The new sanitary laws : namely, the Public Health Act, 1848, the Public Health Act, 1858, and the local Government Act, 1858 ; an introduction, notes, and index, and an appendix, containing the various statutes referred to therein / by W.G. Lumley.

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THE

NEW SANITARY LAWS:

NAMELY,

THE PUBLIC HEALTH ACT, 1848,

THE

PUBLIC HEALTH ACT, 1858,

AND

THE LOCAL GOVERNMENT ACT, 1858,

AN INTRODUCTION, NOTES, AND INDEX:

And an Appendix,

CONTAINING THE VARIOUS STATUTES REFERRED TO THEREIN AND THOSE WHICH ARE INCORPORATED THEREWITH.

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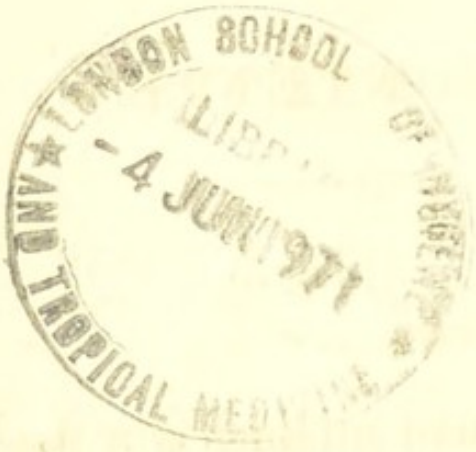
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LONDON:
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INTRODUCTION.

THE Common Law of England in the early periods of our history provided but very scantily for the rude and scattered population of the country in regard to their social exigencies, and though the expansive powers of modern jurisprudence extend the principles of that law very far to meet the demands of the civilized state of this densely-peopled nation, still those principles must be maintained generally upon the basis of their original foundations. The highway must be kept in repair, so that the line of road must be preserved, but the common law did not provide for its being paved or swept or scavengered. "If the road be miry," said the old judge, "the traveller must pluck up his hose and put on his boots." But no indictment would lie against the parish.

In process of time the Crown was empowered to issue commissions to form great sewers to drain large districts, but no provision was made for the smaller, but not less important, drainage which separate and individual dwelling-houses required for the comfort and the health of the inmates and the neighbourhood. Again, though in the Court of the Leet, many of the minor nuisances which exist where men congregate together in their dwellings were the sub-

jects of investigation and penalty, the process was tedious and the results seldom very efficacious.

As civilization advanced, and population increased, it became necessary that special legislation should be resorted to for the supply of greater powers for extending the means of improving the external condition of towns, or regulating the conduct of persons in their out-of-door life, and repressing the nuisances and petty annoyances by which careless or ill-regulated persons molest, injure, or inconvenience their neighbours or the public. But until very lately no general measure applicable to the whole of the nation was passed by the legislature. Where the inhabitants of any town, or populous parish, found themselves suffering under the grievances above adverted to, or were desirous of improving the general state of their district for their mutual benefit, or of extending its attractions for visitors, they applied to parliament to make a special law for them. In their application they sought for all the special authorities which they considered their own peculiar condition then required. The demand was conceded as necessary or reasonable, though where private rights and interests were interfered with, contests took place with varying success to prevent their destruction, or to secure adequate compensation. For a century and a half will be found in the annals of parliament a long series of the local and private Acts of the character and for the purposes thus described. Of course they have been most numerous during the present century, and, making all allowance for the variations rendered necessary by local circumstances,

they had become very uniform in their nature and provisions.

The Acts were sometimes of a limited and at other times of a very comprehensive character. One town would seek to provide means of improving its streets and its sewers,—another to obtain adequate means of lighting its highways and thoroughfares,—another to establish an efficient police, or to provide a good supply of water, or additional burial grounds, or to set up and regulate markets. All or several of these objects might be combined in one bill.

The legislature were content to receive the applications as they were made, and to grant them, subject to such modifications as each case required, but no general measure was provided for the country until the year 1845. Then under the ministry of Sir Robert Peel were introduced the first of the measures which have since been termed the Model Acts, and apply to these several objects.

The matters which had been the subject of so much private legislation were classed under distinct heads. The great experience of so many years pointed out what were the provisions most usually demanded for the purpose of the several objects, and those provisions were accordingly ranged together until they formed, as it were, a code upon the particular object. As that object appeared to be in itself of sufficient importance to be dealt with separately, it was taken for the subject of a particular Act of Parliament, and the various provisions or clauses, to speak technically, were passed by parliament as measures which the legislature recog-

nized to be fit and proper for adoption on all occasions when applications should be afterwards made from the inhabitants of any locality for special legislation. The effect of the legislation was this, that parliament was so far satisfied with these provisions that it would not be necessary henceforward to introduce them into any bill, but that they should be admitted as part of the future legislation by mere reference and words of incorporation.

The number of these Acts was eleven, and they were passed in 1845 and 1847, but the following only relate to the subject of this work: 8 & 9 Vict. c. 18; 10 & 11 Vict. cc. 14, 15, 16, 17, 27, 34, 65, and 89. These related to the purchase of land, the providing of markets, gas, water, harbours and piers, paving and cleansing of towns, cemeteries, and the police of towns, while one provided for the appointment and duties of commissioners: on this occasion also the newly-introduced practice of abbreviated titles of the Acts were adopted.

Although these models rendered much assistance in the preparation of local Acts, still it was necessary that there should still be such local Acts for the introduction of these improvements or advantages into any town, and the expense and apprehension of local irritation tended to prevent the application for them in many places where they were oftentimes urgently required.

But about the same time the reports of the commissioners appointed to investigate and report upon the sanitary condition of the metropolis and great towns of the country were published, and drew general attention to the necessity of providing some measures for remedying

the evils which were shown to exist in the places so examined. And cotemporaneously with the movement so caused and stimulated, the fatal epidemic of the cholera invaded the country, and rendered it necessary that temporary measures of a remedial nature should be immediately taken, whilst it gave increased effect to the movement for sanitary regulations.

In 1845, indeed, the Duke of Newcastle, then Lord Lincoln, had introduced a bill "For the Improvement of the Sewerage and Drainage of Towns and Populous Districts, and for making Provision for an ample supply of Water, and for otherwise promoting the Health and Convenience of the Inhabitants;" but this bill did not pass into a law, and another bill was produced by Lord Morpeth, in 1847, without success. But in 1848 the Act now termed the Public Health Act, also introduced by that noble lord, was passed. The important provision of that measure was the establishment of the general board of health, which was composed of the first commissioner for the time being of Her Majesty's woods and forests, and two other persons to be appointed by Her Majesty. Of these the first commissioner was to be the president, and one of the others was to receive a salary. This board, supplied with a secretary and clerks, was intrusted with the superintendence of the execution of the Act. It was to originate, and in some respects to control, all the proceedings under it. But the commission was only temporary, its duration being limited to five years.

By another Act of the same session, 11 & 12 Vict.

c. 123, passed to provide against the calamity of the cholera above alluded to, the general board of health, thus constituted, was required, upon the issue of orders from the privy council, to make and issue directions and regulations to prevent or remedy epidemic and contagious diseases. Some additional powers were conferred upon the board by 12 & 13 Vict. c. 111, passed to amend the Act of the previous year for the prevention of diseases, which contained certain provisions relative to the burial of dead, and gave the general board of health power to superintend the providing of new burial grounds in parishes. The clauses applicable to that subject were only temporary, and expired after the lapse a year. This subject, however, received more particular attention on the part of the government, and the complaints which had long been made, and fully corroborated by the interesting report of Mr. Chadwick upon interments, were attempted to be remedied by the legislature. In 1850, the statute, 13 & 14 Vict. c. 52, was passed to provide for the burial of the dead in the metropolis. This subject was thereby placed under the management of the general board of health, which was thereby incorporated. But this Act was repealed by 15 & 16 Vict. c. 85, which contained other regulations for the burial of the dead in the metropolis, and the authority of the general board thereby created over the burial of the dead ceased.

In the Act above referred to for the prevention of diseases, 11 & 12 Vict. c. 123, s. 11, the Crown was empowered to appoint a medical member of the board for the purposes of that Act only, and by 13 & 14

Vict. c. 52, above noticed, power was given to appoint an additional member for the purposes of that Act also; but when it was repealed in 1852, the Queen was empowered to continue, during the continuance of the general board of health, the appointment of the additional member of the board authorized by the former Act.

Thenceforward the board of health consisted of four members,—one official, one honorary, and two paid commissioners,—the last two being Mr. Edwin Chadwick and Dr. Southwood Smith.

The commission was established by 11 & 12 Vict. c. 63, s. 4, for five years only, and its existence therefore would have terminated at the end of the session of parliament next after August 31, 1853. Before that time arrived, from a variety of causes, the board had become unpopular, and much public dissatisfaction was expressed with its proceedings. It is unnecessary here to discuss the justice of the complaints, but no one can deny the great ability which was exhibited in many of the important documents, statements, and reports which emanated from the board upon the epidemic cholera, the practice of quarantine, the burial of the dead, the supply of water, its impurities, the proper modes of drainage, and the removal, deodorizing, and utilizing the sewage of towns, while the greatest zeal, activity, and energy characterized their labours.

It was deemed, however, advisable by the government to alter the constitution of the board, and in 1854, by 17 & 18 Vict. c. 95, the provisions of the

former statutes applicable to this subject were repealed, and a new board was created, analogous to the poor law board, which consisted of a president, to be appointed by Her Majesty, by warrant under her sign manual, the secretaries of state, and the president and vice-president of the board of trade. The president of the board was to receive a salary, and be capable of sitting in the House of Commons. The duties and powers of the general board of health were transferred to the new board, and it was enacted that the president alone, or any two or more of the members, might exercise the powers vested in the board.

The documents purporting to proceed from the board, and to be signed by the president, or any two or more of the members, and sealed or stamped with the seal of the general board of health, were made *primâ facie* evidence.

The existence of this board was limited to one year.

By 18 & 19 Vict. c. 115, this board was continued for another year, but it was empowered to appoint a medical council and a medical officer. The power to appoint a medical officer only was exercised, and Mr. Simon was appointed accordingly.

By 19 & 20 Vict. c. 85, this board was continued for another year. The 20 & 21 Vict. c. 38, continued its existence until the 1st September, 1858, a provision being introduced to the effect that if a person holding an office of profit should be appointed president of the board, he should not receive any salary for the latter office.

In the last session of parliament there was no re-

newal of the board, and it therefore determined on the 1st September in this year, after an existence of ten years.

It will be seen by the statutes hereinafter printed that such of the powers as were vested in the board under the statute for the prevention of diseases are temporarily vested in the privy council, and the control which has been given to the board under the Public Health Act has been for the most part transferred to the secretary of state.

The termination of the board of health had not been altogether anticipated; indeed, it had been intended if not to make the board permanent, at least to continue it for a considerable length of time.

Experience showed that the Public Health Act required amendment, and, in 1855, Sir Benjamin Hall, then president of the general board of health, introduced into the House of Commons a comprehensive bill, which contained a complete consolidation of the provisions already existing, and the proposed changes and additions. This bill was referred to a select committee of the House of Commons, together with another bill, which he had also introduced, to amend the Nuisances Removal Act.

The committee sat during March and April in that year, and having examined various witnesses on the subject of those bills, made many alterations. Among other suggestions a series of clauses were submitted to the committee on behalf of certain water companies for the preservation of their rights. The committee adopted these clauses, and they are such as now appear

in the Local Government Bill as sect. 68, Nos. 2 to 5, and sects. 69, 70, 71, and 72. The committee reported to the House in favour of both bills as altered and amended. The bill for the removal of nuisances passed into a law, and became the 18 & 19 Vict. c. 121, but the other bill was dropped for that session.

It was introduced again in 1856 and 1857, and it will be seen that the bill brought in by the Hon. Mr. Cowper, president of the board, in December, 1857, was, like that of Sir B. Hall, a complete consolidation of the first Act, with its amendments and numerous suggested improvements and additions. Upon the change of the ministry in last spring this bill was given up, and a shorter bill was proposed by the government, which was subsequently adopted by the legislature, and constitutes what is now termed the Local Government Act, 1858. The Act of 1848 was left in full force, with the exception of the clauses constituting the general board of health, and some others, which were repealed to make room for the substituted provisions.

It would be tedious to give a detailed account of the provisions of these Acts, but it is convenient to give a short abstract.

By 11 & 12 Vict. c. 63, towns and populous places were enabled to obtain many of those benefits for the improvement of their local condition which have been above referred to as obtainable by private legislation. This was done through the intervention of the general board of health. Borough towns, and places having a defined boundary, could, upon petition,

supported by the report of an inspector duly commissioned by the general board of health, obtain the recommendation of that board to the issue of an order of the Queen in council for the adoption of the provisions of that Act. Upon investigation, it might prove that the place so petitioning was not quite suitable for the composition of the district, and alterations might be deemed by the general board of health to be advisable; these were submitted to the inhabitants for their consideration, and the general board were empowered to hear and decide upon any adverse statements, and report to the Queen such a scheme as appeared to them to be proper. This report was followed by the issue of a provisional order of Her Majesty in council creating the district, with a constitution according to the report of the general board of health. This provisional order required to be sanctioned by the legislature before it took effect, and accordingly a public bill was submitted to parliament by the government for the confirmation of this provisional order, and when the Act was passed, the district was created, and the local board was legally constituted, and became competent to act.

But the legislature had already provided in the general Act for everything in regard to the constitution of the local board which could be laid down generally, and only left to the general board of health and the privy council authority to make arrangements applicable to the particular locality.

It is right to observe that where any private Acts of parliament would have interfered with the working

of the provisions of the Act by the new board, any delegation, repeal, or alteration of the powers created thereby was in all cases the subject of a provisional order in council, and afterwards of a special Act of parliament. But besides these spontaneous movements on the part of the inhabitants of the districts, the general board might themselves, in places where the average annual mortality during seven years exceeded a certain limit, originate a scheme for a district, submit it to the inhabitants, receive their acquiescence or objections, and in their judgment report the same to the Queen in council, when the provisional order might be issued, to be followed by the confirming Act of parliament.

There was a variation in the practice of the House of Commons in dealing with those Acts which deserves notice. Usually one Act embraced several orders. At first the terms of the Act referred generally to the order as applicable to each place, and confirmed it absolutely, but fixed a date for the day of election. An objection being made to this course of proceeding the Acts were framed to confirm the orders "so far as they were authorized by the Public Health Act." Lastly, it was required that the order itself should be set out in a schedule to the confirming Act, so that parliament might know fully and distinctly what was being passed into a law. Some special provisions were enacted to secure knowledge of the orders to members of parliament and parties interested before the bills were read. It appears that no less than seventeen Acts were passed, applying to about one hundred and twenty places,—some borough towns, others only populous

places,—while from the Parliamentary Paper, No. 328, 1857, it is shown that in ninety-four other places the Act was brought into operation by orders in council, and in the Union Officer's Almanack for 1856, the number of local boards is set out to the number of 230.

The powers conferred by the Act related to sewerage, house drainage, improvement of streets, removal of nuisances, and supply of water, with some additional authorities for special and public convenience, and for improving the health and comfort of the inhabitants. Means were supplied for effecting these objects by facilitating the purchase of land and interests therein, and by authorizing the levying of rates, either general or partial, according to the nature and extent of the expenses.

The terms of the Act were not explicit with reference to the repairs of the highways, and some litigation arose in consequence; but looking at the extensive powers conferred, and the novelty of the constituted authority, it is a subject of congratulation that so little legal discussion has occurred in the courts of law upon this statute. Doubtless the existence of the general board of health provided a resource whence legal advice was readily obtainable, and obviated in many cases the cost of expensive litigation.

Now, it cannot fail to be observed that under this measure there was full opportunity of framing the extent of the district, moulding the constitution of the board, and modifying its powers, so as to render the whole properly suitable to the particular district which applied for the benefit of the statute.

The measure which the legislature has passed in the late session has been termed by parliament "The Local Government Act of 1858." It is difficult to see in what respects this title is justified by the Act itself. Corporate boroughs whose government depends upon their charters are enabled to adopt the provisions of the Act. So are Improvement Commissioners who are elected by the ratepayers of any locality, and the inhabitants of parishes and places of hitherto unsettled boundaries are empowered to adopt the Act and elect boards of health, not with any indefinite powers of self-government, but to carry into execution the powers conferred by the Public Health Act and those contained in the new law. Under the former Act it was necessary that the general board of health, the Queen in council, and sometimes the legislature, should concur in sanctioning the adoption of the Act. Now if it be not requisite to interfere with existing statutes or powers otherwise secured by the law, the provisions of the statute may be adopted by the simple act of the ratepayers and owners of property in the locality. The effect of this legislation is that the benefits of the Model Acts referred to in the first part of this Introduction are obtained without the necessity of a private Act.

If the locality be a corporate borough or a district under the management of popularly-elected commissioners, or be a parish or place with defined or known boundaries, the Act may be adopted by the resolution of the council or commissioners in the first and second cases, and the ratepayers and owners of property in the

third. When there is no defined boundary, the secretary of state, on petition, can assign one, and the place so defined will constitute the district of the new board.

The council and the commissioners will, in the first cases respectively, form the board, but in the other cases the number of members must be determined by the electors, and will constitute a board, to be elected in the manner provided in the former statute, with this addition, that it will be competent for the secretary of state to divide the district into wards, analogous to the cases of municipal corporations and boards of guardians for parishes.

Questions as to the proper extent and composition of the district, and as to the legality of the proceedings, may be referred to the secretary of state for decision.

This is the great change in this scheme of legislation on this subject. The statute explains and enlarges the powers conferred upon the local boards by the Public Health Act of 1848, and incorporates in it many of the provisions of the Model Acts which are found so beneficial, and oftentimes so necessary for the well-being of populous places, while it enables the board of health in other instances to avail itself of some provisions not absolutely requisite in all cases, but which will prove of great convenience in some districts.

The statute, however, has not conferred upon the local boards unlimited power to carry out all their demands. Where they conceive that the property of individuals should be taken for the public good without their assent, when they seek to set aside or alter

authorities and arrangements established by previous legislation, to alter or rescind the constitution created under the previous statute, or to obtain any extension of the powers expressly granted to them by the statutes, they must have special resort to the legislature. But they must proceed through the government. They must represent their requisitions to a secretary of state, who, after due inquiry, may make a provisional order, as in the case of the privy council under the former Act, and this order he is required to submit to parliament for confirmation by a public Act.

It will thus be found, that, though in some small details the local boards are released from the control of the general board of health, in all substantial matters, which were not perfectly free from restraint before, they must now submit to the secretary of state, and probably be compelled as before to seek the aid of parliament.

The control of the secretary of state is in accordance with the plan originally proposed in the bill of Lord Lincoln. Accordingly a department has been formed in the office of the secretary of state for the home department for the special management of the business arising out of these Acts, and the able and experienced staff of officers and clerks who have long been trained under the general board of health have been transferred to that department. A minute of information respecting the provisions of the Local Government Act, 1858, and a valuable collection of byelaws, have already issued from this office.*

* To be had of the Publishers of this Work.

Although these two Acts are most important and beneficial in their operations with reference to the general administration of local districts in regard to their sanitary condition, there are other laws which the legislature in late years has passed, having for their object the improvement of the public health. These are contained in the statutes which have enforced the practice of the vaccination of young children,which subject common lodging houses to regulation and control, which facilitate the establishment of public baths and wash-houses, which provide summary remedies in all parts of the country for the removal of nuisances, and which have also provided preventive and remedial measures to meet sudden contagious and epidemic diseases of a formidable character.

It has been deemed convenient to frame a collection of these various Acts, which relate to the health of the people of England, into one volume; and as the Local Government Act of itself is imperfect, those parts of the Acts which have been incorporated with it have been included in this collection.

In addition to the matters above referred to, the attention of the legislature has been directed to the burial of the dead, and a series of Acts have been passed relative thereto since 1849, by which churchyards and burial grounds have been closed, burial boards established, and numerous regulations passed upon the subject. It was found impracticable to include those Acts in this volume, but the clauses which particularly refer to local boards of health are appended.

The Editor has given his careful attention to the provisions of the two great statutes which form the basis of the work; he has endeavoured to bring under the notice of the reader the decisions which have taken place upon different clauses of the first Act, and the alterations effected therein by the second; and he has made such commentaries upon both as will, as he trusts, facilitate their interpretation, or otherwise assist those who are engaged in carrying them into execution; but he cannot but regret that the consolidation originally proposed was abandoned, since the reference from the original to the supplemental Act, and from the latter to the former, and from both to the incorporated clauses, will often lead to embarrassment, and prevent the clear elucidation and understanding of enactments so important as the present to the cities and towns of England.

ABSTRACTS OF THE STATUTES.

THE PUBLIC HEALTH ACT, 1848.

11 & 12 Vict. c. 63.

Sect. 1. Recites the object of the Act, and prescribes the limits of its operation.

2. Interprets and defines various words and terms used in the Act.

3. Gives the title of the Act.

4. Constitutes the general board of health—limits its duration to five years.

5. Enables the general board of health to appoint officers and servants—to cause a seal to be made wherewith their documents are to be sealed, and provides that so sealed they shall be received in evidence.

6. Enables the said board to appoint superintending inspectors—defines their powers and duties.

7. Provides for the payment of salaries to one member of the general board of health, their officers and servants, and specifies the sum to be paid to each superintending inspector.

8. Empowers the general board of health upon petition, or where there has been a specified amount of mortality, to direct an inquiry to be made by a superintending inspector as to the condition of any place and its sanitary state, and other matters, to enable the board to report thereon to the Queen, or to make a provisional order.

Sect. 9. Requires the inspector to give certain notice of his inquiry, and to report the result thereof to the general board of health—enables the board to cause another inquiry to be made as to boundaries if proposed to differ from those of the district reported upon, and as to other matters—requires them to publish the report made to them in a particular manner, with notice for statements as to the proposal to be forwarded to them—provides for the publication and deposit of such statements—subjects public officers to penalties who refuse to receive such statements—and enables the board of health to cause a further inquiry to be made.

10. Enables the Act to be put in force in certain places by an order of the Queen in council—in others enables the general board of health to make a provisional order, with, when they deem necessary, provisions affecting local Acts, to be published in the district and to be confirmed by a subsequent Act of parliament—provides against alteration of local Acts relating to waterworks without consent, and the formation of a part of a corporate borough into a district without consent of the town council, and, except for main drainage, against the inclusion of a place without a borough in a district composed of such borough without the consent of the ratepayers.

11. Empowers the lords of the treasury to make an order charging the costs and expenses incurred by the general board of health in these inquiries upon the general district rate, to be repaid by five annual instalments, with interest at five per cent.

12. Enacts that the town council of any borough within 5 & 6 Will. 4, c. 76, shall be the local board of health where the district consists of the whole or a part thereof—provides for selection of members where the district comprises two or more boroughs, and pro-

vides for selection of part of the board from town council, and the election of the remainder by the owners and ratepayers in other compounded districts—appoints the day of the first selection—provides for continuance in office and supply of vacancies—declares the meeting of the council to be one under 5 & 6 Will. 4, c. 76.

Sect. 13. Provides for the election of members of local board by owners and ratepayers—their continuance in office—and renewal of elections.

14. Regulates the number of members—renders a vacating member re-eligible—enables the board to act though incomplete—and provides that a member selected and elected shall determine under which title he will act, and shall act accordingly, and the other vacancy to be filled up.

15. Provides for the special case of members elected for a sewerage district which is afterwards formed into a district for other purposes.

16. Prescribes the qualification of elected members.

17. Prescribes a declaration to be made by members elected or selected before acting—renders a false declaration, made wilfully, a misdemeanor.

18. Imposes a penalty on persons neglecting to make declaration, and determines the office on failure to make it or to act for three months.

19. Declares the disqualifications of members—imposes penalties on them for acting—prescribes proof in actions—provides for certain shareholders and the consequences of acts of disqualified persons.

20. Declares the qualification of electors, and the scale of voting—defines owner and ratepayer—provides for corporations—and imposes conditions on owners.

