurred in carrying into effect the Sewage Utilization Act, 1865, or 30 & 31 Vict. c. 113, issue their precept to the overseers of the parish of which they are the authority, requiring such overseers to pay over the amount specified in such precept to the sewer authority, or to their officer named in the precept, or into some bank mentioned in such precept. 30 & 31 Vict. c. 113, s. 17.

The overseers shall comply with the requisitions of such precept by levying a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception, that the owner of any tithes or of any tithe commutation rent-charge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market-gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of such property in the proportion of one-fourth part only of the rateable value thereof; or, where no special assessment is made, shall pay in respect of such property one-fourth part

only of the rate in the pound payable in respect of houses and other property. *Ib.*

A separate rate under 30 & 31 Vict. c. 113, shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against the same, and all other incidents thereof except the purposes to which it is applicable be deemed to be a rate levied for the relief of the poor. *Ib.*

The expression "overseers" shall include any officer authorized to levy a rate in a special drainage district, and any person or body of persons authorized or required to levy rates for the relief of the poor. 30 & 31 Vict. c. 113, s. 17.

In case the amount ordered by any precept of a sewer authority to be paid by the overseers of any parish be not paid in manner directed by such precept and within the time therein specified for that purpose, any justice of the peace, upon the complaint by the sewer authority or by any person authorized by the sewer authority, may issue his warrant for levying the amount or so much thereof as may be in arrear by distress and sale of the goods of all or any of the overseers; and in case the goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which is directed to be made in such parish for the purposes of the Sewage Utilization Act, 1865, or 30 & 31 Vict. c. 113, and shall be collected by the like methods. *Ib.* s. 18.

#### SPECIAL DRAINAGE DISTRICTS.

In order to enable a parish to constitute the urban centre of it, for the purposes of drainage, a separate

district managed by a vestry of its own body, and levying a rate upon the urban district, it is enacted that—where the sewer authority of a district is a 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, it may, by resolution at any meeting convened for the purpose after twenty-one clear days' notice affixed to the places where parochial notices are usually affixed in its district, form any part of such district into a special drainage district for the purposes of the Sewage Utilization Act, and thereupon such special drainage district shall, for the purposes of the Sewage Utilization Act, 1865, and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the 58 Geo. III. c. 69, and the Acts amending the same. 29 & 30 Vict. c. 90, s. 5.

Any officer or officers who may from time to time be appointed by the sewer authority of a special drainage district for the purpose shall have within that district all the powers of levying a rate for the purpose of defraying the expense of carrying the Sewage Utilization Act into effect that they would have if the district were a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, and such rate were a rate for the relief of the poor, and they were duly appointed overseers of such parish. *Ib.*

Where the sewer authority of any place has formed a special drainage district as above mentioned, if any number of the inhabitants of the

place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands, presented within three months after the date of the resolution forming the district, bring their case under the consideration of one of Her Majesty's principal secretaries of state, who may after due investigation annul the formation of the special drainage district or modify its boundaries as he thinks just. 29 & 30 Vict. c. 90, s. 6; 30 & 31 Vict. c. 113, s. 9.

A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the parish, and by advertising notice thereof in some newspaper published or circulating in the county in which the district is situate. The production of a newspaper containing such advertisement or 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 the district, and after the expiration of three months from the date of the resolution forming the district such district shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatever. 29 & 30 Vict. c. 90, s. 7.

Where part of a parish as above defined in the schedule to the Sewage Utilization Act, 1865, as amended by 30 & 31 Vict. c. 113, is at the time of the passing of that Act (20th August, 1867) subject to the jurisdiction of a local board in pursuance

of the Local Government Act, 1858, the portion of such parish which is not subject to the jurisdiction of any local board shall for the purposes of the Sewage Utilization Act, 1865, and 30 & 31 Vict. c. 113, be deemed to be by that Act constituted a special drainage district, unless the secretary of state, upon petition presented to him in manner provided by sect. 6 of the Sanitary Act, 1866, within three months after the 20th August, 1867, otherwise directs. 30 & 31 Vict. c. 113, s. 7.

It shall not be necessary in the case of a part of a parish which is so constituted a special drainage district, to give the notices required by sect. 7 of the Sanitary Act, 1866. *Ib.*

Any inhabited place not having a known or defined boundary may petition one of Her Majesty's principal secretaries of state in manner provided in the 16th section of the Local Government Act, 1858, to settle its boundaries for the purposes of the Sewage Utilization Act, 1865, and of the 30 & 31 Vict. c. 113; and the secretary of state may, by order made in manner provided by 21 & 22 Vict. c. 98, s. 16, settle the same accordingly, and from and after the date of such order the place shall be deemed to have been constituted a special drainage district for the purposes of the Sewage Utilization Act, 1865, and 30 & 31 Vict. c. 113. *Ib.* s. 8.

A copy of the order of the secretary of state shall be published in manner provided by the 7th section of the Sanitary Act, 1866, and that section shall be construed in reference to a special drainage district formed under 30 & 31 Vict. c. 113, s. 8, as if the order of the secretary of state were substituted for "resolution of a sewer authority."

## UNION OF SEWAGE DISTRICTS.

Where it appears to the sewer authority of any district that it would be for the advantage of such district, and of any district or districts adjoining or lying within the same drainage area, or otherwise conveniently situate, that all such districts should be formed into a united district for the purposes of the Sewage Utilization Act, 1865, and of the 30 & 31 Vict. c. 113, or for any of such purposes, such sewer authority may, with the consent of the sewer authority of every district affected, apply to one of Her Majesty's principal secretaries of state for an order forming such districts into one united district, and the secretary of state, if satisfied of the expediency of such union of districts, may make an order accordingly. 30 & 31 Vict. c. 113, s. 10.

The intention of a sewer authority to apply to a secretary of state for an order forming a united district shall be advertised in some newspaper circulating within the area of such proposed united district once at least in each of the three weeks before such application is made. *Ib.* s. 11.

A united district shall be subject to the jurisdiction of a joint sewerage board consisting of members elected by each of the sewer authorities of the component districts in such manner as may be determined by the secretary of state, and such board shall be a body corporate, with perpetual succession and a common seal, having a capacity to acquire and hold lands for all the purposes of the Sewage Utilization Act, 1865, and of 30 & 31 Vict. c. 113, or for any of such purposes. *Ib.* s. 12.

The first meeting of a joint sewerage board shall be held in such manner and at such time as may be determined by the secretary of state, and "the rules as to proceedings of drainage boards" contained in the second part of the schedule annexed to the Land Drainage Act, 1861, shall apply to a joint sewerage board constituted under this Act. *Ib.*

A joint sewerage board shall, in the united district, have all the same powers, except the power of levying a rate, and be subject to the same obligations, so far as relate to the purposes of its constitution, as if it were the only sewer authority of that district, subject to this proviso, that the joint board may delegate to any sewer authority of a component district such powers of superintendence or otherwise within its own district as such joint board think fit. *Ib. s. 13.*

Any expenses incurred by a joint sewerage board in pursuance of 30 & 31 Vict. c. 113, shall be defrayed out of a common fund to be contributed by the component districts in proportion to the rateable value of each district, or in such other proportion as the secretary of state may, with the consent of the sewer authority of each component district, by order determine. *Ib. s. 14.*

The rateable value of a district shall be deemed to be the value on which any such rate would be assessed as would, if such district were not in union, be applicable by the sewer authority of that district to the payment of any expenses legally incurred by that authority, and the amount of contribution shall be paid out of such last-mentioned rate, and the sewer authority of each component district shall levy the same accordingly. *Ib.*



## POWERS OF SEWER AUTHORITIES.

Sewer authorities have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained; and, as respects all sewers constructed by them or under their control, whether they were made before or after the passing of the Act, have all the powers that local boards have, in respect of sewers vested in or constructed by them under sections 45 and 46 of the Public Health Act, 1848, section 30 of the Local Government Act, 1858, and section 4 of the Local Government Act, 1858, Amendment Act, 1861, subject to the provisions of sections 5 and 6 of the last-mentioned Act, and to the saving clauses in the Local Government Act, 1858," mentioned, from 68 to 74, both inclusive. 28 & 29 Vict. c. 75, s. 4.

A sewer authority shall within their district have all the powers vested in a local board by the 32nd section of the Local Government Act, 1858, as amended by any subsequent Act of Parliament, so far as relates to—

- (1.) The removal of house refuse from premises;
- (2.) The cleansing of privies, ashpits, and cess-pools;

and the paragraphs numbered (1), (2), and (3) of the said section shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "Local Board."

Where the sewer authority and the nuisance authority are different bodies of men, the jurisdic-

tion of the nuisance authority in such district shall cease in respect to all matters over which the sewer authority acquires powers by this section. 31 & 32 Vict. c. 115, s. 5.

The following sections of the Public Health Act, 1848, as amended by any subsequent Act of Parliament, that is to say,

- (1.) The 51st section, requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient water-closet or privy and ashpit (as to earth closets, see 31 & 32 Vict. c. 115, s. 7):
- (2.) And the 54th section, as amended by any subsequent Act of Parliament, providing that the local board of health shall see that drains, water-closets, privies, and ashpits within their district do not become a nuisance;

shall extend to the district of every sewer authority in which there is no enactment of any public or private Act of Parliament to the like effect in force; and the said sections when so extended shall be so construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in place of the expression "Local Board," and any officer for the time being appointed by the sewer authority to examine any premises shall be deemed to be the surveyor within the meaning of the said sections. 31 & 32 Vict. c. 115, s. 4.

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 the said sections of the Public Health Act, 1848; and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with efficient sewers. *Ib.*

The sewer authority have the powers of entry conferred by section 143 of the Public Health Act, 1848, for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in that section. 28 & 29 Vict. c. 75, s. 5.

A sewer authority may, without their district, provide any works and do any act for the purpose of receiving, storing, disinfecting, or distributing sewage which they may provide or do within their district, subject to the conditions to which they would be subject in providing such works or doing such acts within their district, and to the conditions imposed on Local Boards in carrying into effect the 4th section of 24 & 25 Vict. c. 61, 30 & 31 Vict. c. 113, s. 3.

Where complaint is made to one of Her Majesty's principal Secretaries of State that a sewer authority 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, the 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 the

time for the performance of its duty in the matter of such complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court. 29 & 30 Vict. c. 90, s. 49.

The costs of this proceeding on the part of the Secretary of State are provided for by 31 & 32 Vict. c. 115, s. 8.

If any person wilfully damages any works or property belonging to any sewer authority he shall be liable to a penalty not exceeding £5. 29 & 30 Vict. c. 90, s. 45.

A sewer authority shall pay all expenses incurred by them in carrying the Act into effect out of the fund or rate mentioned in the third column of the table, *ante*, p. 109, and shall have all such powers of borrowing money on the security of such fund or rate as Local Boards have of borrowing money under the Local Government Act, 1858, and the Acts amending that Act, on the security of the funds or rates in those Acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by Local Boards under such Acts. 28 & 29 Vict. c. 75, s. 6.

A sewer authority, for the purposes of the Act,

have the powers of taking lands conferred on Local Boards by section 75 of the Local Government Act, 1858, and any Act amending the same. *Id. s. 7.*

A sewer authority for the purpose of receiving, storing, disinfecting, and distributing sewage, and of the construction of any works for receiving, storing, disinfecting, or distributing sewage, and of the construction of any sewer or drain, or for any of the above purposes, may purchase or take on lease any lands either within or without their district, and shall for carrying into effect any such purchase have all the powers of taking land conferred by the 75th section of the Local Government Act, 1858, as amended by 30 & 31 Vict. c. 113. s. 4.

The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may advance to any sewer authority, upon the security of any rate applicable to the purposes of the Act, without any further security, such sums of money as may be recommended by one of Her Majesty's principal Secretaries of State, to be applied by such authority in carrying into effect the purposes of the Act. 28 & 29 Vict. c. 75, s. 12.

Full compensation shall be made out of any fund or rate applicable to the purposes of the Act, to all persons sustaining any damage by reason of the exercise of any of the powers of the Act; and in case of dispute as to the amount, the same shall be settled by arbitration, as provided in the Public Health Act, 1848, or any Act amending the same, or if the compensation claimed do not exceed the sum of £20, the same may be ascertained by and recovered before justices in a summary manner, as provided by those Acts. *Ib. s. 8.*

Two or more sewer authorities, including under

that expression Local Boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly. 28 & 29 Vict. c. 75, s. 9.

All powers given by the Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any sewer authority by Act of Parliament, law, or custom; and the sewer authority may exercise such other powers in the same manner as if the Act had not passed. 28 & 29 Vict. c. 75, s. 13.

#### DISTRIBUTION OF SEWAGE.

A sewer authority may deal with any land held by them for the purpose of receiving, storing, disinfecting, or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding seven years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in any appropriation which may be made of land held by a sewer authority for the above purposes, care shall be taken that provision be made for receiving, storing, disinfecting, or distributing all the sewage which it is the duty of the sewer authority

to cause to be disposed of in that manner. 30 & 31 Vict. c. 113, s. 5.

The sewer authority of any place may from time to time, for the purpose of utilizing its sewage, agree with any person or body of persons, corporate or unincorporate, as to the supply of such sewage, and works to be made for the purpose of that supply, and the parties to execute the same and to bear the costs thereof, and the sums of money, if any, to be paid for that supply. No contract, however, shall be made for the supply of sewage for a period exceeding twenty-five years. 28 & 29 Vict. c. 75, s. 14.

The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "Improvement of Land" authorized by the Land Improvement Act, 1864, and the provisions of that Act shall apply accordingly. *Ib.* s. 15.

#### USER OF SEWERS OF SEWER AUTHORITY.

Any owner or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority 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 sewer authority to superintend the making of such communications.

Any person causing any drain to empty into any sewer of a sewer authority without complying with these provisions shall incur a penalty not exceeding £20, and the sewer authority may close any communication between a drain and sewer made in contravention of the section, and recover in a summary manner from the person so offending any expenses incurred by them under the section. 29 & 30 Vict. c. 90, s. 8.

Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by the Public Health Act, 1848, in respect of matters by that Act authorized or directed to be settled by arbitration. *Ib. s. 9.*

If a dwelling-house within the district of a sewer authority is without a drain or without such drain as is sufficient for effectual drainage, the sewer authority may by notice require the owner of such house within a reasonable time therein specified to make a sufficient drain emptying into any sewer which the sewer authority is entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the house of such owner, but if no such means of drainage are within that distance then emptying into such covered cesspool or other place, not being under any house, as the sewer authority directs. If the person on whom such



notice is served fails to comply with the same, the sewer authority may itself, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner. *Ib. s. 10.*

By sect. 11 of the Sanitary Act, 1868, 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 that Act. By sect. 14 of the Sanitary Act, 1866, the second part of that Act is to be construed as one with the Nuisances Removal Acts: and by sect. 2 of the Nuisances Removal Act, 18 & 19 Vict. c. 121, the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery, or any order thereof, or who would receive the same if such property were let to a tenant.

By sect. 11 of the Sanitary Act, 1868, notices may be served for the purposes of the first part of the Sanitary Act, 1866, in the same manner in which they are required to be served under the second part of that Act, that is to say, in the manner required by the 18 & 19 Vict. c. 121, s. 31, "by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person on the premises who can be served, by fixing the same upon

some conspicuous part of the premises; or if the person shall reside at a distance of more than five miles from the office of the inspector, then by a registered letter through the post." 31 & 32 Vict. c. 115, s. 11.

#### PREVENTION OF POLLUTION OF RIVERS.

A sewer authority, with the sanction of the attorney-general in England, may, either in its own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as it may deem advisable, for the purpose of protecting any watercourse within its jurisdiction from pollutions arising from sewage either within or without its district. The costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by the sewer authority in carrying into effect the purposes of the Act. 28 & 29 Vict. c. 75, s. 10.

Nothing contained in the Act, or in the Acts referred to in it, shall authorize any sewer authority to make a sewer so as to drain direct into any stream or watercourse. *Ib.* s. 11.

#### SUPPLY OF WATER BY SEWER AUTHORITIES.

A sewer authority within its district shall have the same powers in relation to the supply of water that a local board has within its district, and the provisions of the sections hereinafter mentioned

shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "Local Board of Health" or "Local Board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the local board: that is to say, sections 75 to 80, both inclusive, of the Public Health Act, 1848, sections 51, 52, and 53 of the Local Government Act, 1858, and section 20 of the Local Government Act, 1858, Amendment Act, 1861. 29 & 30 Vict. c. 90, s. 11.

The sewer authority may, if it think it expedient so to do, provide a supply of water for the use of the inhabitants of the district by

- (1.) Digging wells;
- (2.) Making and maintaining reservoirs;
- (3.) Doing any other necessary acts;

and they may themselves furnish the same, or contract with any other persons or companies to furnish the same: Provided always, that no land be purchased or taken under this clause except by agreement or in manner provided by the Local Government Act, 1858. 29 & 20 Vict. c. 90, s. 11.

Any expenses incurred by a sewer authority in or about the supply of water to its district, and in carrying into effect the provisions before mentioned, shall be deemed to be expenses incurred by that authority in carrying into effect the Sewage Utilization Act, 1865, and be payable accordingly. *Ib.*

By section 50 of the Sanitary Act, 1866, all expenses incurred by a sewer authority in giving a supply of water to premises under the provisions of the 76th section of the Public Health Act, 1848, or the 51st section of the Local Government Act, 1858, and recoverable from the owners of the pre-

mises supplied, may be recovered in a summary manner *Ib.* s. 50.

All property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by the 7th section of the 23 & 24 Vict. c. 77, shall vest in the sewer authority, where the sewer authority supplies water to its district *Ib.* s. 13.

#### POWER OF SEWER AUTHORITIES TO PROVIDE HOSPITALS.

The sewer authority, or in the metropolis the nuisance authority, and the local board in a local board of health district, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick. *Ib.* s. 37. 30 & 31 Vict. c. 113, s. 16.

Such authority may itself build such hospitals or places of reception, or make contracts for the use of any existing hospital or part of a hospital, or for the temporary use of any place for the reception of the sick. *Ib.*

It 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 its district, on payment by the sewer authority of such annual or other sum as may be agreed upon. *Ib.*

The carrying the above into effect by a sewer authority shall be deemed to be one of the purposes of the Sewage Utilization Act, 1865, and all the provisions of that Act shall apply accordingly. *Ib.*

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital; 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 the Act. *Ib.*

The sewer authority shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it has to provide hospitals or temporary places for the reception of the sick under the Sanitary Act, 1866, s. 37; but such power to make provision for the temporary supply of medicine and medical assistance shall not be exercised without the sanction of Her Majesty's Privy Council. 31 & 32 Vict. c. 115, s. 10.

#### RECOVERY OF PENALTIES.

Penalties under any section incorporated with the Sanitary Act, 1868 (see *ante*), shall be recovered in manner directed by the Act passed in the session holden in the eleventh and twelfth years of the reign of Her present Majesty. *Ib.*

All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of parliament, and any such other powers may be exercised as if this Act had not passed. *Ib. s. 9.*

Nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would have been liable if this Act had not been passed. *Ib.*

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act. 31 & 32 Vict. c. 115.

AN ACT

TO CONSOLIDATE AND AMEND THE NUISANCES REMOVAL AND DISEASES PREVENTION ACTS, 1848 AND 1849.

14TH AUGUST, 1855.

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and it is expedient to repeal the said Acts as far as relates to England, and to substitute other provisions more effectual in that behalf: 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:

I. From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to England: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts, shall continue and be as effectual as if the said Acts had not been repealed.

II. In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,) the word

11 & 12 Vict.  
c. 123.  
12 & 13 Vict.  
c. 111.

Recited Acts  
repealed as  
far as relates  
to England,  
except as to  
proceedings  
commenced.

Interpreta-  
tion of cer-  
tain terms  
used in this  
Act.

“place” includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word “guardians” includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cognizance of any such officers arises; the word “borough,” and the expressions “mayor, aldermen, and burgesses,” “council,” and “borough fund” have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of, or at the disposal of such chief officers and governing bodies; the expression “improvement Act” means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes; the word “owner” includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery or under any order thereof, or who would receive the same if such property were let to a tenant; the word “premises” extends to all messuages, lands, or tenements whether open or inclosed, whether built on or not, and whether public or private: the word “parish” includes every township or place separately maintaining its poor or separately maintaining its own highways; the expression “quarter sessions” means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word “person,” and words applying to any person or individual apply to and include corporations, whether aggregate or sole; and the expression “two justices” shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

## PART I.

And with respect to the constitution of the local authority for the execution of this Act, the expenses of its execution, the description of nuisances that may be dealt with under it, and the powers of entry for the purposes of the Act, be it enacted thus :

**PART I.**  
*Constitution of Local Authority, Expenses, Description of Nuisances and Powers of Entry.*

III. The local authority to execute this Act in places as herein stated ; (repealed by 23 & 24 Vict. c. 77, s. 3.)

IV. On any vacancy in such nuisances removal committee arising from death, change of residence or otherwise notice shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election : and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete.

*As to filling vacancies.*

V. The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects, execute this Act, whereof two shall be a quorum ; and such local authority or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf.

*Powers to local authority to appoint committees.*

VI. As to the execution of this Act in extra-parochial places ; (repealed by 23 & 24 Vict. c. 77, s. 3).

VII. As to defraying expenses of executing this Act ; (repealed by 23 & 24 Vict. c. 77, s. 3).

VIII. The word "nuisances" under this Act shall include—

*What are deemed nuisances under this Act.*

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal,



cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby.

IX. Power to local authority to appoint a sanitary inspector, and allow him a proper salary ; (repealed by 23 & 24 Vict. c. 77, s. 3).

Notice of nuisances to be given to local authority, &c. to ground proceedings.

X. Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons ; the sanitary inspector or any paid officer under the said local authority ; two or more inhabitant householders of the parish or place to which the notice relates ; the relieving officer of the union or parish ; any constable or any officer of the constabulary or police force of the district or place ; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses : and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed.

Power of entry to local authority or their officer.

XI. The local authority shall have power of entry for the following purposes of this Act and under the following conditions :

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening ; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him

of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand, require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him, of belief in the existence of such nuisance, and of the fact of no person having custody of the premises can be discovered, by order under his hand, authorize the local authority, or their officers, to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done, shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers, and for the purposes of this Act.

For this purpose, the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice.

## PART II.

PART II.  
With regard  
to Removal  
of  
Nuisances.

Proceedings  
by local  
authority  
before jus-  
tices in the  
case of  
nuisances  
likely to  
recur, &c.

If proved to  
justices that  
nuisance  
exists, &c.,  
they shall  
issue order  
for abate-  
ment, &c.

Justices'  
order for  
abatement.

With regard to the removal of nuisances, be it enacted thus:—

XII. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance, in their opinion, did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is, in their opinion, likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists or did exist at the time when the notice was given, or if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance or prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

XIII. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ash-pit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the

accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works 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; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

Prohibitive order against future nuisance.

Penalty for contravention of order of abatement; and of prohibition.

Local authority may enter and remove or abate nuisance.

XIV. Any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than ten shillings per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such contrary action; and the local authority may under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person to whom the order is made as hereinafter provided.

XV. Any such order of prohibition may be appealed against as provided in this Act.

Appeal against order of prohibition.

XVI. When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or

Appeal against order of abatement when struc-

197  
38139  
ca 55

tural works  
are required.

approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted.

If person  
causing nuisance cannot  
be found  
local authority to execute order  
at once.

XVII. Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act.

Manure, &c.  
to be sold.

XVIII. Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing; and the money arising from the sale retained by the local authority and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid on demand, by the local authority, to the owner of such matter or thing.

Costs and  
expenses of  
works to be  
paid by  
person on  
whom order  
is made,  
or owner or  
occupier.

XIX. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under

his Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof.

XX. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale.

Proceedings  
before jus-  
tices to re-  
cover ex-  
penses.

XXI. All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or water-courses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways.

Surveyors of  
highways to  
cleanse  
ditches, &c.  
paying  
owners, &c.  
for damages.

Power to  
local autho-  
rity to cover  
and improve  
open ditches,  
&c.

XXII. Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King William the Fourth intituled, "An Act for consolidating and amending the Laws relating to Highways in England;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to part thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed one shilling in the pound on the assessment to the highway rate, if any.

XXIII. Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds.

Penalty for causing water to be corrupted by gas washings.

XXIV. Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it is sued for during the continuance of the offence, or within six months after it shall have ceased.

Penalty to be sued for in superior courts within six months

XXV. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Daily penalty during the continuance of the offence.

XXVI. Penalty on sale of unwholesome meat, &c.; repealed by 26 & 27 Vict. c. 117, *post.*)

XXVII. If any candle house, melting house, melting place or soap house, or any slaughter house, or any

As to nuisances arising in



cases of  
noxious  
trades,  
businesses,  
processes, or  
manufac-  
tures.

building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building or place used for any trade, business, process or manufacture causing effluvia, be at any time certified by the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting, the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against, is a nuisance, and causes an effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than five pounds, nor less than forty shillings, and upon a second conviction for such offence, the sum of ten pounds, and for each subsequent conviction, a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds: Provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and ordered to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal and shall appear accordingly: Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

Reference  
to superior  
court at the  
option of

XXVIII. Provided also, that if, upon his appearance before such justices, the party complained against objects to have the matter determined by such justices, &

enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of.

the party complained against.