21. Provides for the returning officer.

22. Requires the production of parochial books for the purposes of the election.

Sect. 23. Prescribes notice previous to election—provides for Sunday, Christmas Day, Good Friday, Fasts, and Thanksgivings.

24. Provides for the nomination of candidates, and the delivery of voting papers.

25. Prescribes the mode of voting.

26. Provides for the collection of the voting papers.

27. Regulates the casting up of the votes, and the declaration of the result of the voting.

28. Imposes penalties for neglect of the provisions of the statute relating to the election.

29. Enacts that the defects in the election shall not vitiate the proceedings of the board.

30. Provides for the expenses of the election.

31. Contains a special provision for local boards in Oxford and Cambridge.

32. Provides for the acting of commissioners under local Acts when made a local board of health.

33. Provides for the merging of the local board when the district is incorporated.

34. Prescribes regulations for the meetings of the local board, for their conduct of the business of the board, their voting, and the appointment of their chairman.

35. Requires the local board to provide officers and a seal, and declares their sealed documents to be *primâ facie* evidence.

36. Enables them to appoint committees.

37. Requires them to appoint a surveyor, inspector of nuisances, clerk, treasurer, and collectors—to make byelaws for the duties of their officers, and enables them to pay the same—regulates plurality of offices—and prescribes penalty for breach of the regulations.

38. Imposes penalties on officers engaging in contracts or taking fees improperly.

39. Requires officers intrusted with monies to give

security, and to render accounts—provides for the failure of the collector, and prescribes summary proceedings to be taken against him.

Sect. 40. Enables the local board to appoint an officer of health, with duties to be directed by the general board of health, and to pay him a salary, but requires the approval of the said general board to the appointment.

41. Enables the local board to procure maps to exhibit the system of sewerage.

42. Provides for the expenses of surveys and maps.

43. Vests all sewers in the district (with certain exceptions) in the local board.

44. Enables the local board to purchase sewers—provides for the application of the purchase-money, and the preservation of the independent rights of user.

45. Requires the local board to keep the sewers in repair—to make all necessary sewers—enables them to carry their sewers through specified places—to alter or discontinue any sewer—provides against a nuisance—and for the claims of persons to use the sewer discontinued.

46. Provides for the proper construction and cleansing of sewers, and the outfall and collection of the sewage.

47. Imposes penalties on persons improperly interfering with the sewers, and enables the local board to alter or pull down erections which shall so interfere.

48. Enables owners or occupiers out of the district to communicate with the sewer.

49. Prohibits the building of new houses without proper drains, and enables the local board of health to cause a proper drain to be made to every house in the district, and if necessary, on default, to do the works and recover the expenses.

Sect. 50. Enables the inhabitants in parishes of a population under 2,000, to provide sewers, to cleanse ponds or ditches, to dig wells or set up pumps, through the churchwardens and overseers, at the charge of the poor rate, after a public meeting and due notice.

51. Prohibits the erection of new houses without sufficient waterclosets, or privies and ashpits—imposes penalties on default—and enables the local board to cause the same to be provided for all houses, and to recover the expenses.

52. Provides for the supply of waterclosets in factories.

53. Requires notice to be given of the building of houses and certain particulars, and imposes penalty for building without the board's approval—enables local board to alter building, and provides against their neglect to approve or disapprove after notice.

54. Requires the local board to provide that drains, waterclosets, and ashpits, do not become nuisances—enables the surveyor to make entry on and examination of premises—to give notice to the owner or occupier to remove the nuisance—subjects the same to a penalty on default—and empowers the local board to do the necessary works and recover expenses.

55. Requires the local board to cleanse streets, and remove dust and filth, and to make byelaws for the removal of the same.

56. Requires them to cause places to be provided for the collection and deposit of dust, soil, and sewage, and to sell the same, and imposes a penalty upon any person collecting or removing the same.

57. Enables them to provide public necessaries.

58. Requires the local board of health to cleanse, drain, and cover up ponds, open ditches, and other places, and provide for the collection of offensive matter—to

give notice to the person causing the nuisance, and in his default to execute the requisite works and recover the expenses.

Sect. 59. Imposes penalty on persons causing nuisances—enables the local board of health to abate the same—empowers the inspector of nuisances to give notice to the occupier to remove the nuisance, and if there be default enables the manure to be sold by the local board.

60. Enables, on certificate of the officer of health, or two medical practitioners, the local board to cause any house to be purified for the prevention of diseases.

61. Requires slaughter-houses to be registered, and imposes penalty on default.

62. Enables the local board to provide slaughter-houses, and make byelaws for the management thereof, but saves existing interests.

63. Empowers the inspector of nuisances to enter premises and examine animals, carcases, and the like, and if unfit for food, enables a justice to order the same to be destroyed, and imposes a penalty upon the person to whom the same belongs, or who has the custody of it.

64. Prevents the establishment of certain offensive trades without the consent of the local board of health —subjects offenders to penalties, and enables the board to make byelaws as to the same.

65. Declares that the Act shall not affect the law regarding nuisances.

66. Requires common lodging houses to be registered with the local board, and enables such board to make byelaws for their regulation—requires the keepers thereof to suffer the same to be inspected and disinfected, and to pay the expenses thereof, and subjects them to penalties on neglect.

Sect. 67. Prohibits the letting of cellars as dwellings in future houses, and the letting of any cellars except where there are certain specified dimensions and other conditions—imposes penalty for violation of this enactment—provides for areas—defines what shall be deemed to be an occupation—declares the time when this enactment shall come into operation, and requires churchwardens and overseers to publish notices of these provisions.

68. Vests in the local board all streets, and the management thereof—enables them to alter and repair the same, and imposes penalties upon all persons who disturb the same.

69. Empowers the local board to require private streets to be sewered, levelled, and paved by the owners or occupiers thereof, and in their default to perform the requisite works and recover the expenses.

70. Enables the local board to declare streets not highways to be such, and to repair the same, but requires a certain notice to be given previous to such declaration, and enables the proprietor to object and thereby prevent the declaration of the same.

71. Enables the local board to require gas and water pipes in any street to be altered, and in default to alter them—provides against permanent injury, and for the expenses.

72. Requires notice to be given to the local board previous to the laying out of any new street, and enables them to fix the level—imposes penalties for the neglect—enables the board to alter street not laid out in accordance with their regulations, and provides for the board's neglect to interfere.

73. Enables the local board to purchase premises for improving streets.

74. Enables them to provide places as public walks.

Sect. 75. Empowers the board to provide their district with a supply of water—to contract for the purchase, or leasing, or construction of waterworks—enables waterworks company to contract for the supply of water—enables the local board to keep a supply of water under pressure, but requires notice to be given to waterworks company, and prevents them from constructing waterworks if such company will supply upon reasonable terms—and enables any question as to this to be settled by arbitration.

76. Requires the local board to cause houses deficient in water supply to obtain the same, and in default enables them to do the necessary works and lay a water rate, and to recover the expenses.

77. Enables them to supply water for public baths, or trading or manufacturing purposes.

78. Enables them to maintain and to construct public pumps and cisterns.

79. Imposes penalties on persons injuring waterworks belonging to the local board — diverting or wasting water belonging to them—and provides for the rights of owners and occupiers.

80. Imposes penalties upon persons polluting water in the reservoirs of the local board, and on the proprietors of gasworks for the same — empowers the local board to inspect gas pipes, and charge the expenses of the inspection upon the managers of the works, or, if the water has not been fouled, upon the district rates.

81. Enables the local board to provide premises for the reception of the dead, and make byelaws for the regulation thereof.

82. Prohibits burials in burial grounds within the district proved upon inquiry to be dangerous to health.

83. Prohibits interments in churches and new burial

ground without the consent of the general board of health, and imposes penalties for breach of this enactment.

Sect. 84. Empowers the local board to purchase, hire, sell, or exchange land—incorporates certain parts of the Lands Clauses Consolidation Act—and enables the lands to be held by them as a corporate body.

85. Enables the local board to enter into contracts—prescribes the form—enables the board to compound on breach of contract—requires an estimate to be made and public notice given before the same be entered into, and security to be taken for the due performance of the works.

86. Enables the board to make special district rates in respect of expenses benefitting part of the district—provides for deduction in respect of the drainage of particular premises.

87. Requires the treasurer to keep a separate account, to be called a district fund account, to be applied by the board, and enables them to levy a general district rate.

88. Describes the property assessable to these rates—gives powers to the board to enable them to make them—imposes penalties on persons refusing inspection of rate books and other documents—provides for districts where there is no poor rate, for a lower rate of assessment in respect of particular property, and for exemptions under local Acts.

89. Enables the rates to be made retrospectively or prospectively—provides for unoccupied premises, and the apportionment of rates between successive owners or occupiers—and enables separate assessments to be made on separate parts of the district.

90. Enables the board to make private improvement rates for a limited period, such rates to be a charge on the premises if unoccupied.

Sect. 91. Provides for the deduction by lessees of such rates from the rent.

92. Enables special district or private improvement rates to be redeemed.

93. Enables the board to lay a water rate for the supply of water, and provides for agreements with the Universities.

94. Renders the water rate payable in advance, and empowers the board to stop the supply in cases of default of payment.

95. Provides for the compounding by and recovery of rates from the owners, in respect of tenements under ten pounds per annum.

96. Empowers the board to remit rates on account of poverty.

97. Prevents the Act from interfering with covenants in previous leases.

98. Requires the board to cause an estimate to be made before the making of the rates, showing the sums required for each purpose, the rateable value of the assessable property, and the amount of the rate in the pound.

99. Requires public notice of the intention to make the rate to be given, but dispenses with proof of such notice in proceedings.

100. Requires the rates and estimates to be open to inspection, and imposes a penalty upon persons refusing the same.

101. Provides for the use of the terms "owner" or "occupier" in the rate.

102. Enables the board to amend rates—allows persons aggrieved thereby to appeal—and in cases of an increased rate requires notice to be given before demand of payment.

103. Provides that the rates shall be published as poor rates, and collected as the board shall appoint—

provides for the recovery of rates by summons and distress warrant.

Sect. 104. Gives a form of distress warrant for rates, and imposes penalty on constables refusing to levy.

105. Provides for the quota of rates to be paid by the universities of Oxford and Cambridge, and the recovery thereof.

106. Enacts that the production of the rate book shall be evidence thereof.

107. Enables the rates to be mortgaged—provides for the payment of the mortgagees, but declares that there shall be no priority among the mortgagees—declares the purposes for which the mortgages shall be effected, and provides for apportionment among separate parts.

108. Empowers loans to be obtained from the Public Works Loan Board.

109. Enables successive loans to be made to pay off preceding loans at higher interest.

110. Enables loans to be renewed, if at the appointed time the mortgage cannot be discharged.

111. Provides a form of mortgage of rates, and requires a register of mortgages to be kept.

112. Enables mortgages to be transferred, and requires a register of transfers of mortgages to be kept—provides for payment to the transferree.

113. Requires the interest to be paid half-yearly, and a sinking fund to be set apart for the discharge of the mortgage debt.

114. Enables a receiver to be appointed by two justices to collect and receive the rates on behalf of the mortgagees where the payment is in arrear—requires, however, that in such case the mortgage shall be of a certain amount.

115. Prescribes the mode of making byelaws—

specifies the limits of the penalties—enables them to be altered—requires them to be confirmed by a secretary of state—but provides for notice, publication, and copies thereof.

Sect. 116. Requires the byelaws to be printed and copies to be deliverable.

117. Makes the board surveyors of the highways—releases the inhabitants from payment of highway rates—provides for the collection of arrears and the appropriation of the monies received.

118. Reserves the liabilities of persons to make or contribute towards sewers, sea walls, or paving.

119. Prohibits the borrowing of money without the consent of the general board of health.

120. Enables persons aggrieved by the decision of the local board to memorialize the general board of health—enables that board to make such order as shall be equitable—and to direct a just compensation for loss.

121. Enables the superintending inspector to summon witnesses and require production of plans, rate books, and the like—imposes penalties on persons wilfully refusing—requires previous tender of expenses to witness—and limits the distance of his summons.

122. Requires the accounts of the board to be audited by the auditors of boroughs once every year—and in non-corporate districts by a poor law auditor—enables auditor to require production of documents and declaration as to the accuracy of the accounts—imposes penalties in default—renders this audit final—and enables the board to pay the auditor—provides that notice of the audit shall be given—and a copy of the accounts deposited for inspection—and for the publication of the report.

123. Provides the mode of settling disputes by arbi-

tration—the appointment of the arbitrators—and their award.

Sect. 124. Provides for the appointment of an arbitrator in substitution of one who dies or fails—and for the failure of a single arbitrator.

125. Provides for the appointment of the umpire by the arbitrators, the parties, or the quarter sessions.

126. Requires the award to be made within three months of the appointment of the arbitrator or umpire.

127. Empowers arbitrator to require production of documents and to examine witnesses on oath—to determine as to the costs of the reference—and enables the submission to be made a rule of court.

128. Requires the arbitrators to make a declaration, and declares an arbitrator, wilfully acting contrary thereto, to be guilty of a misdemeanor.

129. Provides for the recovery of damages, costs, or expenses, and penalties, summarily before justices by warrant of distress—and in default of distress, by commitment of the offender to prison.

130. Supplies a form of conviction.

131. Prescribes the process before the justices—the awarding of costs—the levying of distress—and prevents distress from being illegal for want of form.

132. Enables members of the board to act as justices under this Act.

133. Requires the consent of the attorney-general to actions for penalties by common informers—limits the time for recovery of penalties—and provides for the application thereof.

134. Declares that the liability to penalty shall not relieve from other penalties.

135. Gives an appeal to the quarter sessions to persons aggrieved—requires notice of appeal—enables the court to award costs—provides for recognizances—and confines appeal to the grounds in the statement.

Sect. 136. Enables the court to amend or quash rate—provides for payment of rate notwithstanding the quashing of the same.

137. Provides that rate or proceedings shall not be quashed for want of form—and takes away the *certiorari*.

138. Prescribes the mode of suing in the case of the local board—that the actions shall be in the name of the clerk—and states the mode of describing property—provides against abatement of the action—and requires the clerk to be reimbursed his expenses.

139. Requires notice of action to be given in suits, and prescribes a limitation of actions—provides for venue, plea, tender of amends, and payment of money into court.

140. Exempts persons acting in execution of the Act from personal responsibility—and provides that their expenses shall be reimbursed out of general district rates.

141. Enables orders in council and provisional orders to be amended, and the districts altered or extended.

142. Provides for the commencement of the orders in council and their publication—and requires the reports of the superintending inspectors to be laid before parliament.

143. Empowers two justices to make an order to authorize superintending inspector, surveyor, or inspector of nuisances to enter and examine lands and premises on refusal of owner or occupier to allow the same, and enables such officer to enter and examine accordingly—and provides that previous notice shall be given.

144. Requires compensation to be given to persons sustaining damage from this Act—the amount to be settled by arbitration.

145. Prevents the interference with sewers of the

commissioners of sewers, private watercourses, or rights of drainage, or improvement of land under local Acts.

Sect. 146. Enables the local board to allow time to owners for the repayment of the expenses—retaining the power of recovering payment in cases of default.

147. Renders persons examined on oath under the Act giving false evidence punishable as for perjury.

148. Imposes penalties on persons obstructing officers, or destroying notices—enables owner obstructed by the occupier to obtain an order of justices for execution of works—imposes penalty on occupier for disobeying the same—and provides proceedings against occupier who refuses to state name of owner or misstates the same.

149. Prescribes the mode of the giving consent, sanction, or authority by the general and local board.

150. Provides for the mode of serving notices upon local board, and upon owners and occupiers.

151. Contains exemptions from stamp duty, and, in certain cases, from the duty on houses having eight windows.

152. Gives the usual power to amend or repeal the Act.

SCHEDULE

A. Form of voting paper.
B. „ of mortgage of rates.
C. „ of transfer of mortgage.
D. „ of distress warrant.
E. „ of conviction.
F. „ of order to permit execution of works by owners.

THE PUBLIC HEALTH ACT, 1858.

21 & 22 Vict. c. 97.

Sect. 1. Transfers the powers of the general board

of health, under "The Diseases Prevention Act, 1855," to the privy council.

Sect. 2. Empowers the privy council to issue regulations respecting public vaccination—and provides for the distribution of the money to the national vaccine establishment under the directions of the council.

3. Enables the privy council to direct inquiries as to the public health.

4. Empowers the council to appoint a medical officer—continues the medical officer of the general board of health—enables the council to employ other persons—and provides for the salary of this officer.

5. Requires their medical officer to report from time to time, and annually.

6. Requires these reports to be laid before parliament.

7. Provides for the making and authentication of orders by the privy council.

8. Enables proceedings for penalties under the Vaccination Acts to be taken by public officers—and provides for the payment of the expenses.

9. Gives the title of the Act—and limits the Act to 1st August, 1859.

THE LOCAL GOVERNMENT ACT.

21 & 22 Vict. c. 98.

Sect. 1. Gives the title to the Act.

2. Interprets the word "borough."

3. Prescribes limits to the operation of the Act.

4. Requires the provisions of the Act to be construed with 11 & 12 Vict. c. 63.

Sect. 5. Provides for the commencement of the Act, but reserves qualification, powers, and liabilities of previous local boards.

6. Gives to local boards under this Act all the powers, duties, and liabilities of the Act of 1848.

7. Construes the words *the special Act—the limits for the special Act—limits of the district—the passing of the special Act—the promoters of the undertaking* —and provides for the recovery of penalties.

8. Dispenses with the sanction, consent, direction, or approval of the general board of health.

9. Provides that proceedings, contracts, and other matters began or made under repealed clauses of 11 & 12 Vict. c. 98, may be proceeded with, and that no decree or order of a court obtained previously shall be affected by the Act.

10. Enables a receiver to be appointed by justices notwithstanding the failure to elect a local board.

11. Provides for the revival of the local board when there has been a failure to elect—and restores the former rights and liabilities.

12. Provides for the adoption of the Act in corporate boroughs—in places under a board of improvement commissioners—and in other places having a known boundary—and requires a month's previous notice and a certain majority.

13. Provides for previous requisition at meetings to be summoned, by officers declared—requires the summoning officer to give notice—a chairman to be chosen—prescribes regulations for the passing of the resolution—defines the legal effect of the declaration of the chairman—and imposes penalties for malpractices at the voting.

14. Provides that a less place included within a greater shall not adopt the Act unless the latter refuse.

Sect. 15. Enables a corporation or commissioners exercising powers for sanitary regulations to adopt part of this Act.

16. Provides that a place not having a known boundary may have it settled—prescribes the course, and enables any such place then to adopt the Act.

17. Gives an appeal to owners and ratepayers against the adoption by petition to the secretary of state—provides for the proceedings and the order of the secretary thereon.

18. Gives an appeal to the secretary of state where the validity of the vote for adoption is disputed—enables him to make inquiry and order thereon.

19. Requires notice of the adoption to be given to the secretary of state—and by advertisement — and a notice of the adoption to be published in the *London Gazette.*

20. Provides for the time when the Act shall come into operation in the district—excepts certain cases to be dealt with afterwards.

21. Prohibits objections to the adoption of this Act without notice—and limits the time of making objection.

22. Renders publication in the *Gazette* conclusive evidence of the adoption.

23. Provides for the payment of costs incurred by the secretary of state.

24. Prescribes the constitution of the local board in corporate boroughs, in places under boards of commissioners, and in other places—prescribes the qualifications of the members in the last cases—enables the district to be divided into wards, and provides for the voting in such wards, and for the conduct of the election generally—enables an agent to be appointed to accompany the deliverer or collector of voting papers

—provides for the supply of casual vacancies, and for the first meeting of the board.

Sect. 25. Removes certain disqualifications imposed on members by 11 & 12 Vict. c. 63.

26. Repeals 11 & 12 Vict. c. 63, s. 33, and transfers powers of local board to the town council when the district is incorporated.

27. Empowers adjoining districts to be united.

28. Enables the local board to execute works in adjoining places, and provides for the recovery of the expenses.

29. Empowers board to deduct from sewer rate where any premises shall previously have been sufficiently drained.

30. Empowers local board to dispose of their sewage by making outfall without their district, by selling the same, or by purchasing or hiring land or buildings for its reception—but provides that these things shall be done without a nuisance.

31. Provides for the cleansing foul watercourses or open ditches forming the boundaries of districts, by order of justices, and for the costs thereof.

32. Repeals 11 & 12 Vict. c. 63, ss. 55, 56, and enables the board to provide for cleansing of streets and private houses, and dispose of refuse—imposes penalties on persons obstructing them in so doing or removing such matters—empowers them to make byelaws on occupiers respecting the same—and for the prevention of nuisances—and to recover the expenses of removing accumulations of offensive matters.

33. Renders it unnecessary for the surveyor to close the ground opened by him before drain or ashpit is amended.

34. Repeals 11 & 12 Vict. c. 63, ss. 53, 72, and enables the board to make byelaws as to new streets,

the structure of new buildings, the procuring ventilation, the drainage of buildings and closing uninhabitable dwellings—points out what provisions they may make—provides against retrospective operation, and defines what shall be considered as the erection of a new building.

Sect. 35. Enables the board to prescribe the line of new buildings, and to compensate for loss or damage caused by their order, and incorporates certain provisions of the Lands Clauses Consolidation Act.

36. Enables them to purchase premises for new streets.

37. Provides for the costs of the repairs of the highways in certain cases out of the general district rate—in others out of a highway rate—provides for repairs of the highways partly out of the district—dispenses with certain acts required to be done by the General Highway Act—subjects the accounts to the audit under the Act—provides for the application of the surplus highway rate collected by the surveyor of the highway—and renders 12 & 13 Vict. c. 35, s. 2, applicable to the clerk of the local board.

38. Extends 11 & 12 Vict. c. 63, ss. 69, 70, to lighting and repairing streets, and to footpaths—and exempts incumbents or ministers of churches or chapels from rateability under the Act in respect of such churches or chapels.

39. Enables the board to agree with any persons for the making of new public roads.

40. Enables them to agree for the construction of public bridges, viaducts, or arches, or to adopt existing bridges, viaducts, or arches, and make them parts of public streets.

41. Enables them to agree with the trustees of turnpike roads or surveyors of county bridges for the

repair of such roads and bridges — and provides for the rights and interests of mortgagees of the tolls.

Sect. 42. Requires the objection under 11 & 12 Vict. c. 63, s. 70, to be made by the proprietor.

43. Prevents interference with certain roads in the neighbourhood of the metropolis except upon specified conditions.

44. Incorporates certain parts of "The Towns Police Clauses Act."

45. Incorporates certain parts of "The Towns Improvement Clauses Act," subject to certain modifications as to smoke.

46. Supersedes the Lighting and Watching Act, 3 & 4 Will. 4, c. 90, in the district.

47. Enables the vestry to transfer to the local board the management of the baths and wash-houses established under 9 & 10 Vict. c. 74, and provides for the expenses.

48. Repeals 11 & 12 Vict. c. 63, s. 61, and part of s. 62.

49. Enables the local board to be the burial board for the district or part thereof, and provides for the expenses—and also for the case where the district is divided into wards.

50. Empowers the board, with the consent of the ratepayers and owners, to establish markets, and incorporates parts of the Markets and Fairs Clauses Act, 1847—and provides that tolls shall be approved by the secretary of state.

51. Extends the powers of 11 & 12 Vict. c. 63, s. 76, as to the supply of water by the board.

52. Gives to the board the same powers for providing water mains as for sewers.

53. Enables directors of a water company or market company to sell their works to the board.

Sect. 54. Repeals 11 & 12 Vict. c. 63, s. 86, and thereby the power of making special district rates—but provides for existing debts and charges—and makes provisions as to publication, costs of levy, retrospectiveness of rate, and notice of demand of rates.

55. Repeals 11 & 12 Vict. c. 63, ss. 88, 95, and declares the mode of assessing general district rates—enables the owners to be rated instead of the occupiers in certain cases—directs a lower rate to be imposed on particular property—and preserves exemptions created by local Acts, unless a provisional order confirmed by parliament otherwise direct.

56. Renders the poor-rate books accessible to the board for the purposes of the general district rate—imposes penalty on refusal—and in default of a trustworthy poor-rate assessment enables a valuation to be made according to 6 & 7 Will. 4, c. 96.