XXIX. Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding forty shillings.

On certificate of medical officer to local authority that house is overcrowded, proceedings may be taken to abate the same.

XXX. The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act.

Local authority to order costs of prosecution to be paid out of the rates.

PART III.

PART III.

And with regard to procedure under this Act, be it enacted, that—

As to Procedure under this Act.

XXXI. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises, they may also be served by 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, or if the person shall re-

Service of notices, summonses, and orders.

side at a distance of more than five miles from the office of the inspector, then by a registered letter through the post.

Proof of resolutions of local authority.

XXXII. 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, 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.

As to proceedings taken against several persons for the same offence.

XXXIII. Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable.

One or more joint owners or occupiers may be proceeded against alone.

XXXIV. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answered jointly or in common or severally, 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 contribution in any case in which they would now be entitled to contribution by law.

Designation of "owner" or "occupier."

XXXV. Whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Penalty for obstructing execution of this Act.

XXXVI. Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds.

XXXVII. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf, shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order, the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance.

Penalty on occupier obstructing owner.

XXXVIII. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England, according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act.

Penalties and expenses recoverable under 11 & 12 Vict. c. 43.

XXXIX. No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Proceedings not to be quashed for want of form.

XL. Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two

Appeals under this Act to be to quarter sessions.

days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard: Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid: Provided also, that in any case of appeal the court of quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings by writ of *certiorari* or otherwise, into the said court of Queen's Bench.

Forms to be used as in Schedule.

XLI. The forms contained in the Schedule to this Act annexed, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended.

As to protection of local authority and its officers.

XLII. The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being.

Act not to impair jurisdiction of sewers commissioners, of common law remedies for

XLIII. Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of drainage, or to take away or interfere with any course of

proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act, intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from Steam Vessels above London Bridge," or the Common Lodging Houses Act, the Act for the Regulation of Municipal Corporations, the Public Health Act, or any improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any bye-laws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act.

nuisance,  
nor juris-  
diction of  
local autho-  
rity as to the  
nuisances  
referred to  
in this Act.

XLIV. Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act, shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Act not to  
affect navi-  
gation of  
rivers or  
canals.

XLV. No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream or any feeders of such reservoir or stream belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and

Saving as to  
rights of  
millowners.

also of the owners thereof in cases where the owners and parties so entitled are not the same person.

Short title.

XLVI. In citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for England, 1855."

## SCHEDULE OF FORMS.

### FORM (A.)

#### *Order of Justices for Admission of Officer of Local Authority to inspect private Premises.*

Whereas [*describe the local authority*] have by their officer [*naming him*] made application to me *A. B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer hath made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1855, viz. [*describe nuisance*], exists on private premises at [*describe situation of premises so as to identify them*], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act and refused:

Now, therefore, I the said *A. B.*, do hereby require you to admit the said [*name the local authority*], [*or the officer of the said (local authority)*], for the purpose of inspecting the said premises.

Dated this — day of —, 18—.

*A. B.*

### FORM (B.)

#### *Notice of Nuisance.*

To the local authority [*describing it*].

I [*or we*], the person aggrieved by the nuisance hereinafter described [*or the undersigned, and describe*

inhabitant householders, sanitary inspector *or other officer (describing him)*, do hereby give you notice, that there exists in or upon the [dwelling-house, yard, &c., *as the case may be*], situate at — [giving such description as may be sufficient to identify the premises], in the parish of —, in your district, under the Nuisances Removal Act, 1855, the following nuisance, videlicet, [describing the nuisance, as the case may be; for instance, a dwelling-house or building a nuisance or injurious to health for want of a privy *or drain or sufficient means of ventilation, or so dilapidated or so filthy as to be a nuisance or injurious to health, or for further instance, a ditch or drain so foul as to be a nuisance or injurious to health, or an accumulation of —, a nuisance or injurious to health, &c., or swine so kept as to be a nuisance or injurious to health*]; and that such nuisance is caused by [naming the person by whose act or default the nuisance is caused, or by some person unknown].

Dated this — day of —, in the year of our Lord  
One thousand eight hundred and —.

[Signed by Complainant under Section 10.]

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FORM (C.)

*Notice to Owner or Occupier of Entry for Examination.*

To the owner [or occupier as the case may be] of [describe the premises situate at] [insert a description sufficient to identify the premises].

Take notice, that under the Nuisances Removal Act for England, 1855, the [local authority, naming it,] in whose district under the said Act the above premises are situate, have received a notice from [name complainant], stating that in or upon the said premises [insert the cause of nuisance as set forth in the notice].

And further take notice, That after the expiration of twenty-four hours from the service of this notice the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing,



*Nuisances Removal Act.*

or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this — day of —, in the year of our Lord  
One thousand eight hundred and —.

A. B.

The officer appointed by the  
[*local authority*] to take  
proceedings under the  
Nuisances Removal Act  
for England, 1855.

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FORM (D.)

*Summons.*

To the owner or occupier of [*describe premises*] situate  
at [*insert such a description as may be sufficient to  
identify the premises*], or to A. B. of —.

County of — [ <i>or</i> } borough of —, } &c., or district of } —, or as the case } may be], to wit. }	You are required to appear before two of Her Majesty's justices of the peace [ <i>or</i> one of the magistrates of the police courts of the metropolis, or the stipen- diary magistrate] of the county [ <i>or other jurisdiction</i> ] of —, at the petty sessions [ <i>or court</i> ] holden at —, on the — day of — next, at the hour of —, in the — noon, to answer the complaint this day made to me by — [ <i>or by — on behalf of</i> ] [ <i>naming the local authority, as the case may be</i> ], that in or upon the pre- mises above mentioned [ <i>or in or upon certain premises situate at No. —, in the — street, in the parish of —, or such other description or reference as may be sufficient to identify the premises</i> ], in their district under the Nuisances Removal Act for England, 1855, the fol- lowing nuisance exists [ <i>describing it, as the case may be</i> ], and that the said nuisance is caused by the act or default of the occupier [ <i>or owner</i> ] of the said premises, or by you A. B. [ <i>or in case the nuisance be discontinued, but likely to be repeated, say there existed recently, to wit,</i>
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on or about the — day of —, on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last-mentioned day been removed or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises.]

Given under the hand of me *J. P.*, esquire, one of her Majesty's justices of the peace acting in and for the [*jurisdiction*] stated in the margin, *or* one of the magistrates of the police courts of the metropolis *or* stipendiary magistrate of —, this — day of —, in the year of our Lord One thousand eight hundred —.

FORM (E.)

*Order of Justices for Removal of Nuisances by Owner, &c*

To the owner [*or* occupier] of [*describe the premises*] situate [*give such description as may be sufficient to identify the premises*], *or* to *A. B.* of —, *or* to [*giving name of the local authority*], *or* to their servants or agents, and to all whom it may concern.

County of — [*or* ] Whereas on the — day of —  
 borough, &c. of —, }  
*or* district of —, *or* } complaint was made before  
*as the case may be.* } —, esquire, one of her Ma-  
 jesty's justices of the peace  
 acting in and for the county [*or other jurisdiction*]  
 stated in the margin, [*or* before the undersigned, one of  
 the magistrates of the police courts of the metropolis, *or*  
*as the case may be,*] by [*or* by — on behalf of [*the*  
*local authority, naming it, as the case may be*] that in  
 or upon certain premises situate at —, in the district  
 under the Nuisances Removal Act for England, 1855, of  
 the complainants above named, the following nuisance  
 existed [*describing it*]; and that the said nuisance was  
 caused by the act or default of the owner [*or* occupier  
 of the said premises [*or* was caused by *A. B.*] (*If the*  
*nuisance has been removed say,* the following nuisance  
 existed on or about [*the day the nuisance was ascertained*

to exist], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.)

And whereas —, the owner [or occupier within the meaning of the said Nuisances Removal Act, 1855, [or the said *A. B.*] hath this day appeared before us justices, being two of her Majesty's justices in and for —, sitting in petty sessions at their usual place of meeting [or before me, the said magistrate of the police courts of the metropolis, or as the case may be], to answer the matter of the said complaint [or in case the party charged do not appear, say], And whereas it hath been this day proved to our [or my] satisfaction that a true copy of the summons requiring the owner [or occupier] of the said premises [or the said *A. B.*] to appear this day before us [or me] —, hath been duly served according to the said Act:

Now upon proof here had before us [or me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [or occupier] of the said premises [or by the said *A. B.*] we [or I], in pursuance of the said Act, do order the said owner [or occupier], [or *A. B.*] within [specify the time] from the service of this order or a true copy thereof according to the said Act [here specify the works to be done, as for instance, to cleanse, whitewash, purify, and disinfect the said dwelling house; or, for further instance, to construct a privy or drain, &c.; or for further instance, to cleanse or to cover or to fill up the said cesspool, &c.], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[And if it appear to the justices that the nuisance is likely to recur on the premises, say [And we [or I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [or occupier, or *A. B.*] from [here insert the matter of the prohibition, as for instance, from using the said house or building for human habitation until the same, in our judgment, is rendered fit for that purpose].

And if the above order for abatement be not complied with, [or if the above order of prohibition be infringed,] then we [or I] do authorize and require you the said [local authority, naming it,] from time to time to enter upon the said premises, and to do all such works, matters,

and things as may be necessary for carrying this order into full execution according to the Act aforesaid.

*In case the nuisance were removed before complaint, say, [Now, upon proof here had before us that at or recently before the time of making the said complaint, to wit, on — as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [or I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit, [order of prohibition]; and if this order of prohibition be infringed, then we [or I] [order on local authority to do works].*

Given under the hands and seals of us, two of Her Majesty's justices of the peace in and for — [or the hand and seal of me, one of the magistrates of the police courts of the metropolis, *or as the case may be*], —, this — day of — in the year of our Lord One thousand eight hundred and —.

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FORM (F.)

*Order of Justices for Removal of Nuisances by Local Authority.*

To the town council, &c., *as the case may be.*

County, &c. } Whereas [*recite complaint of nuisance as to wit. ] in last form].*

And whereas it hath now been proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known *or* can be found [*as the case may be*]: Now we [or I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given, &c.

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## FORM G.

*Order to permit Execution of Works by Owners.*

County of — [or  
borough of —, or  
metropolitan police  
district, or as the case  
may be,] to wit. } Whereas complaint hath been  
made to me *E. F.*, esquire,  
one of her Majesty's jus-  
tices of the peace in and for  
the county [or borough, &c.]  
of — or one of the magistrates of the police courts of  
the metropolis, or as the case may be, or one of her Ma-  
jesty's justices of the peace, as the case may be, of the  
county of — ], by *A. B.*, owner within the meaning  
of the "Nuisances Removal Act for England, 1855," of  
certain premises, to wit, a dwelling house [or building,  
or as the case may be], situate at [insert such a descrip-  
tion of the premises as may be sufficient to identify them],  
in the parish of — in the said county [or borough,  
&c.], that *C. D.*, the occupier of the said premises, doth  
prevent the said *A. B.* from obeying and carrying into  
effect the provisions of the said Act, in this, to wit, that  
he the said *C. D.* [here describe the act of prevention  
generally according to the circumstances; for instance  
thus, doth refuse to quit the said house, the same having  
by the order of justices been declared unfit for human  
habitation, or doth prevent the said *A. B.* from cleansing  
or whitewashing or purifying the said dwelling house,  
or erecting a privy or drain or breaking an aperture for  
ventilation, or cleansing a drain, ditch, gutter, water-  
course, privy, urinal, cesspool, or ashpit which is a nu-  
isance or injurious to health]. And whereas the said  
*C. D.* has been summoned to answer the said complaint,  
and has not shown sufficient cause against the same, and  
it appears to me that [describe the act or works to be  
done] is necessary for the purpose of enabling the said  
*A. B.* to obey and carry into effect the provisions of the  
said Act, I do hereby order that the said *C. D.* do per-  
mit the said *A. B.* [describe the act or works to be done]  
in manner required by the said Act.

Given under my hand and seal, this — day of —  
in the year of our Lord One thousand eight hun-  
dred and —.

*E. F.* (L. S.)

## FORM (H.)

*Summons for Nonpayment of Costs, Expenses, or Penalties. Sect. 20.*

To —, [*describe the person from whom the costs, expenses, and penalties are due.*]

County of —, or } You are required to appear before  
borough of —, } two of Her Majesty's justices of  
or district of —, } the peace [*or one of the magis-*  
to wit. } trates of the police courts of the  
metropolis, *or* the stipendiary magistrates] of the county  
[*or other jurisdiction*] of —, at the petty sessions [*or*  
court] holden at —, on the — day of — next, at  
the hour of — in the — noon, to answer the com-  
plaint this day made to me by —, [*or by —, on*  
behalf of [*naming the local authority*], that the sum of  
— pounds, being costs and expenses incurred by you  
under and in relation to a certain complaint touching  
[*describe the nuisance*], and an order of [*describe the*  
*person making the order*], duly made in pursuance of  
the Nuisances Removal Act for England, 1855, [*if pe-*  
*nalties are due, add*, and also the sum of —, being the  
amount of penalties payable by you for disobedience of  
the said order], remains unpaid and due from you.

Given under the hand of me, *J. P.*, esquire, one of Her Majesty's justices of the peace acting in and for the [*jurisdiction stated in the margin*], *or* one of the magistrates of the police courts of the metropolis, *or* stipendiary magistrate of —,] the — day of —, in the year of our Lord one thousand eight hundred and —.

## FORM (I.)

*Order for Payment of Costs, Expenses, and Penalties. Sect. 20.*

To —, [*name the person on whom the order is made.*]

County, &c. } Whereas complaint has been made before  
to wit. } us [*or me*] for that [*recite the cause of*  
} *complaint*].

And whereas the said [*naming the person against whom the complaint is made*] has this day appeared before us

the said justices [*or before me the said magistrate of the police courts of the metropolis, or as the case may be,*] to answer this matter of the said complaint : [*Or, in case the party charged do not appear, say,*],

And whereas it has been this day satisfactorily proved to us [*or me*] that a true copy of the summons requiring the said [*naming person charged*] to appear before us [*or me*] this day hath been duly served according to the said Act : Now, having heard the matter of the said complaint, we [*or I*] do adjudge the said [*naming the person charged*] to pay forthwith] *or* by instalments of, payable respectively on or before the —] to the said [*naming the person or local authority to whom the costs adjudged are payable*], the sum of —, for costs in this behalf, and to [*naming the person or authority to whom the expenses are payable*], the sum of —, for expenses in this behalf, [*if penalties are due, add, and the sum of —, for penalties incurred in relation to the premises*], together with the sum of —, being the charges attending the application for this order and proceedings thereon ; and if the said several sums, amounting in the whole to —, [*or if any one of the said instalments,*] be not paid within fourteen days after the same is due as aforesaid, we [*or I*] hereby order that the same be levied by distress and sale of the goods and chattels of the said —, and in default of sufficient distress in that behalf adjudge the said — to be imprisoned in the common gaol [*or house of correction, as the case may be,*] at —, in the said county, [*or as the case may be,*] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [*or sum*], and all costs and charges of the said distress [*and of the commitment and carrying of the said — to the said house of correction or common gaol, or as the case may be,*] shall be sooner paid.

Given under our [*or my*] hands, this — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the [*county, or as the case may be,*] aforesaid.

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## FORM (K.)

## Warrant of Distress. Sect. 20.

To the constable of —, and to all other peace officers  
in the said county [*or as the case may be*].

Whereas on — last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [*or as the case may be*] *or* a magistrate of the police courts of the metropolis, [*or stipendiary magistrate, as the case may be*] for that [*&c., as in the order*]; and thereupon having considered the matter of the said complaint, we [*or I*] adjudge the said — [*set out from Form I. the adjudication of payment, and the order for distress and for imprisonment in default of distress*]: and whereas the time in and by the said order appointed for the payment of the said several sums of — and — hath elapsed, but the said — hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default; these are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of — days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the division of — in the said [*county, or as the case may be*], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said —; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under our [*or my*] hands and seal, this — day  
of —, in the year of our Lord one thousand eight  
hundred and —, at —, in the [*county*] afore-  
said.

(L. S.)

A. B.  
C. D.



## FORM (L.)

*Return of Proceedings under Nuisances Removal Act, 1855,  
by the [naming the local authority at length.]*

*From 25th March, 1855 to 25th March, 1856.*

Date of notice.	By whom given.	Nature of Nuisance.	Proceedings taken.	Remarks:—with any special work done under the Acts, without any notice.
16 April	The in- specter.	Foul drain- age from house.	Owner put down good drain on summons, without jus- tices' order.	Several houses being in a like position, the highway sur- veyor laid down a sewer in the old watercourse, and each house was charged a proportionate sum for the same, of which the highest sum was 10s.
18 April	Two neigh- bours.	Offensive cesspool.	Abated by local authority.	Renewed once; but penalty recovered, and no subse- quent renewal attempted.

Dated this 26th day of March, 1856. [*To be signed by the  
chairman of the local authority.*]

## 18 &amp; 19 VICT. CAP. 116.

*An Act for the better prevention of Diseases.*

[14th August, 1855.]

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," in so far as the same relate to the prevention or mitigation of epidemic, endemic, or contagious diseases, are defective, and it is expedient to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

## Short title

I. This Act may be cited for all purposes as the "Diseases Prevention Act, 1855."

II. Local authority for execution of Act; (repealed by 23 & 24 Vict. c. 77, s. 10.)

III. Expenses of Act; (repealed by 23 & 24 Vict. c. 77, s. 10.)

IV. The local authority and their officers shall have Power of entry. power of entry for the purposes of this Act, and for executing or superintending the execution of the regulations and directions of the general board, issued under this Act.

V. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic or contagious disease, the lords and others of Her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of Her Majesty's principal secretaries of state, being one) may, by order or orders to be by them from time to time made, direct that the provisions herein contained, for the prevention of diseases, be put in force in England, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts 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 of 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 London Gazette; and such publication shall be conclusive evidence of such order, to all intents and purposes.

VI. From time to time after the issuing of any such order as aforesaid, and whilst the same continues in force, the general board of health may issue directions and regulations, as the said board think fit—

For the speedy interment of the dead :

For house to house visitation :

For the dispensing medicines, guarding against the spread of disease, and affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases, such medical aid and such accommodation as may be required.

And from time to time, in like manner, may revoke, renew, and alter any such directions and regulations as to the said board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of

Power to general board of health to issue regulations to carry out such provisions.  
Local extent and duration of regulations of general board.

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, and then to such parts 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.

Publication of such regulations.

VII. Every such direction and regulation as aforesaid, when issued, shall be published in the London Gazette, and the Gazette in which such direction or regulation was published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes.

The local authority to see to the execution of such regulations, &c.;

VIII. The local authority shall superintend and see to the execution of such directions and regulations, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating such disease, and 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 prosecutions for violating the same.

IX. The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation.

Orders of council, directions, and regulations to be laid before parliament.

X. Every order of Her Majesty's privy council, and every direction and regulation of the general board of health under 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 sessions of parliament.

Order in council may extend to parts and arms of the sea.

XI. Orders in council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts contained, in Great Britain, may extend to parts and arms of the sea lying within the jurisdiction of the Admiralty: and the board of health for England may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation,

and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid, as upon inland waters.

XII. Whenever, in compliance with any regulation of the general board of health, which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor, shall perform any medical service on board of any vessel, 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 union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, 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 union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate 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 of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined summarily, at the place where the dispute arises, as in case of seamen's wages not exceeding fifty pounds, according to the provisions of the law in that behalf for the time being in force ; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made.

Medical officer of unions and others entitled to costs of attending sick on board vessels, when required by orders of general board of health.

XIII. The directions and regulations of the general board of health under this enactment, shall be under the seal of the said board, and the hand of the president or two or more members thereof ; and any copy of such regulations purporting to bear such seal and signature, whether the said signature and seal be respectively impressed and written, or printed only, shall be evidence in all proceedings in which such regulations may come in question.

Authentication of directions and regulations of general board of health.

XIV. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this

Penalty for obstructing

execution of Act, and whosoever wilfully violates any direction or regulation issued by the general board of health as aforesaid, shall be liable for every such offence to a penalty not exceeding five pounds, to be appropriated in or towards the defraying the expenses of executing this Act.

Certain provisions of Nuisances Removal Act to apply to this Act. XV. The provisions of any general Act in force for the removal of nuisances, with regard to the service of notices, the proof of orders or resolutions of the local authority, and the recovery of penalties, shall extend and apply to this Act.

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21 & 22 VICT. CAP. 97.

*An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health.*

[2nd August, 1858.]

20 & 21 Vict. c. 38. WHEREAS under an Act of the last Session of Parliament, chapter thirty-eight, the general board of health stands continued only until the first day of September one thousand eight hundred and fifty-eight: And whereas it is expedient to vest in the privy council certain powers now vested in the said general board of health, and certain other powers for the protection of the public health: 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:—

Powers of general board of health under 18 & 19 Vict. c. 116, added to those of the privy council.

I. In addition to the powers vested in Her Majesty's most honourable privy council for the protection of the public health, all powers now vested in the general board of health under the "Diseases Prevention Act, 1855," shall, upon the discontinuance of the said board, be vested in the said privy council, and the provisions of the said Act having reference to the general board of health and the regulations and directions issued by them, except section thirteen, shall be construed as referring to such privy council and the regulations and directions issued by them.

II. The privy council may from time to time issue such regulations as they think fit for securing the due qualification of persons to be hereafter contracted with by guardians and overseers of unions and parishes in *England* for the vaccination of persons resident in such unions and parishes, and for securing the efficient performance of vaccination by the persons already or hereafter to be contracted with as aforesaid; and any money from time to time provided by parliament for or towards defraying the expenses of the national vaccine establishment, or otherwise, providing for the supply of vaccine lymph, shall be applied under the directions of the privy council.

Certain powers in relation to public vaccination vested in privy council.

III. The privy council may from time to time cause to be made such inquiries as they see fit in relation to any matters concerning the public health in any place or places, and to the observance of the regulations and directions issued by them under this Act.

Privy council may direct inquiries.

IV. The powers of appointing and removing a medical officer, vested in the general board of health under the General Board of Health Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the privy council; and the person who at the time of the cesser of the general board of health may be their medical officer shall become the medical officer of the privy council, subject to such power of removal as aforesaid; and the privy council may also from time to time employ such other persons as they may deem necessary for the purposes of this Act; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds per annum, and to such other persons such remuneration and allowances as the commissioners of Her Majesty's treasury may direct; and such salary, remuneration, and allowances shall be paid out of such monies as shall be provided by parliament.

Privy council to appoint medical officer, &c.

V. The medical officer shall from time to time report to the privy council in relation to any matters concerning the public health or such matters as may be referred to him for that purpose, and shall, in or before the month of *March* in each year, report to the privy council the proceedings had and taken under this Act during the preceding year ending on the thirty-first day of *December*.

Medical officer to report annually as to the execution of this Act.

Reports to be  
laid before  
parliament.

VI. The annual report made by the medical officer as aforesaid, shall be laid before both houses of parliament within fourteen days after the making thereof, if parliament be sitting, and if not, then within fourteen days after the next meeting of parliament, together with all other reports made by him under this Act, during the period to which such annual report relates.

As to the  
making and  
authentic-  
ation of orders,  
&c.

VII. All powers vested in the privy council by this Act may be exercised by any three or more of the lords and others of the privy council, the vice president of the committee of the said privy council on education being one of them, and all orders, regulations, directions, and acts of the privy council under this Act shall be sufficiently made and signified by a written or printed document, signed by one of the clerks of the privy council, or such officer as may be appointed by the privy council in this behalf; and all orders, regulations, directions, and acts made or signified by any written or printed document, purporting to be so signed shall be deemed to have been duly made, issued, and done by the privy council, and every such document shall be received in evidence in all courts and before all justices and others without proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the privy council.

VIII. Proceedings for penalties under vaccination Acts. Repealed by 22 Vict. c. 3, *post*, p. 167.

Short title  
and continu-  
ance of Act.

IX. This Act may be cited as "The Public Health Act, 1858," and shall be in force only until the first day of *August*, one thousand eight hundred and fifty-nine (*a*).

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(*a*) See 22 Vict. c. 3.

## 22 VICT. CAP. 3.

*An Act to amend and make perpetual "The Public Health Act, 1858."* [1st April, 1859.]

"WHEREAS an Act was passed in the session holden in the twenty-first and twenty-second years of Her Majesty, (chapter ninety-seven), 'For vesting in the Privy Council certain Powers for the protection of the Public Health,' which Act was to be in force only until the first day of August one thousand eight hundred and fifty-nine; and it is expedient that section eight of the said Act should be repealed, and that, except such section, the said Act should be made perpetual:" 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:—

Section eight of the said Act shall be repealed, and, except the said section, the said Act shall be, and the same is hereby made perpetual (a).

## 23 &amp; 24 VICT. CAP. 77.

*An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.* [6th August, 1860.]

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: 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:

*Nuisances Removal.*

I. Section three, section six, section seven, and section

18 & 19 Vict. cc. 121, and 116.  
Sections 3, 6, 7, and 9 of

(a) See 21 & 22 Vict. c. 97, s. 8, ante.



18 & 19 Vict. c. 121, repealed. nine of the said "Nuisances Removal Act for England, 1855," shall be repealed: Provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual, as if this Act had not been passed.

Local Authority to execute the Nuisances Removal Act.