57. Repeals 11 & 12 Vict. c. 63, ss. 113, 119, and enables local boards to borrow money on the security of the rates, and to mortgage the same—but imposes conditions as to the consent of the secretary of state, and as to the limit of the loan—provides for the repayment—and requires the local board to repay money borrowed for private expenses out of private improvement rates.

58. Enables the local board to make rentcharges on property to meet the first cost of private improvements, to be payable for thirty years, with interest—and provides remedies for the grantees.

59. Requires rentcharges to be registered.

60. Repeals 11 & 12 Vict. c. 63, s. 122, and provides for the audit of the accounts of the local board by the borough auditors in respect of corporate districts—and by the poor law auditor in respect of other districts—requires him to allow, disallow, or surcharge

items—enables disallowances to be removed into the Court of Queen's Bench for the decision of the court, or an appeal to the secretary of state, who shall have the same powers as the poor law board—provides for the recovery of sums disallowed or surcharged—empowers the auditor to require production of books and documents, and the attendance of persons accountable—imposes penalties on them for default, or for making false declaration—specifies payment to be made to the auditor—requires notice of audit to be published and books to be open to inspection—provides for proof of audit, and requires auditor to report on the audit, and an abstract of the accounts to be published.

Sect. 61. Provides for the preparation and authentication of documents of the board.

62. Makes the expenses chargeable upon the owners of premises a charge on such premises, with interest—and declares the limits for the commencement of proceedings.

63. Declares the time when the apportionment of expenses by owners shall be concluded without notice.

64. Enables justices to settle questions referable to arbitration when the sum is under 20*l.*, and to require the work to be surveyed, and to determine the costs and order payment thereof.

65. Requires memorials under 11 & 12 Vict. c. 63, s. 120, to be addressed to a secretary of state for his determination.

66. Imposes penalty on persons injuring works of local board.

67. Requires penalties incurred in a corporate borough under these Acts to be paid to the district fund account.

68. Repeals 11 & 12 Vict. c. 63, s. 145, and makes various prohibitions upon the local board, to prevent

their interference with certain public, proprietary, and private sewers, waterworks, streams, navigations, and other public works, without consent, but saves the rights of local boards existing at the time of the passing of the Act.

Sect. 69. Requires, in cases not within the last clause, where the local board propose to execute works, that they should give notice to the parties interested under any local Act of parliament, and if they do not consent that the matter in difference be referred to arbitration.

70. Provides for the result of this arbitration and the action of the local board thereon.

71. Preserves the rights of persons authorized to navigate rivers or canals, or to take toll in respect thereof.

72. Enables corporations or commissioners, with consent of the local board, to alter sewers or other works.

73. Preserves the water rights of individuals or companies.

74. Enables questions arising under the previous sections to be referred to arbitration, and prescribes the questions to be decided.

75. Repeals part of 11 & 12 Vict. c. 63, s. 84, and provides for the purchase of lands by the board by incorporating the Lands Clauses Consolidation Act, by requiring them to publish notice of their intention in newspapers, serve notice on parties interested, and present a petition to the secretary of state, who may direct local inquiry to be made and issue a provisional order to be confirmed by a special public Act of parliament—and provides for the payment of the costs incurred by the secretary of state out of the general district rates.

76. Requires local board to report annually to the secretary of state, and publish the same in a newspaper.

Sect. 77. Repeals 11 & 12 Vict. c. 63, s. 141, and enables a petition to be presented for the incorporation of an adjoining place, or a separation of a part of a district, or the repeal of a local Act dealing with public works, or exempting property from rating, or of any provisional order or any Act confirming the same, or the alteration thereof, to a secretary of state, who may direct inquiry and issue order thereon—requires consent to be obtained in certain cases, and provides for the testification thereof—provides for the meeting and conduct thereat, and requires secretary of state to obtain a confirming Act of parliament—prohibits the validity of the order until confirmed, and enables parties to petition against the bill, and to appear and oppose it as a private bill.

78. Enables the local board to petition the secretary of state that the powers of borrowing already given to them in certain cases, and the term for repayment, may be extended—enables the secretary to make inquiry and issue provisional order, to be confirmed by Act of parliament.

79. Empowers the secretary of state to report to parliament annually on this Act, and to provide for its execution by appointing officers and clerks.

80. Confers upon any person directed to make inquiry the powers contained in 11 & 12 Vict. c. 63, s. 121.

81. Renders the orders of the secretary binding and conclusive, and enables him to make orders for costs.

82. Makes certain exceptions in respect of the city of Oxford and the town of Cambridge.

SCHEDULE

A. Form of voting paper.

B. „ rentcharge.

THE

PUBLIC HEALTH ACT, 1848.

NOTE.—The sections printed between asterisks have become superseded by the Local Government Act, and those sections which are printed between asterisks and are included in brackets have been repealed.

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11 & 12 VICT. CAP. 63.

AN ACT FOR PROMOTING THE PUBLIC HEALTH.

[31ST AUGUST, 1848.]

PREAMBLE AND INTERPRETATION OF WORDS.

"WHEREAS further and more effectual provision "ought to be made for improving the sanitary con- "dition of towns and populous places in England "and Wales, and it is expedient that the supply of "water to such towns and places, and the sewerage, "drainage, cleansing, and paving thereof, should, "as far as practicable, be placed under one and the "same local management and control, *subject* (*a*) "*to such general supervision as is herein-after pro-* "*vided:*" Be it therefore enacted, that this Act may from time to time be applied, in manner herein-after provided, to any part of England and Wales,

Parts to which this Act may be applied.

(*a*) The supervision which is here deemed advisable has been repudiated by the legislature and another substituted by the Local Government Act of 1858, *post*. See note on sect. 67, as to whether any parts of the Act except sect. 50 have a general operation.

Except the parts next hereinafter mentioned; (that is to say,) the city of London and the liberties thereof (*b*), the parts within the limits of certain commissions of sewers (*c*) bearing date at Westminster the 30th day of November in the year of our Lord 1847, also the parts within the limits of a certain other commission of sewers bearing date at Westminster the 4th day of December in the year last aforesaid (*c*), and the parts subject to the jurisdiction of the commissioners acting in the execution of an Act of the fifth year of the reign of King George the Fourth, for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, and in the execution of the several Acts for extending the jurisdiction of such commissioners (*d*).

Interpretation of terms.

II. And be it enacted (*e*), that in the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsis-

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(*b*) This exemption of the city of London and its liberties still continues.

(*c*) These commissions of sewers have expired.

(*d*) This exemption still continues. But as the above-mentioned commissions of sewers have expired the limitation contained in 21 & 22 Vict. c. 98, s. 2, *post*, excludes the metropolis, as defined by the Metropolitan Local Management Act, 18 & 19 Vict. c. 120.

(*e*) In the case of *Queen* v. *Justices of Cambridgeshire*, 7 A. & E. 491, Lord Denman, C. J., says, "We apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should." See also the observations of Lord Cottenham, C., in *A. G.* v. *Worcester Corporation*, 15 L. J. R. (N. S.), Ch. 399.

tent with the context or subject matter in which such words or expressions occur (*f*); (that is to say,)

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number: Number:

Words importing the masculine gender shall include females: Gender:

The word "person" and words applying to any person or individual shall apply to and include corporations, whether aggregate or sole: "Person:"

The word "*lands*" (*g*) and the word "premises" shall *include* messuages, buildings, lands, and hereditaments of any tenure: "Lands:" "Premises:"

The word "owner" (*h*) shall *mean* (*i*) the person for the time being receiving the rackrent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other per- "Owner:"

(*f*) See also the statute 13 & 14 Vict. c. 21, which contains a general interpretation of the words *month*, *county*, *land*, and *oath*.

(*g*) It was held by two judges in *Oldacre* v. *Hunt*, cit. in note on sect. 145, *post*, that this word included "a right of fishery," though the lords justices did not give any decisive opinion on this point.

(*h*) See also the definition of this word in sect. 20, *post*.

(*i*) This word appears to signify that the following is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a ground rent is not within the definition. See *Evelyn, app., Wychcord, resp.*, 22 Jur. 808. In *Reg.* v. *Kershaw*, 6 E. & B. 1007, Erle, J., points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an *extending* and the latter an *excluding* signification. Generally, however, an interpretation clause does not restrain the meaning of the words interpreted. *Doe* v. *Benham*, 7 Q. B. 979.

son, or who would so receive the same if such lands or premises were let at a rackrent:

"Rackrent:" The expression "rackrent" shall mean rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises (*a*);

And the "*full net annual value*" shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (*b*):

"Month:" The word "month" shall mean calendar month:

"Commissioners of the treasury:" The expression "commissioners of Her Majesty's treasury" shall mean the commissioners of Her Majesty's treasury of the United Kingdom of Great Britain and Ireland for the time being, or any *three* (*c*) or more of them, or the lord high treasurer of the United Kingdom of Great Britain and Ireland for the time being:

"Superior courts:" The expression "superior courts" shall *include* (*d*) Her Majesty's superior courts of record at Westminster, and the Court of Common Pleas of the county palatine of Lancas-

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(*a*) See 4 & 5 Will. 4, c. 76, s. 109.

(*b*) This definition is taken from the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, s. 1, and is what is set out in the column of the rate in the schedule headed *Rateable Value*.

(*c*) But by the statute 12 & 13 Vict. c. 89, two of the lords commissioners of the treasury are empowered to act.

(*d*) It is to be presumed that this word is intended to be exclusive, as it is difficult to know what other courts than those mentioned can be considered as superior courts.

ter (*e*) and the Court of Pleas of the county of Durham:

"Justice:" The word "justice" shall mean *any* justice of the peace acting for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of the "justice" arises:

"Two justices:" The expression "two justices" shall mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police magistrate acting in any police court, for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of "two justices" arises (*f*):

"Court of general or quarter sessions:" The expression "court of general or quarter sessions" shall mean the court of general or quarter sessions of the peace having jurisdiction over the whole *or any part* (*g*) of the district or place, as the case may be, in which the matter requiring the cognizance of the "court of general or quarter sessions" arises:

"Arbitrators:" The word "arbitrators" shall include a single arbitrator; and the words "arbitrators" and "arbitrator" shall *include* an *umpire* (*h*):

"Oath:" The word "oath" shall *mean and include* an affirmation in the case of Quakers, and a decla-

(*e*) *Quære*, whether the court of the chancellor of the duchy is included. The same interpretation is found in other statutes.

(*f*) See also the provisions contained in 21 & 22 Vict. c. 73, s. 1, which confirm this interpretation.

(*g*) As where the district runs into two counties two courts of quarter sessions will have jurisdiction over the respective parts, it seems that this definition would give authority to both and consequently to either.

(*h*) As this cannot be universally applicable, the interpretation will be modified by the context.

ration in the case of persons allowed by law (*i*) to make a declaration in lieu of an oath:

"Corporate borough:" The expression "corporate borough" (*k*) shall mean any corporate borough mentioned in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales," and any borough incorporated by charter granted or to be granted in pursuance of that or any subsequent Act:

5 & 6 Will. 4, c. 76:

"District:" The word "district" shall mean the entire area, places, or parts of places comprised within the limits of any district to which this Act or any part thereof shall be applied by order in council, or provisional order of the general board of health sanctioned by parliament (*l*):

"Corporate district:" The expression "corporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are exercised and executed by the council of a corporate borough:

(*i*) See 3 & 4 Will. 4, c. 49, and c. 82.

(*k*) By 12 & 13 Vict. c. 94, s. 10, it was declared and enacted, that the expression "corporate borough" whenever used in the Public Health Act, 1848, shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the word "burgesses" wherever used in the said Public Health Act shall be construed to mean *citizens* in the case of a city.

A similar definition of the word *borough* is given in 21 & 22 Vict. c. 98, s. 2, *post*.

(*l*) See the definition of the term "limits of the district" in 21 & 22 Vict. c. 98, s. 7, *post*.

"Non-corporate district:"

The expression "non-corporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are *not* exercised and executed by the council of a corporate borough:

"Street:"

The word "street" shall apply to and include any highway (*m*) (not being a turnpike road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley, passage (*n*), whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley, or passage *within the limits of any district* (*o*):

"House:"

The word "house" shall include schools, factories, and other buildings in which more than twenty persons are employed at one time (*p*):

"Drain:"

The word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed (*q*):

(*m*) The 15 & 16 Vict. c. 42, s. 16, interprets the word "highway," but only as it is used in ss. 68, 69, hereafter.

(*n*) See in *Le Neve* v. *Vestry of Mile End Old Town*, 22 Jur. 660, an illustration of the word *street*.

(*o*) See 21 & 22 Vict. c. 98, s. 7, *post*.

(*p*) See the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law for illustrations of the word "house." *Primâ facie* a *house* means a dwelling house; *Surman* v. *Darley*, 14 M. & W. 181; or a building calculated for use as such; 8 *Scott. Rep.* 794, 949; but the above interpretation extends the signification. The 21 & 22 Vict. c. 98, s. 34, interprets the term *new buildings*.

(*q*) There may be instances of drains not comprehended

"Sewer:" The word "sewer" shall mean and include sewers and drains of *every* description (*a*), except drains to which the word "drain" interpreted as aforesaid applies:

"Slaughter-house:" The term "slaughter-house" shall mean and include the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale (*b*):

"Waterworks company:" The expression "waterworks company" shall mean any corporation, person, or company of persons supplying or who may hereafter supply water *for their own profit*:

"Waterworks:" The term "waterworks" shall include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also *the stock in trade* (*c*) of any waterworks company:

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within this definition, as where there is a direct communication from a house to a river or canal, or the sea itself.

(*a*) In *Sutton* v. *The Mayor of Norwich*, 31 L. T. 389, Kindersley, V. C., observed: "The word *sewer* comes from the word "to sew," *i. e.* to drain, and has a much more extended signification (than drain), embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, &c. In the common sense of the term it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit, or to be converted into manure, or other useful purposes."

(*b*) See *Elias* v. *Nightingale*, 22 Jur. 166.

(*c*) These words are very extensive, and not easy to be understood, because it would seem unnecessary to apply the word *waterworks* to anything not mentioned in the previous enumeration.

"the local board of health:"

The expression "the local board of health" shall mean the person authorized (*d*) to execute in each district all or any of the powers, authorities, and duties vested in or imposed upon the local board of health by this Act:

"the clerk," &c.

The expressions "the officer of health," "the clerk," "the treasurer," "the surveyor," "the inspector of nuisances," shall mean the persons respectively appointed to be or authorized to execute the offices of the officer of health, clerk, treasurer, surveyor, and inspector of nuisances respectively in each district for the purposes of this Act (*e*).

Mode of citing this Act.

III. And be it enacted, that 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 Public Health Act, 1848" (*f*).

CONSTITUTION OF THE GENERAL BOARD OF HEALTH.

General board of health to be constituted.

IV. ** And be it enacted, that the first commissioner for the time being of Her Majesty's woods and forests, land revenues, works, and buildings,

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(*d*) That is, authorized by this Act. The 21 & 22 Vict. c. 98, s. 15, enables corporations not constituted local boards to adopt parts of that Act, which is incorporated with the present.

(*e*) It is to be noticed that the 15 & 16 Vict. c. 42, enacted in sect. 14, "that the word 'year' shall, for the purpose of the election of local boards of health acting in execution of the Public Health Act, 1848, and of the continuance in office of the members of such boards, be taken to mean the interval between any day of election of any such board and the day of election next ensuing."

See other definitions in 21 & 22 Vict. c. 98, s. 7, *post*.

(*f*) See also the title of 21 & 22 Vict. c. 98, in sect. 2.

together with such two other persons as Her Majesty by warrant under the royal sign manual may be pleased to appoint, shall be and constitute a board for superintending the execution of this Act, and shall be called "The General Board of Health," and shall have and execute all the powers and duties vested in or imposed on such board by this Act, and the said first commissioner shall be the president of the said board; and Her Majesty may from time to time, at her pleasure, remove all or any of the persons so appointed by her, and appoint others in their stead; and the powers and duties vested in the said board by this Act may be exercised and executed by any *two* members thereof;

And during any vacancy in the said board the continuing members or member thereof may act as if no vacancy had occurred:

Provided always, that the said general board of health shall be continued only for five years next after the day of the passing of this Act, and thenceforth until the end of the then next session of parliament, and no longer (*a*). **

Power to general board of health to appoint officers and servants, subject to approval of

V. ** And be it enacted, that the said board may from time to time appoint a secretary and such clerks and servants as they, subject to the approval of the commissioners of Her Majesty's treasury, may deem necessary for the purposes of this Act;

(*a*) This and the following clauses, which relate to the general board of health and its officers, have ceased to be operative. In the introductory essay will be found an account of the proceedings and different constitution of that board.

and every person so appointed shall be removable at the pleasure of the said board; treasury, and to cause a seal to be made.

And the said board shall cause to be made a seal for their use in the execution of this Act, and documents or copies of documents purporting to proceed from them, and to be signed by any two or more of them, and to be sealed or stamped with such seal, shall be received as *primâ facie* evidence in all courts and places whatsoever (*b*). **

VI. ** And be it enacted, that the general board of health may from time to time appoint so many proper persons as they, subject to the approval of the commissioners of Her Majesty's treasury, may deem necessary, to be *superintending inspectors* for the purposes of this Act; Power to appoint superintending inspectors, subject to approval of treasury.

And every person so appointed shall have all the powers (*c*), duties, and liabilities vested in or imposed upon any superintending inspector by this Act, and shall assist in the superintendence and execution of this Act, when, where, and in such manner as the said board shall direct, and shall be removable at their pleasure. **

VII. ** And be it enacted, that there shall be paid to such one of the members of the general board of health, not being the president, as Her Majesty shall direct, and to the said secretary, clerks, and servants, such salaries or wages, and to the said superintending inspectors such allowances, Power to treasurer to grant salaries, &c. to general board of health, superintending inspectors, &c.

(*b*) See the statute 8 & 9 Vict. c. 113, ss. 1, 4, as to the proof of documents sealed with a public board's seal.

(*c*) See sect. 121, *post*, as to his powers, and sect. 148 as to his protection.

as shall from time to time be appointed by the commissioners of Her Majesty's treasury, out of any monies which may from time to time be provided by parliament for that purpose:

Provided always, that the allowance to a superintending inspector shall not exceed the sum of *three pounds three shillings* for every day he shall be actually employed or travelling in the performance of the duties of his office:

Provided also, that the commissioners of Her Majesty's treasury may allow to any superintending inspector such reasonable travelling and other expenses as may be incurred by him in the performance of the duties of his office under this Act, in addition to his said allowance. **

CREATION OF DISTRICT FOR LOCAL BOARD OF HEALTH.

Upon petition of a certain proportion of householders &c., or when the deaths in any city, &c., appear upon

VIII. ** And be it enacted (*a*), that from time to time after the passing of this Act, upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, *parish* (*b*), or place having a known or defined

(*a*) The board of health were empowered to act either upon petition from the ratepayers, or, where the annual mortality bore a certain proportion to the population, on their own motion. By the new Act the proceedings will be entirely optional with the inhabitants. As the general board of health has ceased, this clause, though not expressly repealed, has become inoperative for the future.

(*b*) The parish of *Waltham Holy Cross* comprises the township of *Waltham Abbey* and several other townships. A petition was presented from the inhabitants of the *parish;* a superintending inspector made his inquiry as to the *parish*, but reported to the general board of health as to the *town* of Waltham Abbey, and recommended the application of the Act to the *township* of Waltham Abbey. The general board of health published his report, and invited statements rela-

boundary (*c*), not being less than thirty in the whole, OR where it shall appear or can be ascertained from the last return for the time being made up by the registrar general of births, marriages, and deaths, from the deaths registered in a period of not less than *seven* years, that the number of deaths annually in any city, town, borough, parish, or place during the period in respect whereof such return shall have been made have on an average exceeded the proportion of twenty-three to a thousand of the population of such city, town, borough, parish, or place, the general board of health may, if and when they shall think fit, direct a superintending inspector to visit such city, town, borough, parish, or place, and to make public inquiry, and to examine witnesses, as to the sewerage, drainage, and supply of water, the state of the burial grounds, the number and sanitary condition of the inhabitants, and as to any local Acts of parliament in force within such city, town, borough, parish, or place, for paving, lighting, cleansing, watching, regulating, supplying

the registrar general's returns to be above a certain proportion, superintending inspector to make local inquiry.

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tive to it. No further inquiry was made, but the general board of health made their report to the Queen that the Act should be put in force in the *parish*, and an order in council was issued accordingly. The Court of Exchequer held that the local board was duly established for the whole *parish*. *Barber* v. *Jessop*, 1 H. & N. 578.

(*c*) The fact of a portion of land included within the boundary being extra-parochial, or otherwise exempted from poor rate, did not prevent its forming part of the district of the local board of health otherwise legally created under this Act. *Tait* v. *Carlisle Local Board of Health*, 2 E. & B. 498. See the provision in 21 & 22 Vict. c. 98, s. 14, as to the inclusion of small places in larger ones formed into districts.

It will be observed that this part of the clause applies to a place having a known or defined boundary, whereas the next part is not in terms so limited. Accordingly in 21 & 22 Vict. c. 98, s. 13, *post*, there is a specific provision for places not having such boundary.

with water, or improving the same, or having relation to the purposes of this Act, also as to the natural drainage areas, and the existing municipal, parochial, or other local boundaries, and the boundaries which may be most advantageously adopted for the purposes of this Act, and as to any other matters in respect whereof the said board may desire to be informed, for the purpose of enabling them to judge of the propriety of reporting to Her Majesty, or making a provisional order, as hereinafter mentioned. **

Inspector to give notice of inquiry, and report to general board the result of the same.

IX. ** And be it enacted (*a*), that before proceeding upon such inquiry the said inspector shall give fourteen days notice of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of such inquiry, by advertisement in some one or more of the public newspapers usually circulated in the parts to which the inquiry will relate, and by causing such notice to be affixed on the doors of the *principal* (*b*) churches, chapels, public buildings, and places (*c*) where public notices are usually affixed within such

(*a*) This clause has in effect ceased to be operative for the future, but in regard to districts formed before the 21 & 22 Vict. c. 98, came into operation, it is necessary that attention should be paid to these provisions with the view of ascertaining in any case of doubt whether they have been duly observed. The 21 & 22 Vict. c. 98, s. 21, *post*, will probably not apply to the districts formed under this Act.

(*b*) Note here that the word used is *principal*, not *all*, as in 1 & 2 Vict. c. 45, so that the failure to affix on some one church would not be fatal, as in *Q.* v. *Whipp*, 4 Q. B. 141.

(*c*) Though churches and chapels in public statutes when unexplained by the context are to be construed as referring to the established church, [see *Ormerod* v. *Chadwick*, 16 M. &

parts, and in such other manner as may appear to the said inspector to be necessary;

And so soon as can be after the completion of such inquiry he shall report in writing to the general board of health, in such manner as they may direct, upon the several matters with respect to which he has been directed to inquire as aforesaid, and upon any other matters with respect to which he may deem it expedient to report for the purposes of this Act;

Upon such report general board may, if they think fit, cause inspector to make further inquiries respecting boundaries, and present a further report, which shall be published, &c.