II. The following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the districts hereunder stated in England:

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:

III. Highway Board or Nuisances Removal Committees now subsisting may be continued so long as they employ sanitary inspectors; (repealed by 29 & 30 Vict. c. 90, s. 17).

How expenses of

IV. All charges and expenses incurred by the local

authority in executing the said Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows ; to wit, Local Authority to be defrayed.

Out of general district rate where the local authority is a local board of health :

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council :

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable :

Out of the rates levied for the purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act :

Where a board of guardians for a union is such a local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor :

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority :

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "The Nuisances Removal Committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof :

Where the board of guardians for a union is under this Act the local authority for part only of any

place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof:

So much of any such charges and expenses as may be apportioned to a part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.

Board of guardians may appoint committees for particular parishes.

V. Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under section five of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority; and every committee so appointed shall have the full power of executing the said Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee: Provided that where any one such committee is appointed for all the places for which the board is the local authority its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed.

VI. Provided also, that as regards the metropolis, the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue and be the local authorities for the execution of the said Nuisances Removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed.

Saving for the vestries and district boards of the metropolis.

VII. All wells, fountains, and pumps provided under section fifty of "The Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under this Act for such place, who shall from time to time cause to be kept in good repair and condition, and free from pollution, all wells, fountains, and pumps, vested in them under this Act, and may also keep in good repair and condition, and free from pollution, other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

Wells, &c., belonging to any place vested in local authority, &c.

VIII. If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding five pounds for such offence, and a further sum not exceeding twenty shillings for every day during which such offence is continued after written notice from the local authority in relation thereto; but nothing herein contained shall extend to any offence provided against by section twenty-three of the said "Nuisances Removal Act."

Penalty for fouling water.

IX. Local authorities under this Act may, for the purposes of the Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors.

Appointment of inspectors of nuisances.

### *Diseases Prevention.*

X. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting

Section 2 and 3 of 18 &

19 Vict. c. 116 repealed. a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty, the Metropolis Local Management Act, shall be repealed.

Guardians and overseers of the poor to be the local authorities for executing Diseases Prevention Act.

XI. The board of guardians for every union, or parish not within an union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no board of guardians, the overseers of the poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place: Provided, that every such board of guardians shall, for the execution of the said Act for the Prevention of Diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said Nuisances Removal Act: Provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed: Provided moreover, that in respect of any place where, under this Act, the local authority for executing the Nuisances Removal Act is any other body than the board of guardians or the overseers of the poor, the privy council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act: Provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

XII. It shall be lawful for the local authority for executing the said "Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expense thereof shall be deemed to be an expense incurred in executing the said Act.

Local authorities may provide carriages for conveyance of infected persons.

XIII. Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under section twelve of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: Provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under section eleven of the said Act: Provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices; any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under section twelve of the said Nuisances Removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on

Justices on the application of householders, may order the removal of nuisances.

whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

Guardians may procure Sanitary reports and pay for the same.

XIV. The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Interpretation of terms.

XV. The several words used in this Act shall be construed in the same manner as is declared with reference to the same words in the above-cited Act, termed "The Nuisances Removal Act for England, 1855," and all the provisions therein, and in "The Diseases Prevention Act, 1855," contained, shall respectively be applicable to this Act, except so far as they shall be hereby repealed, or be inconsistent with anything herein provided.

XVI. Justices not incapable of acting by being members of bodies to execute Nuisances Removal Act; (repealed by 29 & 30 Vict. c. 41, s. 1).

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## SEIZURE OF DISEASED AND UNWHOLESOME MEAT.

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26 & 27 VICT. CAP. 117.

*An Act to amend the Nuisances Removal Act for England, 1855, with respect to the Seizure of Diseased and Unwholesome Meat.*

[28th July, 1863.]

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," with regard to the inspection and seizure of diseased and unwholesome meat, are defective; and it is therefore expedient that the same should be repealed, and that other and more effectual provisions in that behalf should be substituted therefor: 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 :—

I. From and after the passing of this Act, the twenty-sixth section of the said Act is repealed.

Section 26 of recited Act repealed,

II. The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged; and in case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice; and if it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed, or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found, shall, upon conviction, be liable to a penalty not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months.

Power to Medical Officer of Health or Inspector of Nuisances to inspect any animal, &c.

III. In case any person shall in any manner prevent such medical officer of health or inspector of nuisances from entering any slaughter-house, shop, building, market, or other place where such animal, carcase, meat, poultry, or fish is kept for the purpose of sale or

Penalty for obstructing Medical Officer of Health, &c.



of preparation for sale, or shall in any manner obstruct or impede him, or his servant or assistant, when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding five pounds.

This and re-  
cited Act to  
be as one Act.

IV. This Act and "The Nuisances Removal Act for England, 1855," shall be read and construed together as one Act.

Short title

V. This Act may be cited for all purposes as "The Nuisances Removal Act for England (Amendment) Act, 1863."

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29 & 30 VICT. CAP. 41.

*An Act to amend the Nuisances Removal and Diseases Prevention Act, 1860.* [28th June 1866.]

WHEREAS it is expedient that the provisions of the Act 23 & 24 Vict. c. 77, as to the power of justices of the peace to act in cases other than appeals arising under "The Nuisances Removal Act for England, 1855," should be repealed, and that the said Act of the 23 & 24 Vict. c. 77, should be amended as hereinafter mentioned: 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:

Sec. 16 of 23  
& 24 Vict. c.  
77, repealed.

I. The sixteenth section of the Act of the 23 & 24 Vict. c. 77, shall be and is hereby repealed.

No justice to  
be incapable  
of acting be-  
cause mem-  
ber of body  
authorized to  
execute Act,  
or liable to  
contribute.

II. No justice of the peace shall be deemed incapable of acting in cases under the Nuisances Removal Act, or the Act of the 23 & 24 Vict. c. 77, by reason of his being a member of any body thereby declared to be the authority to execute the said Act, or by reason of his being a contributor or liable to contribute to any rate or fund out of which it is thereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

Short title.

III. This Act may be cited as "The Nuisances Removal Act (No. 1), 1866."

29 & 30 VICT. CAP. 90.

*An Act to amend the Law relating to the Public Health.*

[7th August, 1866.]

WHEREAS it is expedient to amend the law relating to public health: 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.*

I. This Act may be cited for all purposes as the Sanitary Act, 1866. Short title  
of Act.

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PART II.

AMENDMENT OF THE NUISANCES REMOVAL ACTS.

XIV. The expression "Nuisances Removal Acts," shall mean the Acts passed in the years following of the reign of Her present Majesty, that is to say, the one in the session of the eighteenth and nineteenth years, chapter one hundred and twenty-one, and the other in the session of the twenty-third and twenty-fourth years, chapter seventy-seven, as amended by this part of this Act; and this part of this Act shall be construed as one with the said Acts, and all expenses incurred by a nuisance authority in carrying into effect any of the provisions of this part of this Act shall be deemed

Definition of  
"Nuisances  
Removal  
Acts."

to be expenses incurred by it in carrying into effect the Nuisances Removal Acts."

Definition of  
Nuisance  
authority."

XV. "Nuisance authority" shall mean any authority empowered to execute the Nuisances Removal Acts.

Power of  
police with  
respect to  
nuisances.

XVI. In any place within the jurisdiction of a nuisance authority the chief officer of police within that place, by and under the directions of one of Her Majesty's principal secretaries of state, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceeding which the nuisance authority of such place might institute with respect to the removal of nuisances: Provided always, that no officer of police shall be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice of the peace, for the purpose of carrying into effect this Act.

Section 3 of  
23 & 24 Vict.  
c. 77, re-  
pealed.

XVII. The third section of the said Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven, shall be repealed, and all powers vested in any highway board or "Nuisance Removal Committee" under the Nuisances Removal Acts shall determine, and all property belonging to them for the purposes of the said Nuisances Removal Acts shall, subject to any debts or liabilities affecting the same, be transferred to or vested in the nuisance authority under the said Acts: Provided always, that this section shall not extend to any vestry or district board, under the Act of the session of eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled "An Act for the better Local Management of the Metropolis," or to any committee appointed by such vestry or district board for the purpose of carrying into effect the Nuisances Removal Acts, or any of them.

18 & 19 Vict.  
c. 120.

Requisition  
of ten in-  
habitants  
equivalent  
to certificate  
of medical  
officer.

XVIII. A requisition in writing under the hands of any ten inhabitants of a place shall for the purposes of the twenty-seventh section of "The Nuisances Removal Act for England, 1855," be deemed to be equivalent to the certificate of the medical officer or medical practitioners therein mentioned, and the said section shall be enforced accordingly.

XIX. The word "Nuisances" under the Nuisance Removal Acts shall include, Addition to  
Definition of  
Nuisances.

1. Any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates :

2. Any factory, workshop, or workplace, <sup>Repealed</sup> ~~not already under the operation of any general Act for the regulation of factories or bakehouses,~~ <sup>Vide</sup> ~~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, that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein :~~ <sup>Fact Act</sup> <sup>187</sup>

3. Any fireplace or furnace which does not, as far as practicable consume the smoke arising from the combustibles used in such fireplace or furnace, and is used within the district of a nuisance authority for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever :

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

Provided, first, 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 :

Secondly, that where a person is summoned before the justices in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the justices may hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if they are satisfied that such fireplace or furnace is constructed in such man-

ner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

Duties of  
Nuisance  
Authorities  
as to Inspec-  
tion of  
nuisances,  
&c.

XX. It shall be the duty of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of the Nuisances Removal Acts, and to enforce the provisions of the said Acts 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; and any justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under the eleventh section of the Nuisances Removal Act, 1855.

As to  
proceedings  
of Nuisance  
Authority  
under s. 12  
of 18 & 19  
Vlct. c. 121.

XXI. The nuisance authority or chief officer of police, shall, previous to taking proceedings before a justice under the twelfth section of the Nuisances Removal Act, 1855, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works and to do all such things as may be necessary within a time to be specified in the notice: Provided,

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

Secondly, that where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, then the nuisance authority may itself abate the same without further order, and the cost of so doing shall be part of the costs of executing the Nuisances Removal Acts, and borne accordingly.

Power to  
cause premi-  
ses to be

XXII. If the nuisance authority shall be of opinion, upon the certificate of any legally qualified medical

practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious or contagious disease, it shall be the duty of the nuisance authority to give notice in writing requiring the owner or occupier of such house or part thereof to cleanse and disinfect the same, as the case may require; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings 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; when the owner or occupier of any such house or part thereof as is referred to in this section is from poverty or otherwise unable, in the opinion of the nuisance authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent, at its own expense, cleanse and disinfect such house or part thereof, and any articles therein likely to retain infection.

cleansed or otherwise disinfected.

XXIII. The nuisance authority in each district may provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge.

Power to provide means of disinfection.

XXIV. It shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick or to his own home.

Nuisance authorities may provide carriages for conveyance of infected persons.

XXV. If any person suffering from any dangerous infectious disorder shall enter any public conveyance without previously notifying to the owner or driver thereof that he is so suffering, he shall on conviction thereof before any justice be liable to a penalty not exceeding five pounds, and shall also be ordered by such

Penalty on person suffering from infectious disorder entering public con-

veyance  
without  
notifying  
to driver  
that he is so  
suffering.

justice to pay to such owner and driver all the losses and expenses they may suffer in carrying into effect the provisions of this Act: and no owner or driver of any public conveyance shall be required to convey any person so suffering until they shall have been first paid a sum sufficient to cover all such losses and expenses.

Removal of  
persons sick  
of infectious  
disorders,  
and without  
proper lodg-  
ing, in any  
district.

*vide 51 sect  
San Laws  
undert act  
1844.*

XXVI. Where a hospital or place for the reception of the sick is provided within the district of a nuisance authority, any justice may, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the nuisance authority, of any person suffering from any dangerous contagious or infectious disorder, being without proper lodging or accommodation, or lodged in a room occupied by more than one family, or being on board any ship or vessel.

Places for the  
reception of  
dead bodies  
may be pro-  
vided at the  
public  
expense.

XXVII. Any nuisance authority may provide a proper place for the reception of dead bodies, and where any such place has been provided and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed to such proper place of reception, at the cost of the nuisance 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 relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Places for  
reception  
of dead  
bodies  
during time  
required for  
post-mortem  
examination

XXVIII. Any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as lastly hereinbefore provided for) for the reception of dead bodies for and during the time required to conduct any post-mortem examination ordered by the coroner of the district or other constituted autho-

rity, and may make such regulations as they may deem fit for the maintenance, support, and management of such place; and where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such post-mortem examination and the re-removal of such body, such costs of removal and re-removal to be paid in the same manner and out of the same fund as the cost and fees for post-mortem examinations when ordered by the coroner.

XXIX. Any nuisance authority may, with the sanction of the privy council, signified in manner provided by "The Public Health Act, 1858," lay down rules for the removal to any hospital to which such authority is 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 or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

Power to remove to hospital sick persons brought by ships.

XXX. For the purposes of this Act, any ship, vessel, or boat that is in a place not within the district of a nuisance authority shall be deemed to be within the district of such nuisance authority as may be prescribed by the privy council, and until a nuisance authority has been prescribed then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line, but nothing in this Act contained shall enable any nuisance authority to interfere with any ship, vessel, or boat that is not in British waters.

Provision as to district of nuisance authority extending to places where ships are lying.

XXXI. The power of entry given to the authorities by the eleventh section of the Nuisances Removal Act, 1855, may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried on.

Power of entry to nuisance authority or their officer, under s. 11 of 18 & 19 Vict. c. 121.

And any justice's order once issued under the said section shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

XXXII. Any ship or vessel lying in any river, harbour, or other water shall be subject to the jurisdiction

Provision as to ships



within the jurisdiction of nuisance authority,

of the nuisance authority of the district within which such river, harbour, or other water is, and be within the provisions of the Nuisances Removal Acts in the same manner as if it were a house within such jurisdiction, and the master or other officer in charge of such ship shall be deemed for the purposes of the Nuisances Removal Acts to be the occupier of such ship or vessel; but this section shall not apply to any ship or vessel belonging to Her Majesty or to any foreign government.

Provision for raising money in divided parishes.

XXXIII. Where the guardians are the nuisance authority for part of any parish only, and shall require to expend money on account of such part in execution of the provisions of the said Acts, the overseers of the parish, shall, upon receipt of an order from the said guardians, raise the requisite amount from the persons liable to be assessed to the poor rate therein by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate when made, and shall account to the auditor of the district for receipt and disbursement of the same, in like manner, and with the same consequences, as in the case of the poor rate made by them.

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

XXXIV. That it shall be lawful for the nuisance authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said Nuisances Removal Acts or this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by the Nuisance Removal Acts, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him

for that purpose by or on behalf of the nuisance 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 any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the 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 any contract whatsoever between landlord or tenant.

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### PART III.

#### MISCELLANEOUS.

XXXV. On application to one of Her Majesty's principal secretaries of state by the nuisance authority of the city of London, or any district or parish included within the Act for the better local government of the Metropolis, or of any municipal borough, or of any place under the Local Government Act, 1858, or any local improvement Act, or of any city or town containing, according to the census for the time being in force, a population of not less than five thousand inhabitants, the secretary of state may, as he may think fit, by notice to be published in the London Gazette, declare the following enactment to be in force in the district of such nuisance authority, and from and after the publication of such notice the nuisance authority shall be empowered to make regulations for the following matters; that is to say,

In cities, boroughs, or towns, secretary of state, on application of nuisance authority, may empower them to make regulations as to lodging houses.

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family :

2. For the registration of houses thus let or occupied in lodgings :
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state :
4. For enforcing therein the provision of privy accommodation and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases :
5. For the cleansing and lime-whiting at stated times of such premises :

The nuisance authority may provide for the enforcement of the above regulations by penalties not exceeding forty shillings for any one offence, with an additional penalty not exceeding twenty shillings for every day during which a default in obeying such regulations may continue ; but such regulations shall not be of any validity unless and until they shall have been confirmed by the secretary of state.

But this section shall not apply to common lodging houses within the provisions of the Common Lodging Houses Act, 1851, or any Act amending the same.

Cases in which two convictions have occurred within three months.

XXXVI. Where two convictions against the provisions of any Act relating to the overcrowding of a house, or the occupation of a cellar as a separate dwelling place, shall have taken place within the period of three months, whether the persons so convicted were or were not the same, it shall be lawful for any two justices to direct the closing of such premises for such time as they may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the nuisance authority to permanently close the same, in such manner as they may deem fit, at their own cost.

Power to provide hospitals.

XXXVII. The sewer authority, or in the metropolis, the nuisance authority, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick.

Such authority may itself build such hospitals or places of reception, or make contracts for the use of any existing

hospital or part of a hospital, or for the temporary use of any place for the reception of the sick.

It 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 its district, on payment by the sewer authority of such annual or other sum as may be agreed upon.

The carrying into effect this section shall in the case of a sewer authority be deemed to be one of the purposes of the said Sewage Utilization Act, 1865, and all the provisions of the said Act shall apply accordingly.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, 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.

XXXVIII. Any person suffering from any dangerous infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver conveyed any such sufferer, and any person who without previous disinfection 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 any justice be liable to a penalty not exceeding five pounds: Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any such bedding, clothing, rags, or other things for the purpose of having the same disinfected.

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

XXXIX. If any person knowingly lets any house, room, or part of a house, in which any person suffering from any dangerous 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, disinfected to the satisfaction of a qualified medical practitioner as testified by a certificate given by him, such person shall be liable to a penalty not exceeding

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

twenty pounds. For the purposes of this section the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn.

Guardians and overseers of the poor to be the local authorities for executing Diseases Prevention Act.

XL. Where in any place two or more boards of guardians or local authorities have jurisdiction, the Privy Council may, by any order made under the Diseases Prevention Act, 1855, authorize or require such boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof.

Evidence of family in case of overcrowded houses.

XLI. In any proceedings under the Common Lodging Houses Act, 1851, if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it.

Extension to the whole of England and Ireland of s. 67 of 11 & 12 Vict. c. 63.

XII. The sixty-seventh section of the Public Health Act, 1848, relating to cellar dwellings, shall apply to every place in England and Ireland where such dwellings are not regulated by any other Act of Parliament, and in applying that section to places where it is not in force at the time of the passing of this Act the expression "this Act" shall be construed to mean the "Sanitary Act, 1866," and not the said Public Health Act, 1848. In construing the said sixty-seventh section as applied by this Act, Nuisance Authority shall be substituted for the Local Board.

\* \* \* \* \*

Penalty for wilful damage of works.

XLV. If any person wilfully damages any works or property belonging to any local board, sewer authority, or nuisance authority, he shall be liable to a penalty not exceeding five pounds.

Incorporation of sanitary authority.

XLVI. The following bodies, that is to say, local boards, sewer authorities, and nuisance authorities, if not already incorporated, 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 the several Acts conferring powers on such bodies respectively in their several characters of local boards, sewer authorities, or nuisance authorities.

\* \* \* \* \*

XLVIII. Any local board, sewer, authority, or nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, and such person so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisances Removal Acts or this Act.

Appearance  
of local  
authorities  
in legal pro-  
ceedings.

\* \* \* \* \*

LI. All penalties imposed by 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," 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.

Power to  
reduce pe-  
nalties  
imposed by  
6 Geo. 4,  
c. 78.

LII. Every vessel 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, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom; and the lords and others of her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of her Majesty's principal secretaries of state being one), may, by order or orders to be by them from time to time, made, make such rules, orders, and regulations as to them shall seem fit, and every such order shall be certified under the hand of the clerk in ordinary of her Majesty's privy council, and shall be published in the London Gazette, and such publication shall be conclusive evidence of such order to all intents and purposes; and such orders shall be binding and be carried into effect as soon as the same shall have been so published, or at such other time as shall be fixed by such orders, with a view to the treatment of persons affected with cholera and epidemic, endemic, and contagious disease, and preventing the spread of cholera and such other diseases, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and to declare and determine by what nuisance authority or authorities such orders, rules,

Description  
of vessels  
within pro-  
visions of  
6 Geo. 4, c.  
78.

and regulations shall be enforced and executed; and any expenses incurred by such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisances Removal Acts.

Periodical  
removal of  
manure in  
mews, &c.

LIII. Where notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of 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: Provided always, that this section shall not apply to any place where the board of guardians or overseers of the poor are the nuisance authority.

Recovery  
of penalties.

LIV. Penalties under this Act and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to summary Convictions and Orders," or any Act amending the same.

Powers of  
Act cumulative.

LV. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of parliament, law, or custom; and such authority may exercise such other powers in the same manner as if this Act had not passed.

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## SEWAGE UTILIZATION ACTS.

28 & 29 VICT. c. 75.

*An Act for facilitating the more useful application of Sewage in Great Britain and Ireland (a).*

[29th June, 1865.]

WHEREAS it is expedient to remove difficulties under which local boards and other bodies having the care of sewers labour in disposing of the sewage of their districts so as not to be a nuisance, and to give facility to such authorities to make arrangements for the application of such sewage to land for agricultural purposes: 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:

I. This Act, for all purposes, may be cited as "The Short title. Sewage Utilization Act, 1865."

II. This Act shall not extend to any part of the me- Application of Act.  
tropolis as defined by the Act of the session eighteenth and nineteenth years of the present reign, chapter one hundred and twenty, for better local management of the metropolis (b).

III. The expression "Sewer Authority" shall, in the several places in the schedule annexed hereto in that behalf mentioned, mean the persons or bodies of persons referred to in the first column of the schedule annexed hereto; and the term "district," in relation to a sewer authority, shall, as respects each authority, mean the Definition of sewer authority.

(a) See 29 & 30 Vict. c. 90, and 30 & 31 Vict. c. 113, *post*.

(b) The rest of this section is repealed by 30 & 31 Vict. c. 113, s. 6, *post*.



place in that behalf referred to in the second column of the said schedule.

“Local Board” shall mean a local board authorized in pursuance of the “Public Health Act, 1848,” and “The Local Government Act, 1858,” or one of such Acts.

Powers of  
sewer  
authorities.

IV. Sewer authorities shall have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained, and shall, as respects all sewers constructed by them or under their control, whether the same were made before or after the passing of this Act, have all the powers that local boards have, in respect of sewers vested in or constructed by them, under the forty-fifth and forty-sixth sections of “The Public Health Act, 1848,” the thirtieth section of “The Local Government Act, 1858,” and the fourth section of “The Local Government Act, 1858, Amendment Act, 1861,” subject to the provisions of the fifth and sixth sections of the last mentioned Act, and to the saving clauses in “The Local Government Act, 1858,” mentioned from sixty-eight to seventy-four both inclusive. \* \* \*

Power of  
entry.

V. The sewer authority shall have the powers of entry conferred by the one hundred and forty-third section of the “Public Health Act, 1848,” for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in the said section.

Payment of  
expenses.

VI. A sewer authority shall pay all expenses incurred by them in carrying this Act into effect out of the fund or rate in the schedule in that behalf mentioned, and shall have all such powers of borrowing money on the security of such fund or rate as local boards have of borrowing money under “The Local Government Act, 1858,” and the Acts amending that Act, on the security of the funds or rates in the said Acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by local boards under the said Acts.

Power to  
take lands.

VII. A sewer authority shall, for the purposes of this Act, have the powers of taking lands conferred on local boards by the seventy-fifth section of “The Local

Government Act, 1858," and any Act amending the same.

VIII. Full compensation shall be made, out of any fund or rate applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount, the same shall be settled by arbitration, as provided in "The Public Health Act, 1848," or any Act amending the same, or if the compensation claimed do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner, in manner provided by the Acts mentioned in this section.

Compensation.

IX. Two or more sewer authorities, including under that expression for the purposes of this section local boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly.

Power of sewer authorities to combine.

X. A sewer authority, with the sanction of Her Majesty's attorney-general in England, may, \* \* \* either in its own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as it may deem advisable, for the purpose of protecting any watercourse within its jurisdiction from pollutions arising from sewage either within or without its district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by the sewer authority in carrying into effect the purposes of this Act.

Sewer authority may take proceedings to prevent pollution of streams.

XI. Nothing contained in this Act, or in the Acts referred to therein, shall authorize any sewer authority to make a sewer so as to drain direct into any stream or watercourse.

Sewers not allowed to drain into any stream, &c.

XII. The public works loan commissioners, as defined by "The Public Works Loan Act, 1853," may advance

Power to public works loan com-

missioners  
to lend  
money  
to sewer  
authorities.

to any sewer authority, upon the security of any rate applicable to the purposes of this Act, without any further security, such sums of money as may be recommended by one of Her Majesty's principal secretaries of state, to be applied by such authority in carrying into effect the purposes of this Act.

Powers of  
Act cumu-  
lative.

XIII. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any sewer authority by Act of parliament, law, or custom; and the sewer authority may exercise such other powers in the same manner as if this Act had not passed.

Sewer  
authority  
may enter  
into contract  
for supply  
of sewage.

XIV. The sewer authority of any place may from time to time, for the purpose of utilizing its sewage, agree with any person or body of persons, corporate or unincorporate, as to the supply of such sewage, and works to be made for the purpose of that supply, and the parties to execute the same and to bear the costs thereof, and 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 twenty-five years.

Application  
of 27 & 28  
Vict. c. 114  
to works,  
&c., for  
supply of  
sewage.