And if upon such report it appear to the said general board that the boundaries which may be most advantageously adopted for the purposes of this Act are not the same as those of the city, town, borough, parish, or place with respect to which inquiry has been made, they shall cause the same or some other superintending inspector to visit the parts within the boundaries proposed to be adopted for the purposes of this Act, and after having given such notice as is hereinbefore prescribed, to hear all persons desirous of being heard before him upon the subject of the said report, and to make such further inquiry and report to the said board as they may direct;

And upon the presentation of such report or further report the said board shall cause copies thereof respectively to be published in the parts to which such report or further report respectively relate, in such manner as they may direct, and shall also cause other copies thereof respectively to be

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W. 367, and *Ex parte the Overseers of Warblington*, 18 Jur. 494,] the words *public buildings and places where public notices are usually affixed* would here apply to dissenting chapels and meeting-houses.

deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any local Act of parliament in force within such parts for lighting, paving, cleansing, watching, regulating, supplying with water, or improving such parts or any of them, or in anywise relating to the purposes of this Act, and with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby;

And if such report or further report relate to parts not being within any corporate borough the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and the copies so published or deposited shall be accompanied by a notice stating that within a certain time, not being less than one month from the time of such publication and deposit, written statements may be forwarded to the said board with respect to any matter contained in or omitted from the said report or further report, or any amendment proposed to be made therein;

And all such statements shall be deposited with such town clerk, clerk to justices, clerk to the board of guardians, and with such churchwardens or overseers respectively, in like manner as the said copies, and shall, together with such copies, be open to public inspection from the hour of eleven in the forenoon till the hour of three in the afternoon every day during the time specified in the last-mentioned notice, *Sundays, Christmas Days, Good Fridays,*

and days appointed for general *fasts* or *thanksgivings* only excepted;

And any town clerk, clerk to justices, clerk to the board of guardians, churchwardens, or overseers who shall refuse to receive any document or copy of any document directed to be deposited with him or them as aforesaid, or to allow such inspection, shall be liable for every such offence to a penalty not exceeding five pounds;

And after the expiration of such last-mentioned notice the said board may, if they think fit, direct such further inquiry and report as to them may seem necessary and proper. **

Cases in which Act shall be put in force by order of Her Majesty in council.

X. ** And be it enacted (*a*), that if after such inquiry or further inquiry as aforesaid it appear to the said general board of health to be expedient that this Act or any part thereof should be applied to the city, town, borough, parish, or place with respect to which inquiry has been made, upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local Act of parliament in force for paving, lighting, (otherwise than for the profit of proprietors or shareholders,) cleansing, watching, regulating, supplying with water, or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this Act, they shall report to Her Majesty accordingly;

And at any time after presentation of such report it shall be lawful for Her Majesty, by and with the

(*a*) This clause has become inoperative for the future.

advice of her privy council (*b*), to order that this Act or any part thereof shall be applied to and be put in full force and operation within such city, town, borough, parish, or place;

Cases in which Act shall be put in force by provisional order of general board, and sanctioned by parliament.

And if after such inquiry or further inquiry as aforesaid it appear to the said general board to be expedient that this Act or any part thereof should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded, *or* within boundaries where no petition has been presented from such inhabitants as aforesaid, *or* within any city, town, borough, parish, or place in which any such local Act of parliament as aforesaid is in force, *they* (*c*) shall make a *provisional order* under their hands and seal of office accordingly, with such provisions, regulations, conditions, and restrictions with respect to the application and execution of this Act or any part thereof, *and with respect to any such local Act* (*d*), and the *repeal*, alteration, extension, or future execution of the same, and in all respects whatsoever, as they may think necessary under all the circumstances of the case;

(*b*) There will be no orders in council hereafter for the constitution of local boards. See sect. 142, *post*, as to the commencement of the effective operation of the order, and as to its publication.

(*c*) See the provisions introduced into 21 & 22 Vict. c. 98, s. 77, *post*, which enable the secretary of state to make provisional orders to be confirmed by Act of parliament in particular cases.

(*d*) The power of the general board under this clause was not unrestricted. They could make a provisional order for the purpose of applying this Act to the borough or place, and all the general provisions and the special provisions for the alteration of the local Act were to be such as they thought necessary under the circumstances *for this purpose*, but not otherwise. Their power was limited to this definite purpose.

And such provisional order shall be published in the parts to which the same relates in such manner as the *said general board* may direct, and shall be deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any such local Act, also with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby; and if such provisional order relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be;

And in case it shall be enacted by any Act of parliament hereafter to be passed that the whole or part of any provisional order or orders of the gene-

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This has been explained by the case of *Clayton* v. *Fenwick*, 6 E. & B. 114. The general board made a provisional order extending this Act to the borough of T., a district within which were parts of the S. turnpike roads made under local turnpike Acts. A local sanitary Act also applied to the district, which was altered by the order, and it was directed that after the confirmation of the order by parliament, sect. 50 of the "Towns Improvement Clauses Act, 1847," which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the sanitary Act. This provisional order was confirmed by the statute so far as authorized by the above Act. It was held by three justices in the Queen's Bench against the Chief Justice, that this part of the provisional order was not authorized, and consequently was void. They considered that the toll on the turnpike road was not a matter which affected the public health of the town.

It will be noticed that the Acts passed after July, 1850, which confirm the provisional order of the board, contain these words, "so far as the same are authorized by the Public Health Act." See the provisions contained in 21 & 22 Vict. c. 98, s. 41.

ral board of health shall be confirmed and be absolute, the whole or part of such provisional order or orders which shall be so confirmed shall be as binding and of the like force and effect as if the same had been expressly enacted by parliament, and every such Act shall be deemed a public general Act (*a*);

But no such provisional order shall have any force or effect, nor shall this Act or any part thereof be applied in either of the cases last aforesaid, except for the purposes of such inquiry, further inquiry, report, or provisional order, *without the previous authority of parliament;*

Exception with respect to certain local Acts for supplying water.

And no such provisional order, or any altered or amended order, shall be made with respect to any local Act of parliament under which any waterworks company is empowered to construct waterworks or supply water for their own profit, without the consent of the waterworks company empowered by such local Act first had and obtained:

Consent of town council, &c. in certain cases.

Provided always, that, except for the purposes of main sewerage, no corporate borough or any part thereof shall be included in any district not exclusively consisting of the whole or part of one such borough without the previous consent of the council under the common seal of the borough (*b*);

(*a*) The 12 & 13 Vict. c. 94, s. 9, required the general board of health to cause printed copies of the provisional orders to be delivered to the members of both houses of parliament before the first reading of the bill for their confirmation. The 13 & 14 Vict. c. 90, s. 4, contained other regulations for the supplying of copies of the provisional order to parties requiring them. By 21 & 22 Vict. c. 98, s. 75, No. 5, and s. 77, No. 6, the Act confirming the secretary of state's provisional order is to be deemed a public Act, against which, however, a petition may be presented, and the petitioner may appear and oppose the bill.

(*b*) See 21 & 22 Vict. c. 98, ss. 27, 28, *post.*

But nothing herein contained shall be construed to require such consent to the constitution of a district exclusively consisting of the whole or part of one such borough for all or any of the purposes of this Act, nor to hinder or prevent the application of all or any of the provisions of this Act to parts exclusively consisting of the whole or part of one such borough, although the same parts or any of them may have been already included within a district for the purposes of main sewerage :

Provided also, that, except for the purposes of main sewerage, no parts beyond the boundaries of a corporate borough shall be included in any district comprising the whole or part of any such borough, except upon the petition of a majority of the owners of property and ratepayers who would be qualified to vote in the election of members of a local board of health for the parts proposed to be so included (*c*);

But nothing herein contained shall be construed to require such petition in order to the constitution of a district exclusively consisting of parts not within the boundaries of any such borough, nor to hinder or prevent the application of all or any of the provisions of this Act to a district exclusively consisting of such last-mentioned parts, although the same parts or any of them may have been already included within a district for the purposes of main sewerage (*d*). **

(*c*) See 21 Vict. c. 98, ss. 27, 28, *post*.

(*d*) See in sect. 141, *post*, the provision for the alteration or amendment of orders in council now inoperative. But 21 & 22 Vict. 98, s. 78, provides for the repeal, partial or total, or the alteration of any provisional order, or order in council or Act confirming such provisional order.

Costs of preliminary inquiry, &c., with consent of treasury, to become a charge upon the general district rates.

XI. And be it enacted (*a*), that from and after the making of any such order in council, or the passing of any Act of Parliament confirming any provisional order of the general board of health, the costs, charges, and expenses specially incurred by or under the direction of the *said general board*, or of any superintending inspector, in relation to any inquiry or further inquiry as aforesaid, shall, to such extent and amount as the commissioners of Her Majesty's treasury by order under their hands may think proper to direct, become a charge upon the *general district rates* levied in such district under the authority of this Act (*a*), and be repaid to the said commissioners by annual instalments *not exceeding five* (*b*), together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as shall from time to time remain unpaid.

CONSTITUTION OF THE LOCAL BOARDS OF HEALTH.

Town council to be the local board in districts consisting of one borough, &c.

XII. And be it enacted, that in every district exclusively consisting of the whole or part of one corporate borough, the mayor, aldermen, and burgesses

(*a*) Henceforth this clause will be inoperative for future expenses, but similar clauses are to be found in 21 & 22 Vict. c. 98, s. 23, applicable to that Act.

(*b*) Whether if the money be not repaid by these instalments, or within the time above specified, it can afterwards be recovered will be a question. See the late case of *R.* v. *Hurstbourne Tarrant*, 23 Jur. 783; 27 L. J. R., M. C. 214.

The statute 12 & 13 Vict. c. 89, provides for the making of orders by the lords of the treasury. It is presumed that if the order above-mentioned were not obeyed, the Court of Queen's Bench would enforce it by *mandamus*.

of such borough shall be by the council of the borough, within and for such district, the local board of health under this Act, and such council shall exercise and execute the powers, authorities, and duties of such local board, according to the laws for the time being in force with respect to municipal corporations in England and Wales (*c*);

Selection, &c., of local boards by town councils.

And in every district exclusively consisting of two or more of such boroughs, or of one or more of such boroughs and also of part of any other such borough or boroughs, or exclusively consisting of part of two or more of such borough or boroughs, the mayors for the time being of the boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed (*d*) *by such provisional order* as aforesaid, to be selected by each of such councils respectively out of their own number, or from persons qualified to be councillors of the borough in respect of which the selection is to be made, and shall be named and selected by such councils accordingly, shall, within and for such district, be the local board of health under this Act;

Selection of part of local board by town councils, and part

And in every district comprising the whole or part of any such borough or boroughs, and also parts not within the boundaries of any such borough,

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(*c*) See 21 & 22 Vict. c. 98, ss. 12, 24, *post*, which enables corporate boroughs to become district boards of health. That Act empowers districts, when formed, to be united, but does not enable a district to be originally formed by the union of two boroughs. It appears by the return of the local districts, presented to parliament in August, 1857, that there is no instance of a district formed of *two boroughs*.

(*d*) In future this will be settled otherwise. See 21 & 22 Vict. c. 98, s. 27, *post*. But the orders heretofore made will continue in force in the places to which they have been applied.

by owners and rate-payers.

the mayor or mayors for the time being of the borough or boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed by such provisional order to be selected by such council or each of such councils respectively out of their own number, or from the persons qualified to be councillors of the borough in respect whereof the selection is to be made, and shall be named and selected by such council or councils accordingly, shall, together with such number of persons as shall be elected as hereinafter mentioned in respect of such non-corporate parts, be, within and for such district, the local board of health under this Act (*e*);

And the first selection by any such council in pursuance of this Act shall be made on a day to be appointed by parliament (*f*);

And each person selected by the council out of their own number shall be a member of the local board with which he is selected to act so long as he continues without re-election to be member of the council from whom he was selected, and no longer;

And each person selected by the council otherwise than out of their own number shall be a member of the local board with which he is selected to act for *one year* from the date of his selection, and no longer;

And in case of any vacancy in the number

(*e*) Henceforth there can be no such union of election and selection in reference to any new board.

(*f*) The 14 & 15 Vict. c. 90, s. 5, enabled the general board of health to appoint any days for the *first* election or selection other than those appointed by the order in council or the statute. But such power can no longer be exercised.

selected some other person or persons (as the case may require) shall be selected by the council by whom the person or persons causing the vacancy was or were selected, within one month after the occurrence of the vacancy (*g*);

And the meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales" (*h*). 5 & 6 Will. 4, c. 76.

XIII. And be it enacted (*i*), that in every district comprising the whole or part of any corporate borough or boroughs as aforesaid, *and* also any part or parts not within the boundaries of any corporate borough or boroughs, *such number of persons* (*k*), qualified as hereinafter prescribed, as shall *be fixed by such provisional order* as aforesaid, to be elected for such part or parts or for each of such parts respectively, shall from time to time be elected in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, Election of members of local board by owners and ratepayers.

(*g*) It is presumed that the provision of this time is only directory, and that the vacancy may be supplied although the month has expired. See *Q.* v. *Griffiths*, 7 E. & B. 953.

(*h*) See the provisions in 5 & 6 Will. 4, c. 76, s. 69, as to the meetings of the council in boroughs, which, among other things, require a notice of three clear days before the meeting is held.

(*i*) The 21 & 22 Vict. c. 98, s. 11, *post*, provides for the case where there shall be a failure to elect or a lapse of a local board.

(*k*) Under 21 & 22 Vict. c. 98, *post*, this kind of district will not be formed originally. By sect. 27 adjoining districts may unite and determine the terms of union, one of which must be the numbers of members to be returned for each respectively.

together with the persons *selected* as aforesaid in respect of the corporate parts of such district, and shall be, within and for such district, the local board of health under this Act;

And in every district not comprising the whole or part of any corporate borough or boroughs, but being a district to which this Act may be applied by order of Her Majesty in council (*e*), such number of persons, qualified as hereinafter prescribed in this behalf, *as shall be fixed by such order in council*, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act;

And in every district not comprising the whole or part of any corporate borough or boroughs, and being a district to which this Act cannot be applied without the authority of parliament (*e*), such number of persons, qualified as hereinafter prescribed, *as shall be fixed by such provisional order* as aforesaid, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act;

And the first election for any district or part of a district shall take place on a day to be appointed by order of Her Majesty in council or by parliament (as the case may require) (*f*);

(*e*) See sect. 10, which describes these several districts. In new districts hereafter formed out of places not corporate boroughs nor governed by improvement commissioners, the number of members will be determined at the meeting which adopts the Act by the persons present thereat.

(*f*) See note (*f*) on sect. 12; and as to the proceedings hereafter, see notes on 21 & 22 Vict. c. 98, s. 24.

And one-third of the number elected for the whole or any part or parts of a district respectively shall go out of office on such day in each year subsequently to that of the first election as shall be appointed by such order in council or provisional order as aforesaid (as the case may require) (*g*);

And the order in which the persons first elected (*h*) shall go out of office shall be regulated by each local board:

Provided always, that if the number of persons to be elected be not divisible by three the proportion to go out of office in each year shall be regulated *by such order in council or provisional order* (*i*) (as the case may require), so that as nearly as may be one-third shall go out of office in each year;

And if the number of persons to be elected for any part of a district be less than three the persons elected shall go out of office on such day in each year, or at such other period, not being less than a

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(*g*) These provisions will apply to local boards constituted under the new Act, but *quære* when the day for the determination of the year of office will arrive, as there will be no order in council or provisional order. The intention of the statutes is that the year should determine on the anniversary of the day of election, but this intention is not expressed in either Act.

(*h*) The local board may select members who may in point of fact have ceased to be members, and are not compelled to select members out of the continuing number. *Howitt* v. *Manfull*, 6 E. & B. 736. There the facts were these:—The board consisted of nine members, one-third to go out of office on March 31, 1855. Three of the members had ceased to be members by reason of non-attendance, and the local board selected them to go out of office. Three new members only were elected, and the court held the new board to be well constituted.

(*i*) In future boards, as there will be no order in council or provisional order, the meeting should fix upon a number divisible by three, or there will arise an inextricable confusion.

year, *as such order in council or provisional order* (as the case may require) shall direct;

But no person elected shall in any case continuously remain in office for more than three years (*a*);

And on the days appointed for going out of office (*b*) a number of persons shall be elected equal to the number of those so going out, and so many others as may be necessary to complete the full number of the local board of health in respect of which the election is to be made.

Regulations as to the number of persons to be selected or elected members of local boards.

XIV. And be it enacted (*c*), that the number of persons to be selected or elected for the whole or any part of a district shall from time to time be regulated by such *order in council or provisional order as aforesaid* (as the case may require), due regard being had to the size and circumstances of each district, as may appear to be just and proper (*c*);

And that any member of the local board of health, after going out of office, *resigning* (*d*), or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected (as the case may require);

In case of vacancies,

And in the event of any vacancy in the number of persons elected, by death, *resignation* (*d*), or

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(*a*) But such member may be re-elected. See next section.

(*b*) As already noticed, no such days will be appointed in districts formed under the new Act, unless by the resolution adopting the Act.

(*c*) This part of the clause has ceased to be operative, inasmuch as no general board of health can originate the order, but probably an alteration in the numbers may be effected by the operation of 21 & 22 Vict. c. 98, s. 77, *post*.

(*d*) Note, that a power of resignation is thus recognized though it is not expressly given by this or the subsequent Act; and as this is an onerous office it seems that by the application of the rule of the common law no such power would have existed.

otherwise (*e*), between the times appointed for election as aforesaid (*f*), or if at any time the said local board be without its full number of members, the remaining members shall continue and be as competent to act until the time appointed for election, or until the full number is selected or elected (as the case may require), as if no vacancy had occurred (*g*); remaining members may act.

And if any person be both selected and elected to be a member of the local board of health, he shall, within three days after notice thereof from the clerk, choose, or in default of such choice the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve, and immediately upon such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant (*h*). Persons both selected and elected, &c. to serve in respect of one title only.

XV. Provided always, and be it enacted, that if any corporate borough or part thereof be included, only for the purposes of sewerage, in any district comprising any part or parts not within the boundaries of any such borough, and the last-mentioned part Members elected for part of a sewerage district to constitute separate board for

(*e*) As by becoming disqualified or refusing to act.

(*f*) The 21 & 22 Vict. c. 98, s. 24, enables the local board itself to fill up an occasional vacancy for the residue of the time of the vacating member.

(*g*) This is similar to the provision in 5 & 6 Vict. c. 57, s. 12, in regard to boards of guardians of unions, which, indeed, was only corroborative of a decision of the Court of Exchequer Chamber in the case of the Todmorden union. *Q.* v. *Oc. of Todmorden and Walsden*, 1 Q. B. 185; 3 Q. B. 675.

(*h*) And the vacancy may hereafter be filled up by the local board. See note (*f*), above.

other purposes of the Act.

or parts, or any of them, be constituted a district or districts for any other purposes of this Act, the persons elected for such sewerage district shall, within and for the separate district within which they shall have been so elected, be and constitute the local board of health in the same manner and as fully to all intents and purposes as if they had been expressly elected to constitute the same.

Qualification of elected members.

XVI. And be it enacted (*h*), that every person elected as aforesaid shall at the time of his election, and so long as he shall continue in office by virtue of such election, be *resident* (*i*) within the district for which or for part of which he is elected, *or within seven miles thereof* (*k*), and be seised or possessed of *real* (*l*) or personal estate, or both, to such value or amount (*m*) as shall be fixed by such order in council or provisional order as aforesaid (as the case

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(*h*) It will be found that many of the provisions relating to the constitution of the board, the qualification of the members, and their acting, have been adopted from the Commissioners Clauses Act, 10 & 11 Vict. c. 16; but little assistance can be derived in the interpretation of this Act from reference thereto.

(*i*) Much difficulty has been felt in applying this word to the cases which arise under different statutes; but here it is evident that a permanent abiding must be contemplated.

(*k*) This must be measured in a straight direct line, "as the crow flies," according to the interpretation now established in settlement and other cases. *Q.* v. *Saffron Walden*, 9 Q. B. 76, 79. *Stokes* v. *Grissel*, 14 C. B. 678.

(*l*) No particular locality is required for the real estate, and of course there can be none for the personal estate.

(*m*) In districts to be formed hereafter the qualification must be according to the scale provided by 21 & 22 Vict. c. 98, s. 24, *post*. It will be seen that these regulations, as to the qualification of the members, correspond with those prescribed in the Municipal Corporation Act, 5 & 6 Will. 4, c. 76. Value will apply to estates or goods and chattels; amount will apply to money or pecuniary property.

may require), within the limits next hereinafter provided, or be so resident, and rated to the relief of the poor of some parish, township, or place of which some part is within such district or part of a district, *upon such annual value* (*n*) as shall be fixed by such order in council or provisional order (as the case may require), within the limits next hereinafter provided :

Provided always, that it shall not be lawful to require that any person be seised or possessed as aforesaid to a value or amount exceeding *one thousand pounds*, or to require that any person be rated upon an annual value exceeding *thirty pounds* ;

Provided also, that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them (*o*), qualify each to be elected, or if two or more persons be jointly rated in respect of any property which if equally divided between them would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected ;

But the same property shall not at the same time qualify both the *owner* (*p*) and the occupier thereof.

(*n*) See the case of *Baker* v. *Marsh*, 24 L. J. R., Q. B. 1, in which it was held, with reference to the qualification of a town councillor, which depends upon a rating to the poor upon an annual value of not less than 15*l*., that this term applied to the *rateable value* and not *the gross estimated rental*.

(*o*) It appears to be unnecessary to inquire what are the respective proportions of the interest of the parties in the property.

(*p*) There is some difficulty in applying this proviso. Can a person who is the owner of a house be qualified in respect of his real estate, but the occupier, who is rated for the same,

Declaration to be made by members of local boards before acting.

XVII. And be it enacted, that no person elected as aforesaid, or selected by any council otherwise than out of their number, *shall act* as member of the local board of health (except in administering the following declaration) until he shall have made and signed before two or more other members for the district for which he is elected a declaration in writing to the effect following; (that is to say,)

"I *A.B.* do solemnly declare, that I am seised "or possessed of real or personal [*or* real and "personal] estate to the value or amount of —— "[*or* that I am rated to the relief of the poor "of —— upon the annual value of ——].

"(Signed) *A. B.*

"Made before us, *C.D.* and *E.F.*, members of "the local board of health for the district "of ——, this —— day of —— ."

False declaration a misdemeanor.

And such declaration shall be made and signed by the person making the same, and shall be filed and kept by the clerk;

And any person who shall falsely or corruptly make and subscribe the said declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor (*d*).

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be disqualified? or does the proviso mean that the owner who has a valuable freehold estate, and the lessee who has also a valuable personal interest therein, shall not both be qualified? Again, if both be candidates, how is it to be determined which is qualified, and who is to determine this question? Perhaps however these two questions may be settled by the order in which the nominations are made.

(*d*) This declaration is taken from 10 & 11 Vict. c. 16, s. 12, and is still required by 21 & 22 Vict. c. 98, s. 24. Nevertheless, any act of the party before he makes the declaration will be valid. See sect. 19, *post*.

Person neglecting to make declaration or to act for three months to cease to be a member.

XVIII. And be it enacted, that any person elected as aforesaid, or selected by any council otherwise than out of their own number, who neglects to make and subscribe the declaration required by this Act for the space of *three* months next after his selection or election, and any person selected or elected under this Act who during *three successive months* (*e*) is absent from all meetings and committees of the local board of health of which he is elected or selected to be a member (*f*), shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant.

Disqualifications.

XIX. And be it enacted, that no bankrupt, insolvent (*g*), or other person not qualified as aforesaid shall be capable of being elected as aforesaid;

And if any person, after being so elected or selected by any council otherwise than out of their own number, shall lose or discontinue to hold his qualification, or shall be declared bankrupt, or shall

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(*e*) By 21 & 22 Vict. c. 98, s. 25, this is made *six months*, as in 10 & 11 Vict. c. 16, s. 16.

(*f*) See 10 & 11 Vict. c. 16, s. 8. This will be a vacancy to be supplied by the local board. See sect. 14, note (*f*).

(*g*) By this word is generally understood a person who has taken the benefit of an Insolvent Debtors' Act, and not merely one who is unable to pay his debts. See *The Princess Royal*, 9 Jur. 433. There is an ambiguity in the clause as to the extent of the disqualification. Is a man who has once been declared a bankrupt permanently disqualified? or can he be qualified after he has obtained his certificate? In *R.* v. *Chitty*, 5 A. & E. 609, the Court of Queen's Bench decided that an uncertificated bankrupt was not disqualified from being elected a town councillor under 5 & 6 Will. 4, c. 76, but there the disqualifying words introduced in the commencement of this section were wanting.

apply (*a*) to take the benefit of any Act for the relief or protection of insolvent debtors, or shall compound with his creditors, or if any member selected or elected under this Act shall accept or hold any office (*b*) or place of profit under the local board of health of which he is member, or shall in any manner be concerned in any bargain or contract (*c*) entered into by such board, or participate in the profit thereof, or of any work done under the authority of this Act in or for the district for which he is member, then and in every such case such person shall, except in the cases next hereinafter provided,

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(*a*) Note, that the application is enough to disqualify whatever may be the result.