XV. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "Improvement of Land" authorized by the "Land Improvement Act, 1864," and the provisions of that Act shall apply accordingly.

\* \* \* \* \*

## SCHEDULE.

## ENGLAND AND WALES.

Description of local authority.	Description of places.	Rate or fund out of which expenses to be paid.
The mayor, aldermen, and burgesses, acting by the Council.	In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board.	The borough fund or borough rate.
The Commissioners, trustees, or other persons intrusted by any local Act of Parliament with powers of improving, cleansing, lighting, or paving the town.	The boroughs of Oxford and Cambridge, and any town or place not included within the description, 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.	Any rate leviable by the Commissioners, trustees, or other persons.
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.	In parishes (a) not within the jurisdiction of any sewer authority hereinbefore mentioned, and in which a rate is levied for the maintenance of the poor.	The poor rate.

(a) See 30 &amp; 31 Vict. c. 113, s. 16.

29 &amp; 30 VICT. CAP. 90.

*An Act to amend the Law relating to the Public Health.*  
[7th August, 1866.]

WHEREAS it is expedient to amend the law relating to public health: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:—

*Preliminary.*

Short title  
of Act.

I. This Act may be cited for all purposes as the Sanitary Act, 1866.

## PART I.

*Amendment of the Sewage Utilization Act, 1865.*

Definition of  
"sewer au-  
thority:"

II. "Sewer authority" in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

"lord lieu-  
tenant in  
council."

The words "Lord Lieutenant in Council" shall mean in this Act the lord lieutenant or any chief governor or chief governors in Ireland acting by and with the consent of Her Majesty's privy council in Ireland.

This part to  
be construed  
with 28 & 29  
Vict. c. 75.

III. This part of this Act shall be construed as one with the Sewage Utilization Act, 1865, and the expression "The Sewage Utilization Act, 1865," as used in this or any other Act of parliament or other document, shall mean the Sewage Utilization Act, 1865, as amended by this Act.

Power to  
sewer au-  
thority to  
form com-  
mittee of its  
own mem-  
bers and  
others.

IV. Any sewer authority may from time to time, at any meeting specially convened for the purpose, form one or more committee or committees consisting wholly of its own members, or partly of its own members and partly of such other persons contributing to the rate or

fund out of which the expenses incurred by such authority are paid, and qualified in such other manner as the sewer authority may determine, and may delegate, with or without conditions or restrictions, to any committee so formed, all or any powers of such sewer authority, and may from time to time revoke, add to, or alter any powers so given to a committee.

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present, shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members.

A sewer authority may from time to time add or diminish the number of the members or otherwise alter the constitution of any committee formed by it, or dissolve any committee.

A committee of the sewer authority shall be deemed to be the agents of that 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.

V. Where the sewer authority of a district is a 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, it may, by resolution at any meeting convened for the purpose after twenty-one days' clear notice affixed to the places where parochial notices are usually affixed in the district, form any part of such district into a special drainage district for the purposes of the Sewage Utilization Act, and thereupon such special drainage district shall, for the purposes of the Sewage Utilization Act, 1865, and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the Act of the fifty-eighth year of the reign of King

Formation  
special  
drainage  
district.

George the Third, chapter sixty-nine, and the Acts amending the same; and any officer or officers who may from time to time be appointed by the sewer authority of such special drainage district for the purpose shall have within that district all the powers of levying a rate for the purpose of defraying the expenses of carrying the said Sewage Utilization Act into effect that they would have if such district were such parish as aforesaid, and such rate were a rate for the relief of the poor, and they were duly appointed overseers of such parish.

Appeal  
against con-  
stitution of  
special drain-  
age district.

VI. Where the sewer authority of any place has formed a special drainage district in pursuance of this Act, if any number of the inhabitants of such place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands, bring their case under the consideration of one of Her Majesty's principal secretaries of state, and the said secretary of state may after due investigation annul the formation of the special drainage district or modify its boundaries as he thinks just.

Evidence of  
formation of  
special  
drainage  
district.

VII. A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the said parish, and by advertising notice thereof, in some newspaper published or circulating in the county in which such district is situate; and the production of a newspaper containing such advertisement, or 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, and after the expiration of three months from the date of the resolution forming the district such district shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatever.

Power to  
drain into  
sewers of  
sewer autho-  
rity.

VIII. Any owner or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority 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 sewer authority to superintend the making of such communications; but any person causing any drain to empty into any sewer authority without complying with the provisions of this section shall incur a penalty not exceeding twenty pounds, and it shall be lawful for the sewer authority to close any communication between a drain and sewer made in contravention of this section, and to recover in a summary manner from the person so offending any expenses incurred by them under this section.

IX. Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by the Public Health Act, 1848, in respect of matters by that Act authorised or directed to be settled by arbitration (*a*).

Use of  
sewers by  
persons be-  
yond district.

X. If a dwelling house within the district of a sewer authority is without a drain or without such drain as is sufficient for effectual drainage, the sewer authority may by notice require the owner of such house within a reasonable time therein specified to make a sufficient drain emptying into any sewer which the sewer authority is entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the house of such owner; but if no such means of drainage are within that distance then emptying into such covered cesspools or other place not being under any house, as the sewer authority directs; and if the person on whom such notice is served fails to comply with the same, the sewer authority may itself, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner.

As to the  
drainage of  
houses.

XI. A sewer authority within its district shall have the same powers in relation to the supply of water that a local board has within its district, and the provisions of

Supply of  
water to dis-  
trict of sewer  
authority.

(*a*) See 11 & 12 Vict. c. 63, ss. 123-128.



the sections hereinafter mentioned shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "local board of health" or "local board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the local board, that is to say, the sections numbered from seventy-five to eighty, both inclusive, of the Public Health Act, 1848, sections fifty-one, fifty-two, and fifty-three of the Local Government Act, 1858, and section twenty of the Local Government Act (1858) Amendment Act, 1861.

The sewer authority may, if it think it expedient so to do, provide a supply of water for the use of the inhabitants of the district by

- (1.) Digging wells ;
- (2.) Making and maintaining reservoirs ;
- (3.) Doing any other necessary acts ;

and they may themselves furnish the same, or contract with any other persons or companies to furnish the same: provided always, that no land be purchased or taken under this clause except by agreement or in manner provided by the Local Government Act, 1858.

Expenses of  
sewer authority in supplying water.

XII. Any expenses incurred by a sewer authority in or about the supply of water to its district, and in carrying into effect the provisions hereinbefore in that behalf mentioned, shall be deemed to be expenses incurred by that authority in carrying into effect the Sewage Utilization Act, 1865, and be payable accordingly.

Wells, &c.,  
belonging to  
any place  
vested in  
sewer authority, &c.,  
23 & 24 Vict.  
c. 77, s. 7.

XIII. All property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by the seventh section of the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven, shall vest in the sewer authority, where the sewer authority supplies water to its district.

## 30 &amp; 31 VICT. CAP. 113.

*An Act for facilitating the Distribution of Sewage Matter over Land, and otherwise amending the Law relating to Sewer Authorities.*

[20th August, 1867.]

WHEREAS the governing bodies of cities, towns, and other places are required by divers Acts of parliament effectually to drain their districts: And whereas it is expedient to give further facilities for the distribution for agricultural purposes of sewage matter over the land, and otherwise to amend the law relating to sewer authorities:

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.*

I. This Act may be cited for all purposes as the *Sewage Utilization Act, 1867.* hort title.

II. The expression "sewer authority" shall in this Act have the same meaning as in the Sewage Utilization Act, 1865, and in addition shall include a local board, and shall in this Act and the said Sewage Utilization Act, 1865, include any collegiate or other corporate body required or authorized by or in pursuance of any Act of parliament to divert its sewers or drains from any river or to construct new sewers, and any public department of the government; and 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 or local board that has been guilty of a default as therein mentioned, shall, in the performance of such duty and for the purposes thereof, be invested with all the powers of the sewer authority or local board in default, except the power of levying rates. Definition of sewer authority.

*Powers for Distribution of Sewage.*

Sewer authority may exercise without their district powers in relation to distribution of sewage.

III. A sewer authority may, without their district, provide any works and do any act for the purpose of receiving, storing, disinfecting, or distributing sewage which they may provide or do within their district, subject to the conditions to which they would be subject in providing such works or doing such acts within their district, and to the conditions imposed on local boards in carrying into effect the fourth section of the Local Government Act (1858) Amendment Act, 1861.

Sewer authority may purchase land for distribution of sewage in pursuance of sect. 75 of Local Government Act, 21 & 22 Vict. c. 98.

IV. A sewer authority for the purpose of receiving, storing, disinfecting, and distributing sewage, and of the construction of any works for receiving, storing, disinfecting, or distributing sewage, and of the construction of any sewer or drain, or for any of the above purposes, may purchase or take on lease any lands either within or without their district, and shall for carrying into effect any such purchase have all the powers of taking land conferred by the seventy-fifth section of the Local Government Act, 1858, as amended by this Act.

Power for sewer authority to deal with land appropriated to sewage purposes.

V. A sewer authority may deal with any land held by them for the purpose of receiving, storing, disinfecting, or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding seven years for agricultural purposes, or by contracting with some person to take the whole or part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in any appropriation which may be made of land held by a sewer authority for the above purposes, care shall be taken that provision be made for receiving, storing, disinfecting, or distributing all the sewage which it is the duty of the sewer authority to cause to be disposed of in that manner.

*Special Drainage District.*

Repeal of part of sect. 2 of 28 & 29

VI. There shall be repealed so much of the second section of the Sewage Utilization Act, 1865, as provides

that "this Act shall not, with the exception of clause fifteen, extend to any parish as defined in the schedule to this Act, in a part of which parish the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts, is in force at the time of the passing of this Act."

Vict. c. 75, excluding from Act parish partly under Local Government Act.

VII. Where part of a parish as defined in the schedule to the Sewage Utilization Act, 1865, as amended by this Act, is at the time of the passing of this Act subject to the jurisdiction of a local board in pursuance of the Local Government Act, 1858, the portion of such parish which is not subject to the jurisdiction of any local board shall for the purposes of the Sewage Utilization Act, 1865, and of this Act, be deemed to be by this Act constituted a special drainage district, unless the secretary of state, upon petition presented to him in manner provided by the sixth section of the Sanitary Act, 1866, within three months after the passing of this Act, otherwise directs.

Where part of parish is at time of passing of this Act under 21 & 22 Vict. c. 98, the other part constituted a special drainage district.

It shall not be necessary in the case of a part of a parish which is by this section constituted a special drainage district to give the notices required by section seven of the Sanitary Act, 1866.

VIII. Any inhabited place not having a known or defined boundary may petition one of Her Majesty's principal secretaries of state in manner provided in the sixteenth section of the Local Government Act, 1858, to settle its boundaries for the purposes of the Sewage Utilization Act, 1865, and of this Act, and the secretary of state may by order made in manner provided by the said section, settle the same accordingly, and from and after the date of such order the place shall be deemed to have been constituted a special drainage district for the purposes of the said Sewage Utilization Act, 1865, and of this Act.

Power of undefined inhabited place to apply to be constituted a special drainage district.

A copy of the order of the secretary of state shall be published in manner provided by the seventh section of the Sanitary Act, 1866, and that section shall be construed in reference to a special drainage district formed under this section as if the order of the said secretary of state were substituted for "resolution of a sewer authority."

IX. No petition of appeal shall be presented to the secretary of state in pursuance of the sixth section of the

Time for appeal against

special  
drainage  
district.

Sanitary Act, 1866, except within three months after the date of the resolution forming the district, and the said section shall be read as if after the words "petition in writing under their hands" there were inserted the words "presented within three months after the date of the resolution forming the district."

*Union of Districts.*

Constitution  
of joint  
sewerage  
district.

X. Where it appears to the sewer authority of any district that it would be for the advantage of such district, and of any district or districts adjoining or lying within the same drainage area, or otherwise conveniently situate, that all such districts should be formed into a united district for the purposes of the Sewage Utilization Act, 1865, and of this Act, or for any of such purposes, such sewer authority may, with the consent of the sewer authority of every district affected, apply to one of Her Majesty's principal secretaries of state for an order forming such districts into one district, hereinafter referred to as a united district, and the secretary of state, if satisfied of the expediency of such union of districts, may make an order accordingly.

Advertise-  
ment of in-  
tention to  
form united  
district.

XI. The intention of a sewer authority to apply to one of Her Majesty's principal secretaries of state for an order forming a united district shall be advertised in some newspaper circulating within the area of such proposed united district once at least in each of the three weeks before such application is made.

Constitution  
of joint  
sewerage  
board.

XII. A united district shall be subject to the jurisdiction of a joint sewage board consisting of members elected by each of the sewer authorities of the component districts in such manner as may be determined by the said secretary of state, and such board shall be a body corporate, with perpetual succession and a common seal, having a capacity to acquire and hold lands for all the purposes of the Sewage Utilization Act, 1865, and of this Act, or for any of such purposes.

The first meeting of a joint sewage board shall be held in such manner and at such time as may be determined by the said secretary of state, and "the rules as to proceedings of drainage boards" contained in the second part of the schedule annexed to the Land Drainage Act,

1861, shall apply to a joint sewerage board constituted under this Act.

XIII. A joint sewerage board shall, in the united district, have all the same powers, except the power of levying a rate, and be subject to the same obligations, so far as relate to the purposes of its constitution, as if it were the only sewer authority of that district, subject to this proviso, that the said joint board may delegate to any sewer authority of a component district such powers of superintendence or otherwise within its own district as such joint board think fit.

Powers of joint sewerage board.

XIV. Any expenses incurred by a joint sewerage board in pursuance of this Act shall be defrayed out of a common fund to be contributed by the component districts in proportion to the rateable value of each district, or in such other proportion as the said secretary of state may, with the consent of the sewer authority of each component district, by order determine.

Expenses of joint sewerage board how defrayed.

The rateable value of a district shall be deemed to be the value on which any such rate would be assessed as would, if such district were not in union, be applicable by the sewer authority of that district to the payment of any expenses legally incurred by that authority, and the amount of contribution shall be paid out of such last-mentioned rate, and the sewer authority of each component district shall levy the same accordingly.

#### *Contribution to Works under Contracts.*

XV. Where a sewer authority, or any corporate or other body, under any power enabling them in that behalf, or by any agreement confirmed by parliament, has agreed or hereafter agrees with any person or persons, or body of persons, corporate or unincorporate, as to the supply of all or any of the sewage of any place, and the works to be made for the purpose of that supply, they may contribute to the expense of carrying into execution by such person or persons or body of persons all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such sewer authority or corporate or other body, or to or in which the benefits and obligations of such agreement may have

Sewer authority, &c. may contribute to works under contracts relating to supply of sewage.

been or may be transferred or vested; and all expenditure in consequence of the exercise of the power hereby conferred shall be deemed to have been incurred by such sewer authority or corporate or other body in the construction or due maintenance of the necessary sewers for carrying away the said sewage, and shall be provided for accordingly.

*Amendment of Acts.*

Amendment  
of defini-  
tions.

XVI. "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 "sewer authority" in the thirty-seventh section of The Sanitary Act, 1866, shall include a local board.

In parishes  
a separate  
rate to be  
levied for  
sewage  
purposes.

XVII. Where the sewer authority of a district is a 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, such authority shall for the purpose of defraying any expenses incurred in carrying into effect The Sewage Utilization Act, 1865, or this Act, issue their precept to the overseers of the parish of which they are the authority, requiring such overseers to pay over the amount specified in such precept to the sewer authority, or to their officer named in the precept, or into some bank mentioned in such precept.

The overseers shall comply with the requisitions of such precept by levying a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception, that the owner of any tithes or of any tithe commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of such property in the proportion of one-fourth part only of the rateable value thereof; or, where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate

in the pound payable in respect of houses and other property.

A separate rate under this Act shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against the same, and all other incidents thereof except the purposes to which it is applicable, be deemed to be a rate levied for the relief of the poor.

The expression "overseers" shall include any officer authorized to levy a rate in a special drainage district, and any person or body of persons authorized or required to levy rates for the relief of the poor.

XVIII. In case the amount ordered by any precept of a sewer authority to be paid by the overseers of any parish be not paid in manner directed by such precept and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the sewer authority or by any person authorized by the sewer authority, to issue his warrant for levying the amount or so much thereof as may be in arrear by distress and sale of the goods of all or any of the said overseers; and in case goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which is directed to be made in such parish for the purposes of The Sewage Utilization Act, 1865, or this Act, and shall be collected by the like methods.

Penalty on nonpayment of rates by overseers.

#### *Saving Clause.*

XIX. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any authority by Act of parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed.

Powers of Act to be in addition and not in derogation of other powers.



31 &amp; 32 VICT. CAP. 115.

*An Act to amend the Sanitary Act, 1866.*

[31st July, 1868.]

WHEREAS it is expedient to make further provision for the removal of refuse matter from dwelling houses, and to amend the Sanitary Act, 1866 :

29 & 30 Vict.  
c. 90.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

I. This Act may be cited for all purposes as the Sanitary Act, 1868.

Application  
of Act.

II. This Act shall not extend to Scotland or Ireland.

Definition of  
"sewer  
authority."

III. "Sewer authority" in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

Power to  
sewer  
authority  
in relation  
to privies.

IV. The following sections of the Public Health Act, 1848, as amended by any subsequent Act of parliament, that is to say,

(1.) The fifty-first section requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient water-closet or privy and ashpit ;

(2.) And the fifty-fourth section as amended by any subsequent Act of parliament, providing that the Local Board of Health shall see that drains, water-closets, privies, and ashpits within their district do not become a nuisance ;

shall extend to the district of every sewer authority in which there is no enactment of any public or private Act of parliament to the like effect in force ; and the said sections when so extended shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "Local Board," and any officer for the time being appointed by the sewer authority to examine any premises shall be deemed to be the surveyor within the meaning of the said sections.

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 the said sections of the Public Health Act, 1848; and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with sufficient sewers.

V. A sewer authority shall within their district have all the powers vested in a Local Board by the thirty-second section of the Local Government Act, 1858, as amended by any subsequent Act of parliament, so far as relates to—

Power of sewer authorities to sewerage.

- (1.) The removal of house refuse from premises;
  - (2.) The cleansing of privies, ashpits, and cesspools;
- and the paragraphs numbered (1), (2), and (3) of the said section shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "Local Board."

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 to all matters over which the sewer authority acquires powers by this section.

VI. The provisions of the Public Health Act, 1848, relating to private improvement expenses, as amended by any subsequent Act of parliament, shall be deemed to be incorporated with this Act, so far as may be required for carrying into effect any provision of this Act.

Incorporation of provisions of 11 & 12 Vict. c. 63, as to private improvement expenses.

VII. Any enactment of any Act of parliament in force in any place requiring the construction of a water-closet shall with the approval of the local authority, be satisfied by the construction of an earth-closet, or other place for the reception and deodorization of fœcal matter, made and used in accordance with any regulation from time to time issued by the local authority.

Earth-closets may in certain cases be constructed instead of waterclosets.

The local authority may as respects any houses in which such earth-closets or other places as aforesaid are in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to the water-closets in such houses, on such

terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water.

The local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earth-closets or other places as aforesaid.

The local authority may themselves construct, or require to be constructed, earth-closets or other such places as aforesaid in all cases where, under any enactment in force, they might construct water-closets or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earth-closet or other place as aforesaid in any house instead of a water-closet if he prefer to comply with the provisions of the enactment in force requiring the construction of a water-closet, and a supply of water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earth-closet or other place as aforesaid than he would be put to by compliance with the provisions of any enactment as to water-closets or privy accommodation which he might have been compelled to comply with if this section had not been passed.

Local authority shall, for the purposes of this Act, mean any local board and any sewer authority.

Provision  
for recovery  
of expenses  
by secretary  
of state.

VIII. Whereas by the forty-ninth section of the Sanitary Act, 1866, power is given to one of her Majesty's principal secretaries of state in case of any sewer authority, local board, or nuisance authority making default in performing the sanitary duties specified in the said section, and imposed on them by Act of parliament, to appoint a person to perform the same, and to direct by order that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default, and that any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such court: And whereas it is expedient to make further provision for enforcing payment of any sum so specified as aforesaid in the order of the Secretary of State together

with the costs of the proceedings occasioned by the default made in payment of such sum :

Be it enacted, that the sum so specified in the order of the Secretary of State, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default and to be a debt due from such authority, and payable out of any moneys in the hands of such authority, or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate ; and in the event of any authority refusing to pay any such sum with costs as aforesaid for a period of fourteen days after demand, the secretary of state may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may, in the opinion of the said secretary of state, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt ; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such authority ; and the said person or persons, after repaying all sums of money so due in respect of the precept, shall pay the overplus, if any, (the amount to be ascertained by the secretary of state,) to or to the order of the defaulting authority.

IX. Penalties under any section incorporated with this Act shall be recovered in manner directed by the Act passed in the session holden in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three. As to recovery of penalties.

All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of parliament, and any such other powers may be exercised as if this Act had not passed.

Nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would have been liable if this Act had not been passed :

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

Amendment  
of sect. 37 of  
29 & 30 Vict.  
c. 90.

X. The sewer authority, or in the metropolis the nuisance authority, shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it now has to provide hospitals or temporary places for the reception of the sick under the thirty-seventh section of the Sanitary Act, 1866, but such power to make provision for the temporary supply of medicine and medical assistance shall not be exercised without the sanction of her Majesty's Privy Council.

Construction  
of first part  
of the  
Sanitary  
Act, 1866.

XI. 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, and notices may be served for the purposes of the first part of the said Act in the same manner in which they are required to be served under the second part of the said Act.

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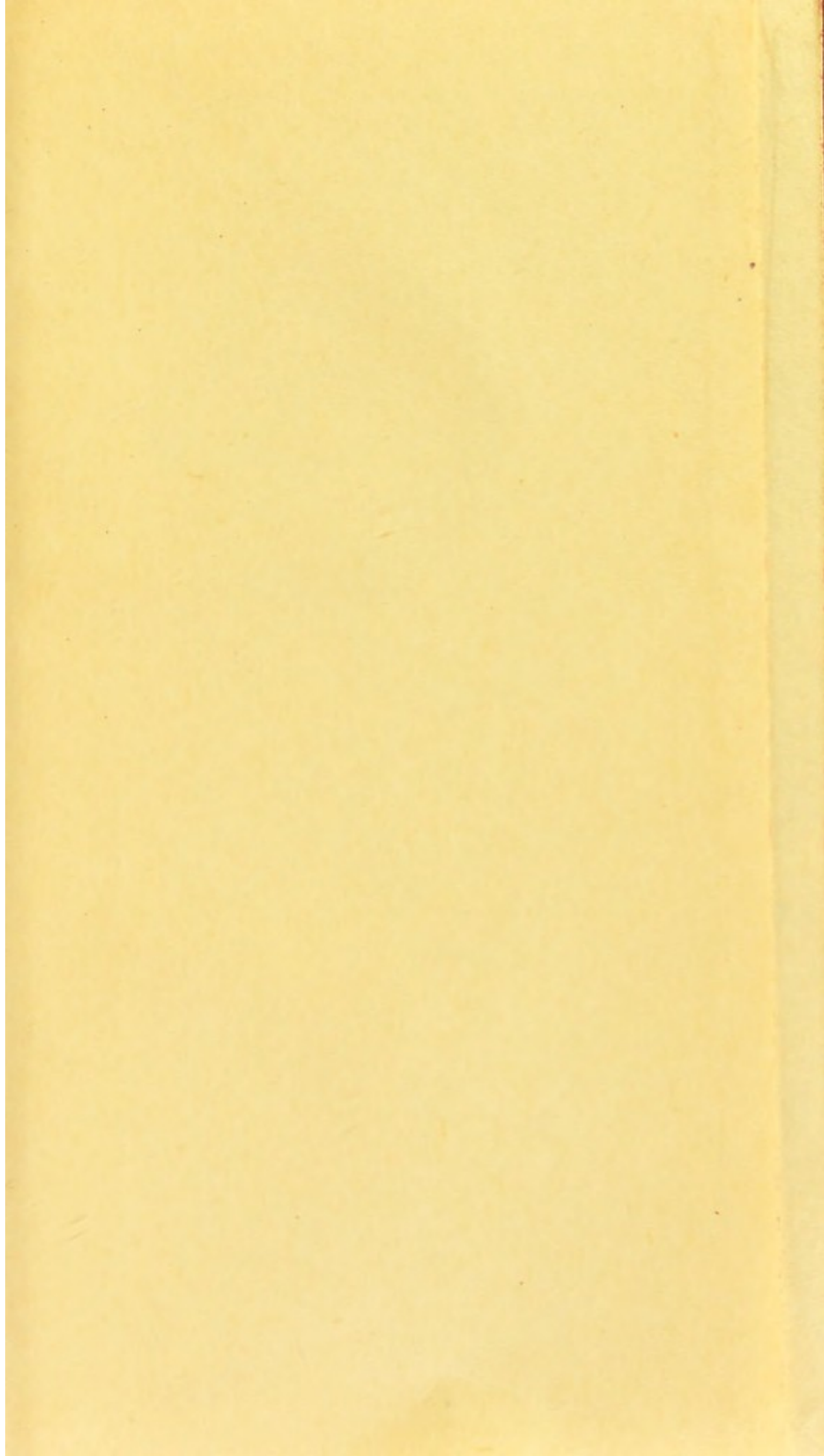
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