(*b*) Must the office be one of profit? In other words, can a member hold any appointment gratuitously? In 5 & 6 Will. 4, c. 76, s. 28, where the same words occur, there is an exception of the Mayor, whose office is not one of profit. See also 5 & 6 Vict. c. 104, s. 8, as to a Sheriff. As to a Treasurer without salary, see *Delane* v. *Hillcoat*, 9 B. & C. 310.

(*c*) See, as to a bargain for the sale of a piece of land to the local board by a member thereof, *Woolley* v. *Kay*, 1 Hurl. & N. Rep. 307. But in future no interest in a sale or lease of any lands or any loans to the local board will disqualify. See 21 & 22 Vict. c. 98, s. 25, which enacts the same provision as was contained in 5 & 6 Vict. c. 104, ss. 1, 7, as to municipal corporations. The disqualifications in the text are mainly adopted from the Municipal Corporation Act, and the Commissioners Clauses Consolidation Act, 10 & 11 Vict. c. 16, s. 9.

In regard to the interest in the contract which will disqualify a member and subject him to penalties, the case of *Le Feuvre* v. *Lancaster*, 3 E. & B. 530, should be referred to. The local board of health of Southampton having contracted with a person to supply iron railings, an alderman of the borough sold him some iron to enable him to complete his contract, openly and *bonâ fide*. It was held that the latter was not liable to the penalty assigned by 5 & 6 Will. 4, c. 76, s. 28. A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on the road, to be used in the performance of the works, and it was held that he was liable to a penalty on a clause framed as above. *Towsey* v. *White*, 5 B. & C. 125. See also *West* v. *Andrews*, 5 B. & Ald. 328, as to the supply of articles by a guardian of the poor to a contractor for the maintenance of the poor in the workhouse

cease to be such member, and his office as such shall thereupon become vacant (*d*);

And any person who, not being duly qualified to act as member of the said local board, or who has not made and subscribed the declaration required of him by this Act, or who after being disqualified or disabled from acting by any provision of this Act shall so act, shall for every such offence be liable to a penalty of *fifty* pounds, which may be recovered by *any person* (*e*), with full costs of suit, by action of debt;

And in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member (*f*);

And the burden of proving qualification, and the making and subscription of the declaration, or negativing disqualification, by reason of non-residence, or not being seised or possessed of the requisite real or personal estate, or both, shall be upon the defendant:

Provided always, that no person, being a proprietor, shareholder (*g*), or member of any company

(*d*) And the vacancy can be supplied by the local board. The person will cease to be a member, but the contract in which he may be interested will not be void. *Foster* v. *Oxford, &c. Railway Company*, 13 C. B. 200.

(*e*) But see the condition precedent to the action, sect. 133, *post*.

(*f*) This and the following provision are contrary to the former spirit of the English law, but they have crept into some late statutes. Where, in an action for a penalty, upon a similar provision in a local Act, the issue being upon the want of qualification, the defendant proved his qualification, but not that he had subscribed the oath, it was held that he had proved enough, and was not bound to prove such subscription. *Tupper*, *app.*, *Newton*, *resp.*, 14 C. B. 114.

(*g*) A shareholder in any joint stock company established under the Acts is rendered competent to act by 21 & 22 Vict. c. 98, s. 25, *post*, as in 10 & 11 Vict. c. 16, s. 10.

or concern established for the supply of water, or for the carrying on of any other works of a like public nature, shall be disabled from being, continuing, or acting as member of the said local board by reason of any contract entered into between such company or concern and such board;

But no such person shall vote as a member of the said local board upon any question in which such company or concern is interested (*g*):

Provided also, that all acts and proceedings of any person disqualified, disabled, or not duly qualified as aforesaid, or who has not made and subscribed the said declaration, shall, if done previously to the recovery of the last-mentioned penalty, be valid and effectual to all intents and purposes whatsoever (*h*).

Qualification of elector, and scale of voting.

XX. And be it enacted (*i*), that at every such election as aforesaid the ratepayers in respect of property in the district or part of a district for which the election is held, and the owners of such property, shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person is entitled to vote be rated (*k*) upon a rateable value of *less than fifty* pounds he shall have *one* vote; if such rateable value amount to fifty pounds

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(*g*) See the power of dispensation granted to the secretary of state by 21 & 22 Vict. c. 98, s. 25.

(*h*) See sect. 29, *post*.

(*i*) For a full exposition of the details and steps in the election of members of the board, see "The Local Board of Health Election Manual," by the Editor of this work.

(*k*) That is, to the poor rate: see *post*. The rateable value means the net annual value and not the gross estimated rental. See note on p. 57, *ante*.

and be *less than one hundred pounds* he shall have *two* votes; if it amount to one hundred pounds and be *less than one hundred and fifty pounds* he shall have *three* votes; if it amount to one hundred and fifty pounds and be *less than two hundred pounds* he shall have *four* votes; if it amount to two hundred pounds and be *less than two hundred and fifty pounds* he shall have *five* votes, and if it amount to or exceed *two hundred and fifty pounds* he shall have *six* votes (*l*);

And any person (*m*) who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation;

And the votes shall be given, taken, collected, and returned according to the directions hereinafter contained (*n*); and the majority of the votes actually collected and returned shall be binding on the district or part of a district for which the election is had;

And whosoever shall not vote or shall not comply with such directions shall be omitted in the calculation of votes, and be deemed to have had no vote (*o*):

Definition of the words "owner" and "owners" as applied to this Act.

Provided always, that the word "owner" and "owners," when used in this Act in relation to the right of voting at any election under this Act, shall respectively be construed to mean any person or

(*l*) This is the scale established by 7 & 8 Vict. c. 101, s. 14, for the voting at the election of guardians.

(*m*) This word includes corporations (see sect. 2), but does not, as it seems, here apply to corporations aggregate, as they are provided for afterwards; and see also sect. 25.

(*n*) See ss. 25, 26, 27. Notwithstanding the terms of this passage the returning officer can scrutinize the returns.

(*o*) This is according to 4 & 5 Will. 4, c. 76, s. 38.

persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor, and not let to him or them at a *rackrent* (*a*);

Or any person or persons receiving, either on his or their own account, or as mortgagee or mortgagees, or other incumbrancer or incumbrancers, in possession, the rackrent of any such property (*b*);

And no person shall be deemed a "ratepayer" (*c*) or be entitled to vote as such at any such election unless he shall have been *rated* (*d*) to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and shall have also paid all rates made upon him for the relief of the poor in such district or part of a district for the period of one whole year, and shall have also paid all such rates, and all rates due from him under this Act, before that day, in such district

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(*a*) The definition of *rackrent* is given in sect. 2, *ante*, p. 30.

(*b*) This is a more extensive definition of the word *owner* than that given in sect. 2, *ante*. It is much the same as that given in 4 & 5 Will. 4, c. 76, s. 109

(*c*) The common law disqualifications of alienage, infancy, coverture, and insanity, will apply to the ratepayer; but a woman not having a husband can vote, and a bankrupt or insolvent, if actually rated, and if the rates for the specified time have been paid, may vote. So in the case of a pauper. But when a person has been excused from the payment of his rates, due within the specified time, by the justices, or under sect. 96, *post*, he cannot be considered as a ratepayer.

Where the owner is rated in the place of the occupier, under 13 & 14 Vict. c. 99, the occupier is not a ratepayer competent to vote. *Richardson* v. *Gladwin*, 27 L. J. R., M. C. 193.

(*d*) The rate must be a valid rate. It must have been allowed by the justices, and have contained the statutory declaration, and have been duly published. If there should have been no valid rate in the district for the time specified, the local board cannot be constituted.

or part of a district, except rates which shall have been made or become due within the six months immediately preceding (*e*):

Provided also, that in case of property belonging to a corporation aggregate, or to a joint stock or other company, or to any body of proprietors or undertakers, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be *one owner* (*f*) for the purpose of voting under this Act, and shall vote by proxy appointed in writing under the common seal (in case of a corporation) or (in any other case) under the hands of three directors or any other persons in the direction or management of the company or concern;

And no member of such corporation, nor any proprietor or person interested in such company or concern, shall be entitled to vote individually as *owner* in respect of such property;

And (*g*) no owner whosoever shall be entitled to vote as such, unless, *fourteen* days *at least* (*h*) pre-

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(*e*) Does this exception extend to the poor rates? That appears to be the natural interpretation, and is in accordance with 4 & 5 Will. 4. c. 76, s. 38, from which the passage was taken. The general board of health have advised, however, that it is confined to the district rates. See Johnson on this Act, p. 49.

(*f*) This provision is similar to that contained in 4 & 5 Will. 4, c. 76, s. 38. It seems from the above that the corporation aggregate, or company, are not empowered to vote as *occupiers*. The number of votes to be given as owner will of course depend upon the rateable value of the property in the district, but cannot exceed six.

(*g*) This is similar to the provision in 7 & 8 Vict. c. 101, s. 15. See the letter of the poor law commissioners, dated Jan. 16, 1845, and printed in their 11th annual report, p. 121, wherein they set forth the forms of claims and statements by owners, and the appointments of proxies in accordance with that Act.

(*h*) Both days must be excluded. *Queen* v. *Justices of Salop*, 8 A. & E. 173. Note, the voter does not in general tender his vote, but a voting paper is sent to him. The returning

viously to the day of tendering his vote, he shall have delivered to the clerk, or (in case of the first election) to such person within the district in which the qualification to vote is situate as shall be directed *by such order in council or provisional order* (as the case may require), a statement in writing of his name and address, and containing a description of the nature of his interest or estate in the property giving the qualification, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay the same;

And no such corporation aggregate, joint stock or other company, body of proprietors or undertakers, shall be entitled to vote unless such statement contain the *name* and *address* of the *proxy* appointed, and a true copy of the *appointment* of such proxy (*h*).

Elections, by whom to be conducted.

XXI. And be enacted, that at every election by owners of property and ratepayers under this Act the chairman (*i*) of the local board of health, or, in

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officer cannot send to the owner unless he has received the claim. Note, that this officer must decide at the election the right of the claimant to vote.

(*h*) It must be observed that it is only corporations aggregate or companies that can vote by proxy. There does not appear to be any exemption from stamp duty in regard to the appointment of a proxy, and therefore, according to 55 Geo. 3, c. 184, Sched. Part I., it must be stamped. See *R.* v. *Kelk*, 1 Q. B. 559. It appears, however, from the note of Mr. Johnson, in p. 201 of his 1st edition of the statute, that the general board of health advised the contrary. No word in the 151st section applies to this proxy appointment, and the ground of that advice is not stated.

An important question arises whether the claim is to be renewed. It seems not, but that once given it remains available so long as the party retains the qualification.

(*i*) It is to be presumed that the chairman *de facto* is to conduct the election, and that it is not competent to persons

case of the first election, *such person as shall be appointed* (*k*) *by order of Her Majesty in council, or by provisional order of the general board of health,* (as the case may require,) shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act;

And in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed, or in case the chairman *or person appointed as last aforesaid,* from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed (*k*) *(in case of the first election) by such order in council or provisional order* or (in any other case) by the local board of health, shall exercise or perform such of the said powers and duties as then remain to be exercised or performed;

And the said local board, or (in case of the first election) *the person appointed by such order in council or provisional order,* shall, before or during the election, appoint a competent number of persons to assist and attend upon the chairman *or the person so appointed* (*as the case may require*) in conducting and completing the same.

Production of parochial books, &c. for purposes of election.

XXII. And be it enacted, that the clerk of the board of guardians of any union, and the overseers or other officers of every parish, wholly or in part

to call in question the legal title of the returning officer, though the law relating to municipal corporations would warrant a different conclusion.

(*k*) See now the provisions of 21 & 22 Vict. c. 98, ss. 16, 19, *post.*

within the parts for which any such election shall be held, and having the custody of any books or papers relating to the election of guardians of the poor (*a*), or the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the said chairman, or (in case of the first election) *by* (*b*) *any person appointed by such order in council or provisional order as aforesaid;* and the said chairman may, if he shall see fit, cause to be made an alphabetical list (*c*) of the persons entitled to vote at the election.

List of voters, &c. to be made if necessary.

Publication of notice previously to election.

XXIII. And be it enacted (*d*), that the said chairman shall, before every such election, prepare, sign, and publish a notice, which *shall* (*e*) contain the particulars following;

That is to say, the number and qualification of the persons to be elected,—the persons by whom and

(*a*) The clerk to the board of guardians has seldom any such books. He is required by the regulations of the Consolidated Order to deliver the nomination and voting papers, when the election is over, to the board of guardians, and everything else must be his own private memoranda.

(*b*) Henceforth by the summoning officer. See 21 & 22 Vict. c. 98, s. 24, No. (5.)

(*c*) This list will not be conclusive, as the owners will still have a right of claiming, so that their title will not be complete until they tender their votes.

(*d*) This and the following directions follow the regulations prescribed by the poor law commissioners in the election of boards of guardians, which see in the General Consolidated Order, Arts. 1—27. They are not dispensed with in the new statute.

(*e*) This word is generally considered to be imperative, but, nevertheless, it is to be presumed that a slight error or omission in this notice will not render the election a nullity. Whether the election could be sustained if the notice were wholly omitted or were framed so erroneously as to mislead the electors, is a more serious question, which must probably be answered in the negative.

the places where the nomination papers hereinafter mentioned are to be received, and the last day on which they are to be sent,—the mode of voting in case of a contest,—and the days on which the voting papers will be delivered and collected,—and the time and place for the examination and casting up of the votes;

And he shall also cause such notice to be affixed *on such places* (*f*) in the parts for which the election is to be held as are ordinarily made use of for affixing thereon notices of parochial business:

Provided always, that whenever the day appointed for the performance of any act in relation to any such election shall be [on]* a Sunday(*g*), Christmas* Day, or Good Friday, or any day appointed for public Fast or Thanksgiving, *such act* (*h*) shall be performed on the day next following.

Sic in Stat.

XXIV. And be it enacted, that any person entitled to vote may nominate for the office of member of the local board of health himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected);

Nomination and election of candidates.

And every such nomination shall be *in writing*,

(*f*) It will not be held that an omission of the notice in some one public place will constitute a fatal default. It will be well to follow the directions in 58 Geo. 3, c. 69, and 1 Vict. c. 45, and cause the notice to be affixed on all churches and chapels, as well as other prominent public places in the district.

(*g*) As to the delivery of a nomination paper on a Sunday, see *Westbury-on-Severn Union Case*, 4 E. & B. 314.

(*h*) Note, that only this act is to be postponed; the poor law commissioners have provided in similar cases that all the subsequent acts shall be postponed.

and shall state the names, residence (*i*), calling, or *quality* (*j*) of the person nominated, and shall be signed by the party nominating, and be sent to the chairman;

And if the number of persons nominated shall be the same or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed to be elected, and shall be certified accordingly by the said chairman under his hand;

But if the number so nominated exceed the number to be elected, the said chairman shall cause voting papers, in the form contained in the schedule (A.) to this Act annexed, to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated (*k*);

And the said chairman shall, three days before the *day of election* (*l*), cause one of such voting papers to be delivered by the persons appointed for

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(*i*) This word is one most difficult to be interpreted. The courts of law assign different meanings to it according to the subject matter in connexion wherewith the question arises. Here it is best to treat it as the place of abode. See *Q.* v. *Hammond*, 17 Q. B. 772; *Q.* v. *Deighton*, 5 Q. B. 896; *Luckett* v. *Knowles*, 2 C. B. 187; *Allen* v. *Greensill*, 4 C. B. 100.

(*j*) Such as baronet, knight, esquire, or gentleman, which words signify the *quality*. Professional titles appear to fall under the word *calling*.

(*k*) This does not justify the omission of the names of any of the nominators.

(*l*) The day of election was settled by the provisional order or order in council heretofore, but it is left uncertain under the new Act.

that purpose to the *address* (*m*) in the parts for which the election is to be held of each owner and proxy, and at the *residence* (*m*) of each ratepayer entitled to vote therein:

Provided always, that if any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the local board of health, and if in consequence of such refusal the number of persons nominated shall be the same as or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand (*n*).

Mode of voting.

XXV. And be it enacted, that each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not (*o*) exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper;

And when any person votes as a proxy, he shall in like manner write his own initials, and sign his

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(*m*) This is a different word from that of *residence*, noticed in p. 70, and which is used afterwards with reference to the ratepayers. It will be observed, that though the residence of the ratepayer is here expressed generally, the address of the owner is to be in the district; nevertheless, according to sect. 26, the delivery must be in the district in both cases.

(*n*) The clause does not go on to provide, as in 5 & 6 Vict. c. 57, s. 9, for the effect of this notice as regards the candidate, but probably it must be taken to have the effect of a resignation, so that the election should then cease as regards him.

(*o*) If a greater number be marked than the number to be elected, the vote will fail for uncertainty.

own name, and state also in writing the name of the corporation, company, or body of proprietors or undertakers for which he is proxy:

Provided always, that if any voter cannot write he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

Regulation as to collection of voting papers.

XXVI. And be it enacted, that the said chairman shall cause the voting papers to be collected on the day of election (*z*) by the persons appointed or employed for the purpose in such manner as he shall direct;

But no voting paper shall be received or admitted unless the same have been delivered at the address or residence as aforesaid of the voter within the parts for which the election is had, nor unless the same be collected by the persons appointed or employed for that purpose, except as next hereinafter provided (*a*):

Provided always, that if any person qualified to vote shall not have received a voting paper as aforesaid, he shall, on application before that day to the said chairman, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

(*z*) See note (*l*) on sect. 24, *ante*.

(*a*) See in 21 & 22 Vict. c. 98, s. 24, No. (6), the new provision for the appointment of a companion to the distributor and collector of votes. The provisions hitherto in force were very defective in regard to securing the due collection by the proper parties. See also in sect. 13, No. (5), of the new Act, *post*, the penalties imposed upon persons forging or otherwise acting improperly with voting papers.

Provided also, that in case any voting paper duly delivered shall not have been collected, through the default of the said chairman, or the persons appointed or employed to receive the same (*b*), the voter *in person* may deliver the same to the said chairman before twelve o'clock at noon on the day, or the first day, (as the case may be,) appointed for the examination and casting up of the votes.

Regulations as to examination of votes and elections of local boards.

XXVII. And be it enacted, that the chairman shall on the day immediately following the day of the election, and on as many days immediately succeeding as may be necessary, attend at the office of the local board of health (*c*), and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining (*d*) such persons as he may see fit;

And he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate; and the candidates to the number to be elected who, *being duly qualified,* shall have obtained the greatest number of votes, shall be deemed to be elected, and shall be certified as such by the said chairman (*e*) under his hand.

(*b*) Note, that the default of the voter or any other party than the chairman or person appointed to collect will not justify the delivery to the chairman.

(*c*) This was ruled by Lord Campbell, C. J., in *Reg.* v. *Cross,* 16 J. P. 215, to be merely directory, and that the casting up at the clerk's office was valid.

(*d*) The examination must be voluntary, as the chairman has no means of compelling attendance, neither has he power to administer an oath.

(*e*) See sect. 20, *ante,* p. 62, as to the majority of votes. The

Notices to be sent to persons elected.

And to each person so elected the said chairman shall send or deliver notice of such election;

And the said chairman shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting paper which he shall have received, to the local board of health at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward;

List of persons elected, &c. to be transmitted to local boards, who shall deposit the same, which shall be open to inspection.

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chairman is not to act merely ministerially, and return the party who may have received the greatest number of votes, but is to ascertain who are duly qualified, and return the duly qualified candidate who has the majority. *Reg.* v. *Inspector of Votes of St. Pancras*, 7 E. & B. 954. The validity of the return may be tested by an information in the nature of a *quo warranto* against any person who is returned and acts. The contrary had been held as regards a guardian, see *Ex parte Aston*, 6 A. & E. 784. But that opinion has been overruled since the case of *Q.* v. *Darley*, 12 Cl. & F. 510. Accordingly in *Q.* v. *Robinson*, 19 J. P. 724, such an information was granted in respect of the members of a local board of health, and in *Reg.* v. *Cross*, *ubi supra*, another was tried at the assizes. But though the validity of the return may be questioned in this information, the chairman's certificate as to the majority of the votes is conclusive, and no scrutiny in reference to such votes can be granted; so held by Lord Campbell, C. J., at *nisi prius* in that case. This decision, however, still leaves open questions as to the sufficiency of the qualification of the candidate and of the nominator, the regularity of the proceedings, and probably as to errors in the casting; so also illegal, partial, or corrupt conduct on the part of the returning officer might be open to investigation in such an information.

And the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made.

Penalty upon persons conducting elections neglecting to comply with provisions of this Act.

XXVIII. And be it enacted, that if the said chairman or other person charged with taking, collecting, or returning the votes at any such election as aforesaid shall neglect (*f*) or refuse to comply with any of the provisions of this Act in that behalf (*g*), he shall be liable for every such offence to a penalty not exceeding *fifty pounds* (*h*); and any person employed for the purposes of any such election, by or under the said chairman or other person charged as aforesaid, who shall be guilty of any such neglect (*f*) or refusal, shall be liable for every such offence to a penalty not exceeding *five pounds* (*i*).

Defects in election, &c. not to invalidate proceedings.

XXIX. And be it enacted, that all proceedings of the local board of health, and of any person acting as member or under the authority thereof, shall, notwithstanding any defect in the selection or

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(*f*) The penalty is incurred by mere neglect. See *King* v. *Burrell*, 9 L. J. R., Q. B. 357; 12 A. & E. 960.

(*g*) If the chairman knowing a voter to be qualified maliciously refuses to receive his voting paper, he would be liable to an action on the case at the suit of the voter. *Tozer* v. *Child*, 6 E. & B. 289. But if he, *bonâ fide* believing the voter to be not qualified, rejects the vote, though erroneously, he is not liable. S. C.

(*h*) See sect. 129, *post*, as to the recovery of this penalty.

(*i*) See, as to the recovery of this penalty, sect. 129, *post*, and also the provision in 21 & 22 Vict. c. 98, s. 13, No. (6), to prevent malpractices at these elections.

election of such board or any member thereof, be as valid and effectual as if no such defect had ever existed (*k*).

Expenses of elections to be defrayed out of general district rates.

XXX. And be it enacted, that the necessary expenses attendant upon any such election as aforesaid, and *such reasonable remuneration* (*l*) to returning officers and other persons for services performed or expenses incurred by them in relation thereto as shall from time to time be allowed by the local board of health in that behalf, shall be paid out of the general district rates to be levied under this Act.

Local board of health in Oxford and Cambridge to consist of Oxford and Cambridge improvement commissioners. 52 Geo. 3, c. lxxii. 34 Geo. 3, c. civ.

XXXI. Provided always (*m*), and be it enacted, that nothing hereinbefore contained with respect to the appointment, selection, or election of any local board of health, or member thereof, shall apply to the city of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement, (which commissioners are hereinafter called the Oxford commissioners,) or to the borough of Cambridge, or the parts within the jurisdiction of the

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(*k*) See a similar provision in 5 & 6 Vict. c. 57, s. 12, with reference to the board of guardians, and see sect. 19, *ante*, p. 62.

(*l*) The statute vests in the local board a discretion as to the amount which they are to allow, and this cannot be reviewed by any court. *Ex parte Metcalf*, 6 E. & B. 288. Hence it is desirable to settle before the election, where practicable, what allowances shall be made.

(*m*) See also 21 & 22 Vict. c. 98, s. 82, *post*.

commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third for amending and enlarging the powers of a former Act of the same reign for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within that town (which commissioners are hereinafter called the Cambridge commissioners);

And if the city of Oxford, or the parts within the first-mentioned jurisdiction, become a district under this Act, the same shall be called "the Oxford district," and the said Oxford commissioners for the time being shall, within and for such district, be the local board of health under this Act;

And if the borough of Cambridge, or the parts comprised within the jurisdiction secondly above mentioned, become a dictrict under this Act, the same shall be called "the Cambridge district," and the said Cambridge commissioners for the time being shall, within and for such district, be the local board of health under this Act.

XXXII. And be it declared and enacted (*n*), that whenever by any *such provisional order* (*o*) as

With respect to the execution of the

(*n*) It does not appear by the previous clauses that any such commissioners or trustees were to be constituted a local board. But Mr. Lawes, in his edition of this Act, explains that as it was apprehended that the general board of health might have created a local board out of such commissioners or trustees under the general language contained in sect. 10, it was necessary to introduce this section. But the new Act enables improvement commissioners, when elected by the ratepayers, to form local boards.

(*o*) See now 21 & 22 Vict. c. 98, s. 12, *post*, which dispenses with the provisional order.

Act by commissioners under local Acts in other cases.

aforesaid the commissioners or trustees acting under any local Act of parliament *are* constituted the local board of health under this Act, such commissioners or trustees shall, within and for the district to which such provisional order applies, exercise and execute the powers, authorities, and duties vested in or imposed on the local board of health by this Act, and so much of this Act as relates to the appointment, election, or selection of local boards of health shall not apply to such district.

Local board of health, in case of a district afterwards becoming a corporate borough.

XXXIII. And be it enacted, that if, after the application of this Act to any district, the parts constituting the district shall afterwards become or be entirely comprised within the limits of a corporate borough, the mayor, aldermen, and burgesses of such borough shall from and after such day as shall have been specified in the charter of incorporation in this behalf be, by the council of the borough, the local board of health within and for such district ;

And in case any day shall have been so specified, *but not otherwise*, the powers, authorities, duties, property, and liabilities of any other persons, as such local board, shall from and after that day absolutely cease and determine, and be vested in such mayor, aldermen, and burgesses, as fully to all intents and purposes as if they had always been the local board of health from the time when the district was originally constituted (*c*).

(*c*) See 20 & 21 Vict. c. 98, s. 26, *post*, which repeals so much of this section as requires a day to be fixed in the charter, and consequently takes away the restriction upon the transfer of the powers contained in the above clause.

PROCEEDINGS OF THE LOCAL BOARD.

Meetings of local boards of non-corporate districts, and regulation of business, &c.

XXXIV. And be it enacted, that the local board of health of every non-corporate district shall hold an annual meeting (*d*), and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing its powers and duties under this Act, and shall from time to time make *byelaws* (*e*) with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business by such board under this Act:

Provided always, that no business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, except in either of the districts to be called the Oxford or Cambridge districts (*f*), in which cases business may be transacted if at least *seven* members be present;

And all questions shall be decided by a majority of votes (*g*);

And the names of the members present, as well

(*d*) No particular day is pointed out when this meeting is to be held.

(*e*) See sect. 115, *post*, as to byelaws made by the local board.

(*f*) See sect. 31, *ante*, p. 76.

(*g*) Much difficulty has lately arisen in regard to the determination of the majority upon any question submitted to a body consisting of a limited number. It seems now to be established that in such cases the majority must be calculated by reckoning not only the persons who vote upon any question, but those who are present at the meeting. See *Ex parte Eynsham*, 13 Jur. 345; 12 Q. B. 398: *Reg.* v. *Griffiths*, 17 Q. B. 164: and *Reg.* v. *Overseers of Christchurch, Spitalfields*, 26 L. J. R., M. C. 68; 7 E. & B. 409.

as of those voting upon each question, shall be recorded (*a*);

And the said local board shall at their first meeting under this Act, and afterwards from time to time at their annual meeting, appoint one of their number to be *chairman* for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat;

And in case the chairman appointed as first aforesaid die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer;

And the chairman at any meeting shall have a second or casting vote in case of an equality of votes;

But nothing herein contained with respect to the appointment of chairman shall apply to any district to be called the "Oxford or Cambridge district," and in such districts the Oxford or Cambridge commissioners respectively shall appoint a chairman as heretofore.

Local boards to provide offices for transacting business, and cause a seal to be made.

XXXV. And be it enacted, that the local board of health shall from time to time provide and maintain such offices as may be necessary for transacting their business and that of their officers and servants under this Act, and (in case of a non-

(*a*) This troublesome requisition is clearly directory only, so that the validity of the decision will not be affected by the omission.

corporate district) shall cause to be made a seal for the use of such board in the execution of this Act;

And documents or copies of documents purporting to proceed from the said local board, and to be signed by any five or more members thereof, and to be sealed or stamped with such seal, or (in the case of a corporate district) to be sealed with the common seal (*b*), shall be received as *primâ facie* evidence in all courts and places whatsoever.

Committees may be appointed.

XXXVI. And be it enacted, that the local board of health may from time to time appoint out of their own number so many persons as they may think fit, for any purposes which in the opinion of the said local board would be better regulated and managed by means of a *committee:*

Provided always, that *the acts* of every such *committee* shall be submitted to the said local board for their approval (*c*).

Powers to local boards to appoint

XXXVII. And be it enacted, that the local board of health shall from time to time *appoint* (*d*) fit and

(*b*) See further sect. 149, *post*, and 21 & 22 Vict. c. 98, s. 61, *post*. In the case of a corporate district it is presumed that the seal will suffice, though there is some ambiguity in the clause. As to proof of documents under seal, see stat. 8 & 9 Vict. c. 113, ss. 1, 4.

(*c*) In many cases the approval must take the shape of confirmation or ratification, as the committees will often be called upon to act before the approval of the local board can be obtained. The clause itself refers to the management by the committee, which would be inoperative if the committee could not act *until* the approval of the board had been obtained.

(*d*) The appointment of the above-mentioned officers appears to be complete by election, and no document in writing is required. See *Smart* v. *Guardians of West Ham Union*, 10 Exc. 867; 11 Exc. 867: *Q.* v. *Greene*, 17 Q. B. 793. It will seem, in sect. 49, that, as regards the officer of health, the case is different. The local board will do well to consult the Minute of Instructions published by the late general board of health with reference to the powers and duties of their officers.

surveyor, inspector of nuisances, clerk, treasurer, &c.

proper (*c*) persons to be surveyor, inspector of nuisances, clerk, and treasurer for the purposes of this Act, and shall appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and shall make *byelaws* (*d*) for regulating the duties and conduct of the several officers and servants so appointed or employed;

And the said local board may pay (*e*), out of the general district rates to be levied under this Act, to such officers and servants, such reasonable salaries, wages, or allowances as the said local board may think proper;

And every such officer and servant shall be removable by the said local board at their pleasure,

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(*c*) It will be seen that the statute does not require any particular qualification for these officers, but generally it will be found most appropriate to select an attorney for the clerk, and an engineer or professional surveyor for the surveyor. The legality of the appointment of the superior officers may be tried in a *quo warranto* information. *Q.* v. *Guardians of St. Martin-in-the-Fields,* 17 Q. B. 149.

(*d*) See sect. 115, *post,* for the provisions relating to byelaws.

(*e*) In regard to the recovery of their salaries by officers of the local board, it has been generally considered that the only remedy was a writ of *mandamus* directed to the board, or an action on the case against the treasurer or other officer, alleging that he had the funds to pay the salary, but had neglected or refused to pay the same. It had been held that no action would lie against the board directly for the salary, (see *Bogg* v. *Pearse,* 10 C. B. 534; *Addison* v. *The Mayor of Preston,* 12 C. B. 108; *Smart* v. *West Ham Union,* 24 L. J. R. Exc. 201,) though a contract under seal might have made a difference; but the late case of *Hall* v. *Taylor,* 22 Jur. 877; 27 L. J. R., Q. B. 311, shows that where a local board is empowered to pay the salary out of the rates leviable by them, an action of debt for the amount may be maintained by the officer against the board. At the same time the judgment can seldom be enforced otherwise than by *mandamus.* See sect. 138, *post.*

[*subject, nevertheless, in the case of the removal of the surveyor, to the approval of the general board of health* (*f*):]

Same person may be surveyor and inspector of nuisances, but not clerk and treasurer.

Provided always, that the same person may be both surveyor and inspector of nuisances;

But neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to (*g*), or shall in any manner assist or officiate in the office of clerk;

And neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of treasurer;

And whosoever offends in any of the cases enumerated in this proviso shall forfeit and pay the sum of one hundred pounds, which may be recovered *by any person*, with full costs of suit, by action of debt (*h*).

Penalty upon officers, &c. interested in contracts or taking fees improperly.

XXXVIII. And be it enacted, that no officer or servant appointed or employed by or under the local board of health shall in anywise be concerned

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(*f*) No such approval is now required. See 21 & 22 Vict. c. 98, s. 8, *post*.

(*g*) The object of this prohibition, which is common in local Acts, appears to be to prevent the clerk who represents the board from holding their money, and thus to create a check upon the two officers. The clerk cannot deal with the money of the board because he does not hold it, and the treasurer must hold it until the clerk, under the direction of the board, gives him the authority to pay it away.

(*h*) See sect. 133, *post*, as to the recovery of these penalties.

or interested in any bargain or contract (*i*) made with such board for the purposes of this Act;

And if any such officer or servant be so concerned or interested, or shall under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances (*j*), he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered *by any person*, with full costs of suit, by action of debt (*k*).

Officers, &c. intrusted with money to give security, and to account.

XXXIX. And be it enacted, that before any such officer or servant enters upon any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local board of health by whom he is appointed shall require and take from him *sufficient security* (*l*) for the faithful execution of such office

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(*i*) See sect. 19 as to the meaning of this word. Sect. 25 of 21 & 22 Vict. c. 98, which applies to the disqualifications of members engaged in certain contracts, does not refer to this clause.

(*j*) It is probable that this provision is intended to apply to other persons than the local board, and to be levelled at the practice of demanding fees from persons seeking aid from the board, or exposed to proceedings by them. But the language is sufficiently general to prevent the officer receiving gratuities for extra services rendered to the board. It is to be observed that the statute applies to demands made under colour of the office, and therefore not to claims where the officer acts and makes a demand for services which he renders independently of his office. Thus the clerk may charge professionally for contracts prepared for contractors if they think proper to employ him. Perhaps also the surveyor may not be prevented from acting professionally for persons within the district, but such conduct will lead to a mischievous result.

(*k*) See sect. 133, *post*, as to the recovery of penalties.

(*l*) The local board must determine for themselves what

or employment, and for duly accounting for all monies which may be intrusted to him by reason thereof;

And every such officer or servant employed in the collection of rates under the authority of this Act shall (*m*), within *seven days* after he shall have received any monies on account of such rates, pay over the same to the treasurer, and shall, as and when the said local board may direct, deliver a list, signed by him, containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from (*n*) them;

And every officer and servant appointed or employed by or acting under the said local board shall respectively, when and in such manner as shall be required by such board, make out and deliver to them a true and perfect account in writing of all

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security they will deem sufficient. Generally the security given by collectors is a bond with two sureties. There are now several guarantee societies who will undertake to guarantee these officers; but there are usually many conditions imposed in their policies, the neglect of which invalidates the security, and the omission is seldom discovered until the security is attempted to be enforced. Moreover, they are generally determinable upon notice by the company; so that the security may fail at the time when the necessity for it becomes most urgent.

Sect. 151, *post*, exempts the bond or security given on behalf of the officer from stamp duty. In regard to the terms of the condition, it should be made to be operative, notwithstanding the change of tenure of the office or alteration of the salary in amount or mode of payment, the change of district, or the imposition of new duties upon the officer by subsequent legislation.

(*m*) This is a very precise direction, but one not very easy to be carried out universally. The local board should, however, pay great attention to it. More confidence can be felt as to the due collection from a strict observance of this provision than from any amount or kind of security.

(*n*) The local board should require an account of the collection and deposit of the rates to be laid before them at short intervals.

monies received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such monies have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over (*d*) to the treasurer all monies owing by him upon the balance of accounts;

Summary proceedings to be taken in case of failing to account, &c.

And if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such monies as aforesaid, or if for the space of *five* days after being thereunto required he fail to deliver up to the said local board all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this Act, or belonging to such board, then and in every such case a *justice* shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before *two justices* (*e*) at a time and place to be specified in the summons (*f*);

And upon the appearance of the party charged, or upon proof that the summons was personally served upon him, or left at his last known place of abode or business (*g*), and if it appear to the last-mentioned justices that he has failed to render any

(*d*) There is some vagueness here as to when the balances are to be paid over. This requisition of course applies when the term of office has expired; but the local board will probably make some additional regulation for other payments.

(*e*) See sect. 2, *ante*, as to the application of these words.

(*f*) See sect. 131, *post*, which, however, does not apply to this clause, and also refer to 21 & 22 Vict. c. 98, s. 60, *post*, as to the proceedings by the auditor.

(*g*) As defaulting officers frequently abscond, this mode of service is very usual. See the cases on the service of summons in Bastardy, and upon the County Court Acts, as to the last known place of abode.

such accounts, or to produce and deliver up any such vouchers or receipts, or any such papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, they may, by warrant under their hands and seals, commit the offender to gaol, there to remain, without bail, *until* (*h*) he shall have rendered such accounts, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made;

And if it appear that the party charged has failed to pay over any such monies as aforesaid, and that he still fails or refuses so to do, the last-mentioned justices may, by a like warrant, cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress commit him to gaol, there to remain, without bail, for a period of three months, unless such monies be sooner paid:

Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, such justice may, without previous summons, by warrant under his hand and seal, cause him to be forthwith apprehended (*i*);

(*h*) There is no limitation of time for this imprisonment; so that the prisoner, if obdurate, may remain in prison for his life; but if he render an account, and cannot pay the balance, he may be committed to prison for three months only. Whether either provision be imperative upon the justices may be questioned. Upon a similar provision in 17 Geo. 2, c. 38, s. 2, the Court of Queen's Bench held that it was in the discretion of the justices whether they would commit an overseer who neglected to account to gaol. *K.* v. *Justices of Norfolk*, 4 B. & Ad. 238.

(*i*) See also 11 & 12 Vict. c. 43, s. 2.

And in such case the said party shall, within *twenty-four hours* after apprehension, be brought before the same or some other justice (*a*), who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices:

Provided also, that no such proceedings shall be construed to relieve or discharge any surety of the offender from any liability whatsoever (*b*).

Power to appoint an officer of health.

XL. And be it enacted (*c*), that the local board of health may from time to time, if they shall think fit, appoint a fit and proper person, being a *legally qualified medical practitioner* (*d*), or a member of the medical profession, to be and be called the officer of health, who shall be removable by the said local board, and shall perform *such duties as the said general board shall direct* (*e*);

(*a*) This must be construed, however, so as to allow a longer delay if a justice cannot be found in the place within that time. See further in 11 & 12 Vict. c. 43, s. 3, as to the requisites of such warrant, and the mode and time of its execution.

(*b*) But it is a question not yet settled by any authority whether committal to prison in default of adequate distress will operate as a release of the defaulter himself.

(*c*) The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, in sect. 12, provides for the appointment of an officer of health, and prescribes his duties.

(*d*) By 21 & 22 Vict. c. 90, s. 34, these words are to signify a person registered under that Act, and by sect. 36, no person after Jan. 1, 1859, is to hold the office of medical officer of health unless so registered.

(*e*) In future the duties must, it is presumed, be directed by the local board. But it will be right to refer to the excellent code of regulations prescribed by the late general board of health, and issued under their hands and seal on the 12th February, 1851.

And the same person may be officer of health for two or more districts;

And the local board or boards of health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates to be levied under this Act, such remuneration by way of annual salary or otherwise as the said local board or boards may by order in writing determine and appoint (*f*), and (in case of a joint appointment for two or more districts) in such proportions *as the said general board* (*g*) may by order in writing determine and appoint:

[*Provided always, that the appointment and removal of the officer of health shall be subject to the approval* (*h*) *of the said general board.*]

POWERS OF THE LOCAL BOARD.

Map exhibiting system of sewerage.

XLI. And be it enacted, that the said local board of health may, if they shall think fit, cause to be prepared (*i*), or to procure, a map exhibiting a system of sewerage for effectually draining their district for the purposes of this Act, upon a scale *to be prescribed by the general board of health* (*k*);

And every such map shall be kept at the office of the said local board, and shall at all reasonable times be open to the inspection of the ratepayers of the district to which it applies.

(*f*) It must be observed that the appointment of this officer must be in writing,—at least the salary must be.

(*g*) The boards must hereafter arrange the proportion themselves.

(*h*) This approval is dispensed with by 21&22 Vict. c. 98, s. 8.

(*i*) The 10 & 11 Vict. c. 34, ss. 13—18, provides for the making of maps of districts. Sect. 143, *post*, gives a power of entry upon private lands for the purpose of survey.

(*k*) The local board must henceforth fix the scale themselves.

Expense of surveys, &c.

XLII. And be it enacted, that the expense of surveys, maps, or plans made, prepared, or procured by the local board of health for the purposes of this Act shall be defrayed out of the general district rates to be levied under this Act.

Sewers, &c. vested in local board.

XLIII. And be it enacted (*h*), that all sewers (*i*), whether existing at the time when this Act is applied or made at any time thereafter,

(Except sewers made by any *person* (*k*) or persons for his or their own profit, or for the profit of proprietors (*l*) or shareholders,

And except sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of parliament, or for the purpose (*m*) of irrigating land,

And sewers under the authority of any commissioners of sewers appointed by the Crown,)

Together with all buildings, works, materials, and things belonging or appertaining thereto, shall vest in, belong to, and be entirely under the management and control of the local board of health.

Power to purchase, &c. certain sewers.

XLIV. And be it enacted, that the local board of health may, if they shall think fit, *purchase* (*n*)

(*h*) See further, as to sewerage, 21 & 22 Vict. c. 98, s. 29.

(*i*) Note, in sect. 2, *ante*, p. 34, the distinction between *sewers* and *drains*.

(*k*) This word includes a corporation aggregate, see s. 2, *ib.*

(*l*) This word seems to apply to the case of works of an extensive character, such as canals, sluices, piers, basins, docks, and the like, where the persons engaged in the concern are frequently termed proprietors. See sect. 145, *post*.

(*m*) This purpose is not limited, as it seems, to cases under local Acts.

(*n*) This clause does not appear to give facilities to persons otherwise disabled to sell. It seems rather to confer power upon the local board of health to purchase. The word *belong*

the rights, privileges, powers, and authorities vested in any person for making sewers, or contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, works, materials, and things belonging or appertaining thereto;

And any person to whom any such rights, privileges, powers, authorities, sewers, buildings, works, materials, or things *belong* may sell and dispose of the same to or otherwise contract with the said local board;

And in case of any such sale the purchase money shall be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of such sale, and the property purchased shall vest in and belong to the local board of health purchasing the same, anything to the contrary notwithstanding:

Provided always, that, notwithstanding any such purchase, any person who previously thereto may have acquired *perpetual right* (*o*) to use any sewer so purchased shall be entitled to use the same, or any other sewer substituted in lieu thereof, in as full and ample a manner as he would or might have done if such purchase had not been made.

XLV. And be it enacted (*p*), that the local board Making alteration,

must signify such an ownership as enables the party to sell the entire interest proposed to be purchased. But sect. 84, *post*, for which 21 & 22 Vict. c. 98, s. 75, is to be substituted, incorporated the Lands Clauses Consolidation Act, 1847, under which powers applicable to persons under disability will be found, and will be available to the local board.

(*o*) Note the extensive right which alone is provided for. Apparently a limited right is not preserved.

(*p*) See in sect. 145, *post*, the restrictions which have been imposed upon the local board in regard to sewers, and the notes upon that section.

and discontinuance of sewers vested in local board.

of health shall from time to time *repair* the sewers vested in them by this Act, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act;

And the said local board *may* carry any such sewers through, across, or under any turnpike road, or any street (*c*) or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after reasonable notice in writing (*d*) in that behalf, (if upon the report of the surveyor it should appear to be necessary,) into, through, or under any lands whatsoever;

And the said local board may from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them by this Act, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary:

Provided always (*e*), that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance;

And if by reason thereof any person is deprived of the lawful use of any sewer the said local board

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(*c*) See as to the meaning of this word, sect. 2, *ante*, p. 33.

(*d*) It is not stated to whom the notice is to be given, but it is reasonable to suppose that notice should be given to the owner and occupier of the lands interfered with. As to its form and authentication, see 21 & 22 Vict. c. 98, s. 61, and as to the service see sect. 150, *post*.

(*e*) This proviso is limited to the destruction of the sewers, and does not extend to the alteration. It would enable persons interested to apply to the Court of Chancery for an injunction to stop works, and the local board could be indicted for the nuisance.

shall provide some other sewer *as effectual* for his use as the one of which he is so deprived (*f*).

As to cleansing and emptying sewers, &c. by local board.

XLVI. And be it enacted, that the local board of health shall cause the sewers vested in them by this Act to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied (*g*);

And for the purpose of clearing, cleansing, and emptying the same (*h*) they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause all or any of such sewers to communicate with and be emptied into such places as may be fit and necessary, or to cause the sewage and refuse therefrom to be collected for sale for any purpose whatsoever (*i*),

But so as not to create a nuisance (*k*).

(*f*) Note, that in this case it is not necessary that the person should have a *perpetual right*. Any dispute as to whether an effectual sewer has been made may be well settled by arbitration, although it is not provided for in terms by sect. 123. Perhaps 21 & 22 Vict. c. 98, s. 74, may be held to be applicable to this case.

(*g*) See also the provisions in sect. 22 of the Nuisances Removal Act, 1855, in the Appendix, and note (*e*), *ante*.

(*h*) This provision did not enable the local board to enter the land of a person against his consent and make a tank and reservoir or depository therein for the reception of the sewage from a sewer proposed to be made after a report from their surveyor, and a notice to the owner of the land. Where such a proceeding was proposed, the Court of Chancery interfered by an injunction. *Sutton* v. *The Mayor of Norwich*, 31 L. T. 389.

(*i*) See the additional powers conferred upon the local board in this matter by 21 & 22 Vict. c. 98, ss. 30, 31, *post*.

(*k*) This prohibition applies to private as well as public nuisances, and local boards have been restrained from carrying on works of sewerage and drainage highly important with

Penalty for making unauthorized sewers, and and building over sewers and under streets.

XLVII. And be it enacted, that it shall not be lawful to cause any sewer or drain to communicate with or to be emptied into any sewer of the local board of health,—nor to cause any building to be newly erected over any such last-mentioned sewer,—nor to cause any vault, arch, or cellar to be newly built or constructed under the carriageway of any street (*a*), without the written consent of the said local board (*b*) first had and obtained (*c*);

And whosoever offends against this enactment shall forfeit to the said local board the sum of *five pounds*, and a further penalty of *forty shillings* for every day during which the offence is continued after notice in writing (*d*) from them in this behalf (*e*);

And if any sewer, drain, building, vault, arch, or cellar be made, erected, or constructed contrary to this enactment, the said local board may cause the same to be altered, pulled down, or otherwise dealt with as they may think fit, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in the summary manner hereinafter provided (*f*).

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reference to their own district and the sanitary state of it, where, however, they created a nuisance, and an injury to the property of individuals. See *A. G.* v. *Town Council of Birmingham*, 22 J. P. 561, in which case the Court of Chancery granted an injunction to stay the execution of such works.

(*a*) See the definition in sect. 2, *ante*, p. 33. This prohibition is here introduced because such vault might interfere with the course of a sewer hereafter to be made.

(*b*) See in sect. 149 how this consent is to be given.

(*c*) The 21 & 22 Vict. c. 98, s. 72, *post*, contains a special provision enabling the sewers of the local board to be altered by other parties.

(*d*) See as to this notice 21 & 22 Vict. c. 98, s. 61, and as to the service, sect. 150, *post*.

(*e*) See as to the recovery of this penalty, sect. 129, *post*.

(*f*) See sect. 129, *post*. These words only provide for

Use of sewers by persons beyond district.

XLVIII. And be it enacted, that any owner or occupier of premises adjoining or near to, but beyond the limits of any district (*g*), may cause any sewer or drain of or from such premises to communicate with any sewer of the local board of health, upon such terms and conditions as shall be agreed upon between such owner and occupier and such local board, or, in case of dispute, as shall be settled by arbitration in the manner provided by this Act (*h*).

No new house to be built without drains, &c.

XLIX. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any house which may have been pulled down to or below the floor commonly called the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain (*i*) or drains be constructed, of such size and materials, and at such level, and with such fall as upon the report of *the surveyor* (*k*) shall appear (*l*) to be necessary

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the expenses of the alteration or pulling down. It is to be presumed that if the works have rendered damage to the sewers of the local board, they could maintain an action for compensation in respect of such damage; and, moreover, that the local board may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be quite inadequate to repair.

(*g*) See also 21 & 22 Vict. c. 98, s. 30.

(*h*) See sect. 123, *post*.

(*i*) See the interpretation of this word in sect. 2, *ante*, p. 33.

(*k*) See sect. 2.

(*l*) This clause is not framed very distinctly, but apparently the plan and specification as to the intended works must be submitted to the local board, and by them referred to the surveyor, who is to report thereupon to the board. The board must then decide as to the sufficiency of the proposed drainage, and give their directions as to the course to be followed.

and sufficient for the proper and effectual drainage of the same and its appurtenances;

And if the sea, or a sewer of the local board of health, or a sewer which they are entitled to use, be within *one hundred feet* of any part of the site of the house to be built or rebuilt, the drain or drains so to be constructed shall lead from and communicate with such one of those means of drainage as the said local board shall direct, or if no such means of drainage be within that distance, then the last-mentioned drain or drains shall communicate with and be emptied into such covered cesspool or other place, not being under any house, and not being within such distance from any house, as the said local board shall direct (*m*);

And whosoever erects or rebuilds any house or constructs any drain contrary to this enactment shall be liable for every such offence to a penalty not exceeding *fifty pounds*, which may be recovered by *any person* (*n*), with full costs of suit, by action of debt;

Local board may, upon report of surveyor that any house is without a drain, cause one to be constructed, &c.

And if *at any time*, upon the report of *the surveyor*, it appear to the said local board that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without any drain, or without such a drain or drains communicating with the sea or a sewer as is or are sufficient for the proper and effectual drainage of the same and its appurtenances, and if the sea, or a sewer of the said local board, or a sewer

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(*m*) This enactment will often render it necessary for the person proposing to rebuild to secure the rights of sewerage under the ground adjoining his property.

(*n*) See sect. 133, *post*.

which they are entitled to use, be within *one hundred feet* of any part of such house, they shall cause notice (*o*) in writing to be given to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to construct and lay down in connexion with such house and one of those means of drainage, one or more covered drain or drains, of such *materials* (*p*) and size, at such level, and with such fall as upon the last-mentioned report shall appear to be necessary;

And if such notice be not complied with the said local board may, if they shall think fit, do the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from the owner (*q*) in a summary manner (*r*), or, by order of the said local board, shall

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(*o*) As to service of notice see sect. 150, *post;* and as to its authentication, 21 & 22 Vict. c. 98, s. 61.

(*p*) It will be seen from *Austin* v. *Vestry of Lambeth*, 22 Jur. 274, that the local board have the exclusive power of deciding whether their directions are complied with in regard to the *materials* to be used. The vestry ordered a drain to be made with pipes of *stone-ware of the best kind and quality*, and the builder laid down *Aylesford pipes*, but the vestry declared that these were not stone-ware, and proceeded to remove them. Vice-Chancellor Stuart held that it was for them to determine the question, and refused to grant an injunction against them on motion. His decision was confirmed by the lords justices on appeal, 27 L. J. R., Ch. 388, 392; and the bill was afterwards dismissed with costs on the hearing, his honour being satisfied that the vestry had not acted capriciously or vexatiously. 22 Jur. 1032.

(*q*) As to the owner referred to in this section, see sect. 2, *ante*, p. 29; as to the payment of such expenses between lessor and lessee, sect. 97, *post*. If there be any difficulty, by reason of the owner not having a right to carry his drain through his neighbour's land, the local board may, perhaps, be able, by means of the authorities conferred upon them by the Acts, to obviate the difficulty.

(*r*) See sect. 129, *post*, as to the recovery of these expenses.

be declared to be *private improvement expenses*, and be recoverable as such in manner hereinafter provided (*e*).

As to construction of sewers, wells, pumps, &c. for parishes, &c. with less than 2,000 inhabitants, and in which this Act is not otherwise applied.

L. And be it enacted (*f*), that if it shall appear to a majority of not less than *three-fifths* of the rated inhabitants of any parish (*g*) 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 is herein-after provided;

And if the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at

(*e*) See sect. 90, *post*, and 21 & 22 Vict. c. 98, s. 62, which makes them a charge on the premises.

(*f*) This useful clause is sometimes adopted in small parishes, and would be more so if it were more generally known.

(*g*) There is no interpretation of the word *parish* in this Act, therefore in this clause it must have its ordinary signification; but the word *place* is of a very wide extent, and may well apply to townships or chapelries having separate overs ers.

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 (*h*), and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

Penalty on persons erecting houses without water-closets, &c.; local board may, upon report of surveyor, order water-closets, &c. to be erected in houses, whether built before or after this Act is applied, &c.

LI. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any *house* (*i*) pulled down to or below the floor commonly called the ground floor, without a *sufficient* (*k*) watercloset or privy and an ashpit, furnished with proper doors and coverings; and *whosoever offends* (*l*) against this enactment shall be liable to a penalty not exceeding *twenty pounds*;

And if at any time, upon the report of *the surveyor* (*m*), it appear to the local board of health that any house (*i*), whether built before or after the time when this Act is applied to the district in

(*h*) See sect. 9, *ante*, p. 40.

(*i*) See in sect. 2, *ante*, p. 33, the interpretation of this word, and in 21 & 22 Vict. c. 98, s. 24, *post*, what is a *new building*.

(*k*) It will be for the justices to determine whether the watercloset or privy provided be or be not sufficient. See sect. 129, *post*, as to the recovery of this penalty.

(*l*) *Quære*, whether the owner, builder, or surveyor is liable to the penalty, and when the offence is committed?

(*m*) See sect. 2, *ante*.

which it is situate, is without a *sufficient* (*d*) water-closet or privy and an ashpit, furnished with proper doors and coverings, the said local board shall give notice (*e*) in writing to the owner (*e*) or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to provide a sufficient watercloset or privy and an ashpit, so furnished as aforesaid, or either of them, as the case may require;

And if such notice be not complied with the said local board may, if they shall think fit, cause to be constructed a sufficient watercloset or privy and an ashpit, or either of them, or do such other works as the case may require;

And the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said local board shall be declared to be *private improvement expenses*, and be recoverable as such in manner hereinafter provided (*e*):

Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the said local board, a watercloset or privy may

(*d*) In every case the surveyor must determine the sufficiency of the convenience. It has been decided by the Vice-Chancellor, Stuart, and afterwards by the lords justices upon appeal, that a district board under the Metropolis Local Management Act, where there is a clause identical with the above, could not lay down any general rule proscribing the use of privies, and requiring waterclosets to be provided in all cases, and therefore where they had required waterclosets to be erected in the place of privies, in compliance with the general rule, and not with reference to the particular circumstances of the case, and were proceeding to erect them in default of the owner, it was held that the proceedings of the local board could not be supported. *Tinkler* v. *Wandsworth District Board of Works*, 22 Jur. 293.

(*e*) See notes on sect. 49, *ante*.

be so used, *they need* (*f*) *not* require the same to be provided for each house.

Certain waterclosets to be constructed in factories, &c.

LII. And be it enacted (*g*), that if at any time it appear to the local board of health, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above *twenty* in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the said local board may, if they shall think fit, by notice (*h*) in writing to the owner or occupier of such house, require them or either of them, within a time to be specified in such notice, to construct a *sufficient* (*i*) number of waterclosets or privies for the separate use of each sex;

And whosoever neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding *twenty pounds*, and a further penalty not exceeding *forty shillings* for every day during which the default is continued (*k*).

(*f*) It will be observed that the previous part of the section required the local board to require a sufficient water-closet or privy to be made, and therefore though this proviso removes that compulsion in this particular case, it does not prevent them from making the requisition when they think proper to do so.

(*g*) Though the previous section applies to such a house as is herein described, it only required a sufficient watercloset to be supplied. In this section separate privies are required for the different sexes.

(*h*) As to service and authentication of notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(*i*) The local board may properly specify the number which they think sufficient, but their decision will not conclude the question, if the owner construct what he considers sufficient, and the magistrate or jury, as the case may be, shall concur.

(*k*) As to the recovery of these penalties, see sect. 129, *post*.

Notice of building and rebuilding with respect to levels of houses, situation of privies, &c.

[LIII. ** And be it enacted (*i*), that, fourteen days at the least before beginning to dig or lay out the foundations of or for any new *house* (*k*), or to rebuild any house pulled down to the extent aforesaid (*l*), the person intending so to build or rebuild shall give to the local board of health written notice thereof, together with the level or intended level of the cellars or lowest floor, and the situation and construction of the privies and cesspools to be built, constructed, or used in connexion with such house;

And it shall not be lawful to begin to build or rebuild any such house, or to build or construct any such privy or cesspool, until the particulars so required to be stated have been approved by the said local board; and in default of such notice, or if any such house, privy, or cesspool be built, rebuilt, or constructed as aforesaid without such approval, or in any respect contrary to the provisions of this Act, the offender shall be liable to a penalty not exceeding *fifty pounds;*

And the said local board may, if they shall think fit, cause such house, privy, or cesspool to be altered, pulled down, or otherwise dealt with, as the case

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(*i*) Repealed by 21 & 22 Vict. c. 98, s. 34, which enables the local board to make byelaws as to these matters.

(*k*) It has been decided that this word applies to a toll house on a turnpike road. Where plans were given as to a new toll house to be built by trustees of a turnpike road, with privy and cesspool, and sanctioned by a local board of health, but the trustees afterwards built their privy and cesspool in a place not sanctioned by the board, it was held by the Court of Queen's Bench that the trustees were properly convicted of a penalty under this section, their local Act, under which they were enabled to build the toll house, not conflicting in this respect with the Public Health Act. *Tunstall Turnpike Road Trustees* v. *Lowndes*, 20 J. P. 374.

(*l*) In sect. 51, *ante*.

may require, and the expenses incurred by them in so doing shall be repaid by the offender, and be recoverable from him in the summary manner hereinafter provided:

Provided always, that if the said local board fail to signify their approval or disapproval of the said particulars for the space of fourteen days after receiving such notice, it shall be lawful to proceed according to such notice, if the same be otherwise in accordance with the provisions of this Act. **]

Local board to provide that drains, water closets, &c. do not become a nuisance.

LIV. And be it enacted, that the local board of health shall see and provide that all *drains* (*m*) whatsoever, and the waterclosets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health (*n*);

And the surveyor may, by written authority of the said local board (*o*), (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, watercloset, privy, cesspool, or ashpit in respect of which application is made is a nuisance or injurious to health, *but not otherwise*,) and *after twenty-four hours notice* (*p*) in writing, or in case of emergency (*q*) without notice, to the occupier of the premises to which such drain, watercloset, privy, cesspool, or

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(*m*) See in sect. 2, *ante*, the meaning of this word, which is confined to private buildings.

(*n*) See the provisions of the Nuisances Removal Act, 1855, in the Appendix.

(*o*) See in sect. 149, *post*, the requisites as to this authority.

(*p*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices from the local board.

(*q*) It is not clear who is ultimately to decide whether the case be one of emergency, but the local board must do so in the first instance.

ashpit is attached or belongs, enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, watercloset, privy, cesspool, or ashpit;

And if the drain, watercloset, privy, cesspool, or ashpit in respect of which such examination is made be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said local board;

But if upon such examination such drain, watercloset, privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment, he *shall cause the ground to be closed* (*a*), and the said local board shall cause notice in writing (*b*) to be given to the owner or occupier of the premises upon or in respect of which the examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works;

And if such notice be not complied with the person to whom it is given shall be liable to a penalty not exceeding *ten* shillings for every day during which he continues to make default (*c*), and the said local board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the *owner* (*d*) in a summary manner (*e*), or by order of the said

(*a*) See 21 & 22 Vict. c. 98. s. 33, *post*, which dispenses with the necessity of closing the ground before the works are done.

(*b*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

(*c*) See sect. 129, *post*, as to the recovery of this penalty.

(*d*) See sect. 2, *ante*, for the definition of *owner*.

(*e*) See sect. 129, *post*, and notes on sect. 49, *ante*.

local board shall be declared to be private improvement expenses, and be recoverable as such in the manner herein-after provided (*f*).

[LV. ** And be it enacted (*g*), that the local board of health shall from time to time and at all convenient times provide that all streets within their district, including the foot pavements thereof, are properly swept, cleansed, and watered, and that all dust, ashes, rubbish, filth, dung, and soil thereon are collected and removed; Cleansing streets, removal of dust, &c.

And they may make *byelaws* (*h*) with respect to the removal by the occupier or (in case of his default) by the said local board of dust, ashes, rubbish, filth, manure, dung, and soil (*i*) collected, placed, or found in or about any house, stable, cow-house, street, or place whatsoever, and for preventing the deposit thereof in or by the side of any street, so as to be a nuisance to any person, and with respect to the times and manner of cleansing and emptying waterclosets, privies, and cesspools. **]

LVI. And be it enacted (*k*), that the local board of health may, in their discretion, provide, in proper and convenient situations, boxes or other conve- Local board to cause places for deposit of

(*f*) See sect. 90, *post*.

(*g*) Repealed by 21 & 22 Vict. c. 98, s. 32.

(*h*) See sect. 115, *post*, in regard to the byelaws of the board.

(*i*) These words did not authorize the local board in making a byelaw for the removal of *snow*. *Q.* v. *Mary Wood*, 5 E. & B. 49. But see the provision in 21 & 22 Vict. c. 98, s. 32, which enables them to make byelaws for the prevention of nuisances arising from *snow* and other matters. Reference also should be made to the Nuisances Removal Act, 1855, in the Appendix, for the powers thereby given for the removal of filth and rubbish from private premises.

(*k*) The last part of this section is repealed by 21 & 22 Vict. c. 98, s. 32, which makes fresh regulations as to these subjects.

soil, dust, &c. to be provided.

niences for the temporary deposit or collection of dust, ashes, and rubbish,

And also fit buildings and places for the deposit of the sewage, soil, dung, filth, ashes, dust, and rubbish collected by such board (*a*);

[**And (*b*) all sewage, soil, dung, filth, ashes, dust, and rubbish so collected by the said local board, or in any convenience provided as aforesaid, shall be vested in and be sold and disposed of by such board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned;

And (*b*) whosoever, without the consent of the said local board, collects or removes any sewage, soil, dung, filth, ashes, dust, or rubbish belonging to them, shall for every such offence be liable to a penalty not exceeding forty shillings. **]

Public necessaries.

LVII. And be it enacted, that the local board of health may, if they think fit, provide and maintain, in proper and convenient situations, waterclosets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of *the district rates* (*c*) to be levied under this Act.

Offensive ditches, drains, &c. to be cleansed or covered.

LVIII. And be it enacted (*d*), that the local board of health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains,

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(*a*) See further 21 & 22 Vict. c. 98, s. 30, *post*, as to the power of purchasing depositories for sewage.

(*b*) These two paragraphs are repealed by 21 & 22 Vict. c. 98, s. 32.

(*c*) Now out of the general district rate only.

(*d*) The first part of this section appears to apply to public nuisances, and therefore the board is required to remove them. The second part applies to private nuisances, and with regard to them notice is to be given to the person causing the nui-

and places 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;

And they shall cause written notice (*e*) to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require;

And if the person to whom such notice is given fail to comply therewith, the said local board *shall* execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner (*f*), or by order of the said local board shall be declared to be private improvement expenses (*g*), and be recoverable as such in the manner hereinafter provided:

Provided always, that the said local board may order that the whole or a portion of the expenses incurred in respect of any such last-mentioned works be defrayed out of the *special* (*h*) *or* general

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sance, or the owner or occupier of the premises, to remove the nuisance, and in his default, the local board are to execute the works, and recover the expenses from such person. It seems that here they have no discretion. Reference may be well made to the Nuisances Removal Act of 1855, 18 & 19 Vict. c. 121, s. 31, in the Appendix.

(*e*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, *post*, as to the service and authentication of notices.

(*f*) See sect. 129, *post*.

(*g*) See sect. 90, *post*.

(*h*) The special district rates are now abolished by 21 & 22 Vict. c. 98, s. 54, *post*.

district rates to be levied under this Act, and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly.

Penalties for keeping swine, &c. in improper situations, allowing waste water to remain in cellars, &c.

LIX. And be it enacted (*b*), that whosoever keeps any swine or pigstye in any dwelling house, *or* so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any cellar or place within any dwelling house for twenty-four hours after written notice (*c*) to him from the local board of health to remove the same, and whosoever allows the contents of any water-closet, privy, or cesspool to overflow or soak therefrom, shall for every such offence be liable to a penalty (*d*) not exceeding *forty shillings*, and to a further penalty of *five shillings* for every day during which the offence is continued;

And the said local board shall (*e*) abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided (*f*);

Removal of filth, on cer-

And if at any time it appear to the inspector of

(*b*) The provisions contained in the Nuisances Removal Act of 1855, Part II. in the Appendix, will be found to apply to the subjects of this clause.

(*c*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

(*d*) See sect. 129, *post*, as to the recovery of this penalty. The continuance referred to must be after the conviction, otherwise there is no time from which the time is to be calculated.

(*e*) Here the local board are required to abate. They appear to have no discretion.

(*f*) Note, that in this case the occupier, and not the owner, is responsible. See sect. 129, *post*, as to the recovery of the penalty.

nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, *he* (*g*) shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; tificate of inspector of nuisances.

And if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the said local board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned (*h*).

LX. And be it enacted, that if upon the certificate of the officer of health (*i*) (if any), or of any *two medical practitioners* (*k*), it appear to the local board of health that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious or contagious disease, the said local board shall give notice in writing (*l*) to the owner or occupier of such house or part Houses to be purified, on certificate of officer of health, or of two medical practitioner.

(*g*) Note, that the inspector is required to give this notice, whereas the local board are to give the notice in the former part of the clause.

(*h*) A similar provision exists in the Nuisances Removal Act. The expenses of the removal shall be recoverable from the occupier, owner, or person causing the accumulation. 21 & 22 Vict. c. 98, s. 32, No. 5. As to the district fund account see sect. 87, *post*.

(*i*) See sect. 40, *ante*.

(*k*) See note (*d*) on sect. 40.

(*l*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of the notice.

thereof to whitewash, cleanse, or purify the same, as the case may require (*l*);

And if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding *ten shillings* for every day during which he continues to make default;

And the said local board may, if they shall think fit, cause such house, building, or part thereof, to be whitewashed, cleansed, or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided (*m*).

Slaughter-houses to be registered.

[LXI. ** And be it enacted (*n*), that every building or place used as a slaughter-house (*o*) shall within three months after this Act is applied to the district in which it is situate, or, in the case of a building or place *newly* used as a slaughter-house after that time, within *three* months after the commencement of such user, be registered by the owner or occupier thereof at the office of the said local board in a book which shall be kept by such board for that purpose;

And whosoever uses or suffers to be used any building or place as a slaughter-house without its being registered as required by this Act, shall be liable for every such offence to a penalty not ex-

(*l*) Provisions to meet this grievance are contained in the Nuisances Removal Act of 1855, which, however, requires an order of justices to enforce the removal of the nuisance.

(*m*) See notes on sect. 49, *ante*, and as to the recovery, sect. 129, *post*.

(*n*) Repealed by 21 & 22 Vict. c. 98, s. 48,—sect. 45, containing provisions applicable to slaughter-houses.

(*o*) See the interpretation of this word in sect. 2, *ante*.

ceeding *five pounds*, and a further penalty not exceeding *ten shillings* for every day during the continuance of the offence after written notice thereof from the said local board. **]

Local board may provide slaughter-houses and make bye-laws with respect to slaughter-houses in general.

LXII. And be it enacted (*p*), that the local board of health may from time to time, if they shall think fit, provide premises for the purpose of being used as slaughter-houses;

[** (*q*) *And they shall make byelaws* (*r*) *for and with respect to the management and charges for the use of the premises so reported, and with respect to the inspection of all slaughter-houses, and for keeping the same in a cleanly and proper state* (*q*):**]

Provided always, that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by any local Act of parliament passed before the passing of this Act for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough, or place (*s*).

Power to inspector of nuisances to enter places used for sale of butcher's meat, &c.

LXIII. And be it enacted (*t*), that the inspector of nuisances may and he is hereby empowered, at all reasonable times (*u*), with or without assistants, to enter into and inspect any shop, building, stall, or place kept or used for the sale of butcher's meat,

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(*p*) The 21 & 22 Vict. c. 98, s. 45, *post*, incorporates the provisions of the Towns Improvement Clauses Act, 1847, regarding slaughter-houses, as to which see Appendix.

(*q*) Repealed by 21 & 22 Vict. c. 89, s. 48, for the future.

(*r*) See sect. 115, *post*, as to the byelaws of the board.

(*s*) See also the saving contained in 21 & 22 Vict. c. 98, s. 50, *post*, which extends to persons and other companies than those mentioned above.

(*t*) See also the Nuisances Removal Act, 1855, sect. 26, and the authority given for the inspection of slaughter-houses by 10 & 11 Vict, c. 34, s. 131, both in the Appendix.

(*u*) No previous notice is required to be given; indeed if

poultry, or fish, or as a slaughter-house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish (*g*) which may be therein;

And in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same (*h*) may be seized;

And if it appear to a justice, upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food;

And the person to whom such animal, carcase, meat, poultry, game, flesh, or fish belongs (*i*), *or* in whose custody the same is found, shall be liable to a penalty not exceeding *ten pounds* for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, so found, which penalty may be recovered before *two justices* in the man-

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it were so, the object of the search would often be defeated, as the corrupted articles might be removed.

(*g*) The 18 & 19 Vict. c. 121, s. 26, extends to fruit, vegetables, corn, bread, or flour, and describes all the articles as exposed for sale or in preparation for sale or use, or landed from any vessel in any port. The language of the text above is quite general. The 10 & 11 Vict. c. 14, s. 15, also provides for the seizure of unwholesome meat and other articles exposed for sale in market places and fairs.

(*h*) The inspector must be careful not to seize any articles which cannot be brought within the above description; moreover, he cannot deal with any article when seized until he obtains an order of a justice.

(*i*) Some question may arise in regard to the ownership of some of these articles, because they may have been sold though not delivered. Hence proceedings may be taken against the person having the custody. Guilty knowledge on the part of the person proceeded against must be proved, or at least if it be disproved, the penalty cannot, it is presumed, be enforced.

ner hereinafter provided with respect to penalties the recovery whereof is not expressly provided for (*k*).

Offensive trades newly established to be subject to regulation of local board of health.

LXIV. And be it enacted, that the business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture, shall not be *newly* established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent (*l*) of the local board of health,

[*Unless the said general board* (*m*) *shall otherwise direct ;*]

And whosoever offends (*n*) against this enactment shall be liable for each offence to a penalty of *fifty pounds*, and a further penalty of *forty shillings* for each day during which the offence is continued (*o*);

(*k*) See sect. 129, *post*. The 10 & 11 Vict. c. 34, s. 131, imposes a penalty upon the owner of the slaughter-house who obstructs the inspector.

(*l*) See in sect. 149, *post*, how the consent is to be given.

(*m*) Their direction cannot henceforth be given. See 21 & 22 Vict. c. 98, s. 8. See 18 & 19 Vict. c. 121, s. 27, in Appendix, as to noxious trades.

(*n*) The offence would be committed by the establishment of the business, *i. e.*, by the beginning to work, but not by the mere erection of the building or premises. But notice of the objection to the establishment of the business should be given as soon as possible.

It is well to refer to the late cases of *Walker* v. *Selfe*, 20 L. J. R., Ch. 633 ; and *Hole* v. *Barlow*, 22 Jur. 1019, in which it is held that the exercise of a lawful trade in a proper and convenient place is justifiable though it be a private nuisance to a neighbour, but if the place be not convenient, and there be a nuisance to the neighbour, the continuance of the trade will be prevented by the Court of Chancery.

(*o*) See in sect. 129, *post*, the provision for the recovery of penalties. The continuance must refer to the conviction.

And the said local board may from time to time make such *byelaws* (*a*) with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof.

Act not to affect present law as to nuisances.

LXV. And be it declared and enacted, that nothing in this Act shall be construed to render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

Common lodging houses to be registered.

LXVI. And be it enacted, that it shall not be lawful to keep any common lodging house unless the same be registered as next hereinafter mentioned (*b*); and the local board of health shall cause a register to be kept in which shall be entered the name of every person applying to register any common lodging house kept by him, and the situation of every such house;

And the said local board shall from time to time make *byelaws* (*a*) for fixing the number of lodgers who may be received into each house so registered, for promoting cleanliness and ventilation therein, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made;

(*a*) See sect. 115, *post*, as to byelaws, and sect. 129, *post*, as to the enforcing thereof.

(*b*) See the provisions of 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41, regarding common lodging houses, in the Appendix. Neither in those statutes nor elsewhere is there any definition of "a common lodging house." See Mr. Fry's note on p. 21 of his edition of the Lodging Houses Acts. But 10 & 11 Vict. c. 34, s. 116, contains a definition of a public lodging house. See Appendix, p. 382.

And the person keeping any such lodging house shall give access to the same when required by any persons who shall produce the written authority (*c*) of the said local board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process, and the expenses incurred by the said local board in so introducing or using any disinfecting process shall be recoverable by them in a summary manner (*d*) from the person keeping the lodging house in which the same shall have been used or introduced;

Penalty on neglect.

And whosoever shall receive lodgers in any common lodging house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon (*e*), any person authorized by the said local board as last aforesaid, shall for every such offence be liable to a penalty (*f*) not exceeding *forty shillings* (*g*).

Cellars, &c. newly built.

LXVII. And be it enacted (*h*), that it shall not be

(*c*) Sect. 149, *post*, and 21 & 22 Vict. c. 98, s. 61, provide for the form and authentication of this writing.

(*d*) See sect. 129, *post*.

(*e*) This limitation as to the time of entry is omitted from 14 & 15 Vict. c. 28, by sect. 16.

(*f*) See sect. 129, *post*, as to the recovery of these penalties.

(*g*) It is right to refer to 14 & 15 Vict. c. 34, which enables local boards of health, if they think proper, to establish lodging houses for the labouring classes within their district. The Act being of considerable length, and its adoption being very improbable, it has not been deemed advisable to print it in this collection.

(*h*) An important question arises, whether the whole or any part of this clause applies generally, or is limited to places where the local board of health is established. Mr. Lawes, in his edition of this Act, considered that the proviso applies generally, and cites *Richards* v. *Easto*, 1 Ex. 319. But the language of the 1st section is that the Act may be applied *in manner therein pro-*

not to be let as dwelling rooms. No cellars, &c. to be let except under certain conditions.

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 this Act, or which shall not have been so let or occupied before the passing of this 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 (*h*),—nor

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vided, to any part of England and Wales, with certain exceptions. It seems to follow that the Act is not in force except where it has been so applied. Sect. 50 indeed is in force in other places, but that is so by the terms of the clause itself. It seems also that the part of the text which relates to cellars built or occupied before the passing of the Act could not apply except within a district, otherwise the passage is inconsistent, containing two limitations of time for the commencement of its operations.

(*h*) See sect. 54, *ante*, p. 103.

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* (*i*), 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;

And 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 this Act, shall be liable for every such offence to a penalty (*k*) not exceeding *twenty shillings* (*k*) for every day during which the same continues to be so let or occupied after notice in writing (*l*) from the local board of health 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

(*i*) See sect. 2, *ante*, and sect. 151, *post*, as to the exemption from duty.

(*k*) See sect. 129, as to the recovery thereof.

(*l*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

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 this Act:

Act not to come into operation until the expiration of a certain time, in case of cellars, &c. already occupied as dwellings.

Provided also, that the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms shall not, so far as the same relate to vaults, cellars, and underground rooms which shall have been let or occupied as dwellings before the passing of this Act, come into force or operation until the expiration of one year from the passing of this Act, nor within any district until the expiration of *six* months from the time when this Act shall have been applied thereto (*c*);

Churchwardens, &c. to give notice of enactment.

And *all* churchwardens and overseers of the poor shall from time to time after the passing of this Act cause public notice (*d*) of the provisions of this 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.

Management of streets vested in local board.

LXVIII. And be it enacted, that all present and future *streets* (*e*), being or which at any time become

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(*c*) See now 21 & 22 Vict. c. 98, s. 20, as to the date of the constitution of the district.

(*d*) As the legislature have imposed this duty upon these officers, it seems that they may charge the cost of these notices upon the poor rate, as that is the only fund which they possess in common. But since no precise time is appointed for the giving of these notices, the clause has not been much observed. Of course the difficulty above adverted to, as to the extent of the operation of the clause, has tended to diminish its operation.

(*e*) See the definition of *street* in sect. 2, *ante*. Sect. 117, *post*, made the local board surveyors of the highways, and vested in such board all the powers of the surveyor of the highways.

highways (*f*) within any district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the said local board of health;

And the said local board shall from time to time cause all such streets to be *levelled*, paved, flagged, channelled, *altered*, and repaired (*g*), as and when occasion may require, and they may from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit, and place and keep in repair fences and posts for the safety of foot passengers;

And whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the

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(*f*) The 15 & 16 Vict. c. 42, enacted in sect. 13, "That the term 'highway,' in the sections of the Public Health Act, 1848, numbered respectively 68 and 69 in the copies of the Act printed by the Queen's printers, shall mean any highway repairable by the inhabitants at large." In *Sunderland, Mayor of*, v. *Herring*, 17 J. P. 741, the Court of Queen's Bench held that this enactment interpreted the clause in the text retrospectively.

(*g*) It will be observed, that there is no reference here to the rights of private individuals, nor does the Act contain any clause applicable to streets such as that which is contained in sect. 145, applicable to sewers. The principle established by *Boulton* v. *Crowther*, 2 B. & C. 703, is, that where public commissioners have conferred upon them, by statute, powers to effect works for the public good, they are not personally responsible for the damage which they cause to private individuals in the due and careful exercise of those powers: hence, where a local Act empowered a town council to alter the level of any street, the Court of Queen's Bench held that they had not exceeded their powers by erecting a bridge, in the line of street, over a canal, (*Beaver* v. *Corporation of Manchester*, 22 Jur. 23,) and were not liable in damages to a person whose house was thereby injured. And it has been

said local board (*h*), shall be liable for every such offence to a penalty (*i*) not exceeding *five pounds*, and a further sum not exceeding *five shillings* for every square foot of the pavement, stones, or other materials so displaced, taken up, or injured.

Power to compel paving, &c. of private streets.

LXIX. And be it enacted, that in case any present or future street (*k*), or any part thereof, (not being a *highway*,) (*l*) be not sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, *such board* may, by notice

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decided by the same court, that an action is not maintainable against the local board for injuring a house by lowering a street, though the access was thereby obstructed. *Bold* v. *Williams*, 21 J. P. 84. But the proper compensation might have been obtained in this case under sect. 144, *post*.

(*h*) See, as to this consent, sect. 149, *post*, and also as to the alteration of the level of sewers, 21 & 22 Vict. c. 98, s. 38. With reference to the powers of gas companies to break up the pavements in districts under Acts granted previous to this statute, see *Dover Gaslight Company* v. *Mayor of Dover*, 1 Jur. (N.S.), 812, where the powers were upheld, though the case depended upon the construction of the local Acts. In the *London and Blackwall Railway Company* v. *Board of Works for Limehouse District*, 25 L. J. R., Ch. 164, this general principle is laid down. Where the legislature has vested special powers in a particular body for certain purposes, a general Act will not override those special powers: thus, a railway company were held to be empowered to build a station which abutted upon a street in the metropolis, without the consent of the district board, their local Act, which preceded the Metropolitan Local Management Act, authorizing them to do so. See also *A. G.* v. *Northern and Eastern Railway Company*, 10 Mee. & W. 263.

(*i*) See sect. 129, as to the recovery of penalties.

(*k*) It was held that this section did not give power to the local board to make new streets and to compel the adjoining owners to pay for them, but was confined to existing streets not repairable by the parish. *Local Board of Health of Hull* v. *Jones*, 1 Hurl. & N. 489, 2 Jur. (N.S.), 1193; but this decision is now qualified by the enactment in 21 & 22 Vict. c. 98, s. 38, which, with retrospective as well as prospective operation, extends the power of the local board to public footpaths.

(*l*) See note (*f*), *ante*, p. 119.

in writing to the respective owners or occupiers (*m*) of the premises fronting, adjoining (*n*), or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, level, pave, flag, or channel (*o*) the same within a time to be specified in such notice;

And if such notice be not complied with, the said local board may, if they shall think fit, execute the works mentioned or referred to therein (*p*);

And the expenses incurred by them in so doing shall be paid by the *owners* (*q*) in default, according to the frontage of their respective premises, and in such proportion as shall be settled by *the* surveyor (*r*), or in case of dispute as shall be settled by arbitration (having regard to all the circumstances of the case) in the manner provided by this Act (*s*);

And such expenses may be recovered from the last-mentioned owners in a summary manner (*t*), or

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(*m*) See sect. 150, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of this notice.

(*n*) In *Baddeley* v. *Gingell*, 1 Exc. Rep. 319, houses and buildings in a yard communicating with a high street by a covered gateway, which houses and buildings abutted on houses in the high street, were held to be situated *in a street*, so as to be liable to a paving rate.

(*o*) The 21 & 22 Vict. c. 98, s. 38, extends these requisitions to *lighting*, *metalling*, and *making good*.

(*p*) After doing the works, the local board had no authority to keep them in repair. *Cunningham* v. *Local Board of Wolverhampton*, 7 E. & B. 113. This decision is corrected by 21 & 22 Vict. c. 98, s. 38. In regard to the steps to be taken by the local board, see sect. 85, *post*.

(*q*) Note, that the notice is given to the owner *or* occupiers, but the owners only are responsible for these expenses.

(*r*) This means the surveyor of the board. See sect. 2, *ante*.

(*s*) It is not clear what is meant by the parenthesis. Such consideration must necessarily arise in the arbitration provided for in sect. 123, *post*. The 21 & 22 Vict. c. 98, s. 63, *post*, concludes the parties, if notice of dispute be not given within *three months*.

(*t*) See notes on sect. 49, *ante*, and sect. 129, *post*.

the same may be declared by order of the said local board to be private improvement expenses, and be recoverable as such in the manner herein-after provided (*b*).

Certain streets not highways to be deemed such, and be repaired by local board.

LXX. And be it enacted (*c*), that if any present or future street, not being a *highway* at the time when this Act is applied to the district in which it is situate, be sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, the said local board may, if they shall think fit, by notice in writing put up in any part of the street declare the same to be a *highway*, and thereupon the same shall become a *highway*, and be from time to time repaired by them out [of] the rates levied *in that behalf* (*d*) under the authority of this Act;

And every such notice shall be entered amongst the proceedings of the said local board:

Provided always, that no street shall become a *highway* as last aforesaid if within one month after notice in writing shall have been put up as last aforesaid the *proprietor* of such street, or the person representing or entitled to represent such proprietor,

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(*b*) See ss. 90, 103, *post*. Though this clause provides a summary remedy for the recovery of these expenses, yet where a local Act incorporating the provisions of this Act enabled the expenses under that Act to be recovered by action, it was held that the local board were justified in suing. *Mayor of Sunderland* v. *Herring*, 17 J. P. 741.

(*c*) It is proper here to notice that 21 & 22 Vict. c. 98, ss. 44, 45, incorporates the clauses in 10 & 11 Vict. c. 34, s. 89, which relate to the management and conduct of persons in the public streets, and they are set out in the Appendix.

(*d*) A difficult question arose as to what rates are here referred to; however 21 & 22 Vict. c. 98, s. 37, has removed it by making express provision for the repairs of the highways.

shall by notice in writing to the said local board object thereto (*e*).

Power to require gas and water pipes to be moved.

LXXI. And be it enacted, that if and when for the purposes of this Act the local board of health deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks laid in or under any street, they may by notice in writing (*f*) require the person to whom the pipes, mains, plugs, or works belong to raise, sink, or otherwise alter the situation of the same in such manner and wthin such reasonable time as shall be specified in such notice, and the expenses attendant upon or connected with any such alteration shall be paid by the said local board out of the general district rates levied under this Act;

And if such notice be not complied with, the said local board may make the alteration required:

Provided always, that no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual;

(*e*) See the explanation of this proviso in 21 & 22 Vict. c. 98, s. 42, particularly with reference to joint proprietors. Unfortunately there is no definition of the word proprietor, which is not a legal term having any distinct meaning. See *Lister* v. *Lobley*, 7 A. & E. 125, where it was held in a clause of a local Act giving compensation for damage to *owners or proprietors* that these words applied not only to the owners in fee simple, but to lessees of the same for terms of years also.

(*f*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices. See in sect. 72 of the latter Act the authority now given to the local board tc enable companies to divert or alter the level of their sewers or pipes under public streets.

Provided also, that where under any local Act of parliament the expenses attendant upon or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks, are or shall be directed to be borne by the person to whom such pipes or works belong, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

Notice to be given to local board before laying out new streets, who shall fix the levels and widths thereof.

[LXXII. ** And be it enacted (*a*), that one month at the least before any street is newly laid out as aforesaid written notice shall be given to the local board of health, showing the intended level and width thereof;

And the level and width of every such street shall be fixed by the said local board, and it shall not be lawful to lay out, make, or build upon any such street, otherwise than in accordance with the level and width so fixed, *unless upon disapproval by the said local board of the level or width specified in such notice the general board of health shall otherwise direct;* and whosoever shall lay out, make, or build upon any such street, otherwise than in accordance with the level and width fixed by the said local board, [*or approved by the said general board,*] shall be liable for every such offence to a penalty not exceeding twenty pounds for every day during which he shall permit or suffer such street to continue to be so improperly laid out, made, or built upon;

(*a*) Repealed by 20 & 21 Vict. c. 98, s. 34, which enables the local board to frame and pass byelaws as to the making of streets.

And the said local board may, if they shall think fit, cause any such street laid out or made at a level or width otherwise than in accordance with the level and width so fixed or approved as aforesaid, or any building built in any such street otherwise than in accordance with such level and width, to be altered in such manner as the case may require, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in a summary manner (*b*) :

Provided always, that if no such level or width be fixed, and no approval or disapproval of the level or width proposed be signified by the said local board within one month from the last-mentioned notice, the intended street may be laid out and made upon the level and of the width specified in such notice, if the same be otherwise in accordance with the other provisions of this Act. **]

Local board may purchase premises in order to improve streets.

LXXIII. And be it enacted, that the said local board may, by agreement, purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, and any part of the premises so purchased which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account hereinafter mentioned (*c*).

(*b*) See sect. 129, *post*.

(*c*) See further 21 & 22 Vict. c. 98, s. 36.

Local boards of health may contract for lighting.

The 12 & 13 Vict. c. 94, s. 8, reciting that *it is expedient that the local boards of health for the execution of the Public Health Act*, 1848, *should be invested with certain powers not included in that Act*, enacted, "that the said local boards constituted under the said Public Health Act may contract for any period not exceeding three years at any one time with

Public Pleasure Grounds.

Local board may provide places of public recreation, &c.

LXXIV. And be it enacted, that the local board of health, [*with the approval of the said general board of health* (*c*),] may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure grounds, and support or contribute towards any premises provided for such purposes by any person whomsoever (*d*).

Supply of Water.

Local board to provide sufficient supplies of water, and may erect waterworks, &c.

LXXV. And be it enacted, that the local board of health may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act and for private use to the extent required by this Act;

And for those purposes or any of them the said local board may from time to time, [*with the approval of the general board of health* (*c*),] contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such water-

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any company or person for the supply of gas or oil, or other means of *lighting* the streets, roads, and other open places, markets, and public buildings within their respective districts, and may provide such lamps, lamp posts, and other materials and apparatus as such local boards respectively may think necessary for lighting the same; and the expenses incurred by any such local board in so doing shall be defrayed out of the general [*or special*] (1) district rates (*as the nature of the case may require*) levied under the said Public Health Act." This is taken from 10 & 11 Vict. c. 34, s. 119. See also the provision in 21 & 22 Vict. c. 98, s. 46, *post*.

(*c*) Not now to be obtained. It is dispensed with by 21 & 22 Vict. c. 98.

(*d*) This clause will be found greatly to aid the measures which are now frequently adopted for the establishment of parks adjoining populous towns. See also 10 & 11 Vict. c. 34, s. 135.

The statutes which provide for the procuring of public libraries and public museums are 8 & 9 Vict. c. 43, and 13 & 14

(1) No special district rate can be levied since 21 & 22 Vict. c. 98, s. 54.

works, and do and execute all such works, matters, and things as shall be necessary and proper;

And any waterworks company may contract with the local board of health to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their waterworks to any local board of health willing to take the same (*e*);

In case of waterworks constructed by local board, the water may be kept constantly under pressure.

And the said local board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling house within the district supplied:

Local board not to construct waterworks, &c. if any waterworks company within their district be able and willing to supply water upon terms.

Provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said local board shall give notice in writing (*f*) to every waterworks company within whose limits the said local board may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the said local board;

And it shall not be lawful for the said local board to construct or lay down any waterworks within such

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Vict. c. 65, which, however, have been repealed and superseded by 18 & 19 Vict. c. 70, intituled "An Act for further promoting the Establishment of Public Libraries and Museums in Municipal Towns, and for extending it to Towns governed under Local Improvement Acts, and to Parishes."

(*e*) Refer to the provisions in 10 & 11 Vict. c. 34, ss. 122, 123, incorporated by 21 & 22 Vict. c. 98, s. 45, and see sect. 53, extending the powers of companies to sell.

(*f*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said local board, [*and* (*e*) *upon such terms as shall be certified to be reasonable by the general board of health, after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate)*] upon such terms as shall be settled by arbitration in the manner provided by this Act (*f*);

And in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said local board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act (*f*).

Local board may require that houses be supplied with water, &c. in certain cases.

LXXVI. And be it enacted (*g*), that if upon the report of *the surveyor* (*h*) it appear to the local board of health that any house is without a proper supply of water, and that such a supply of water can be furnished thereto at a rate not exceeding *twopence* per week, the said local board shall give notice in writing (*i*) to the *occupier* (*k*), requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose;

(*e*) This condition has ceased. The local board and the company must therefore agree upon the terms or refer the question to arbitration.

(*f*) See sect. 123, *post*.

(*g*) See the additional powers granted to the local board in regard to water supply in 21 & 22 Vict. c. 98, s. 51, *post*.

(*h*) See sect. 2, *ante*.

(*i*) As to notice see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(*k*) Sect. 51 of the new Act imposes the expenses upon the

And if such notice be not complied with the said local board may, if they shall think fit, do such works and obtain such supply accordingly, and make and levy water rates upon the premises, not exceeding in the whole the rate of twopence per week, in manner hereinafter provided (*l*), as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water rates for the same;

And the expenses incurred by them in doing such works as last aforesaid shall be private improvement expenses, and be recoverable as such in the manner hereinafter provided (*m*).

Water for public baths or trading or manufacturing purposes.

LXXVII. And be it enacted, that the local board of health may, if they shall think fit, supply water from any waterworks *purchased* (*n*) or constructed by them under this Act to any *public baths or wash-houses* (*o*), or for trading or manufacturing purposes, upon such terms and conditions as may be agreed (*p*) upon between the said local board and the persons desirous of being so supplied.

Maintenance and construction of

LXXVIII. And be it enacted, that the local board of health may (*q*) cause all existing public

owner only, and therefore requires him to be served with the notice.

(*l*) See sect. 93, *post*.

(*m*) See note (*e*) on sect. 49, *ante*, and sect. 103, *post*, and as to appeal against this order, sect. 120.

(*n*) Under sect. 75. See further 21 & 22 Vict. c. 98, s. 53.

(*o*) The Acts relating to public baths and wash-houses are 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61. See 21 & 22 Vict. c. 98, s. 47, *post*, and the Acts in the Appendix.

(*p*) Those terms should be clearly set out in writing in the form of a regular contract.

(*q*) There is a difference in the language used in the two parts of this clause, and this difference leads to a reasonable interpretation that the local board must maintain existing public

public cisterns for gratuitous use.

cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water other such works equally convenient;

And the said local board may, if they shall think fit, construct any number of new cisterns, pumps, wells, conduits, and works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor (*a*) or borough rates.

Penalty for injuring waterworks, diverting streams, or wasting water.

LXXIX. And be it enacted, that whosoever shall wilfully or carelessly break, injure, or open any lock, cock, waste pipe, or waterworks belonging to or under the management or control of the local board of health, or constructed, continued, or maintained under this Act (*b*), in any parish or place in which there shall be no local board of health,

Or shall unlawfully flush, draw off, divert, or take water from any waterworks belonging to or under the management or control of the said local board, or so constructed, continued, or maintained in any such parish or place (*b*), or from any waters or streams by which such waterworks are supplied,

Or shall wilfully or negligently waste or cause to be wasted any water with which he is supplied by the said local board,

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cisterns, and pumps and wells, but they may exercise their own discretion as to constructing such public conveniences in future. In 10 & 11 Vict. c. 34, s. 121, now incorporated herewith, the word used in reference to existing works is *shall*, not *may*.

(*a*) See note (*o*) on sect. 77.

(*b*) This refers to sect. 50. Reference may be made to 21 & 22 Vict. c. 98, s. 66, in regard to injury to the works of the local board.

Shall for every such offence forfeit a sum not exceeding *five* pounds, and a further penalty of *twenty* shillings for each day whilst the offence is continued after *written notice* (*c*) in that behalf,

Which penalties (*d*) shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the church-wardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place:

Provided always, that nothing herein contained shall prevent the owner or occupier of any premises through or by which any streams may flow from using the same as they would have been entitled to do if this Act had not been passed.

Penalties on persons for causing water in reservoirs to be fouled;

LXXX. And be it enacted, that whosoever shall bathe in any stream, reservoir, conduit, aqueduct, or other waterworks (*e*) belonging to or under the management or control of the local board of health, or in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained under this Act (*f*) in any parish or place in which there shall be no local board of health,

Or shall wash, cleanse, throw, or cause to enter therein any animal, rubbish, filth, stuff, or thing of any kind whatsoever (*g*),

(*c*) As to the notice from the local board of health, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61; but in the case of parishes acting under sect. 50, a notice from the overseers would seem to be sufficient.

(*d*) As to the recovery of penalties, see sect. 129, *post*, and 21 & 22 Vict. c. 98, s. 67, *post*, as to the application of penalties.

(*e*) See the extensive signification of this word in sect. 2, *ante*.

(*f*) According to sect. 50.

(*g*) *Quære*—Does this interfere with the prescriptive rights

Or shall cause or permit or suffer to run or be brought therein the water of any sink, sewer, drain, engine, or boiler, or other filthy, unwholesome, or improper water,

Or shall do anything whatsoever whereby any water belonging to the said local board or under their management or control, or whereby any water of or contained in any such reservoir, conduit, aqueduct, or other waterworks (*g*) so constructed, continued, or maintained in any such parish (*h*) or place as aforesaid shall be fouled,

Shall for every such offence forfeit a sum not exceeding *five pounds* (*i*), and a further sum of *twenty shillings* for each day whilst the offence is continued after written notice (*k*) in that behalf;

Which penalties shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place;

and on proprietors of gasworks, &c.

And whosoever, being proprietor of any gasworks, or being engaged or employed in the manufacture or supply of gas, causes or suffers to be brought or to flow into any stream, reservoir, conduit, aqueduct, or waterworks belonging to or under the management or control of the said local board, or into any drain or pipe communicating therewith,

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which may have been obtained by parties thus to use any stream or aqueduct prior to the acquisition thereof by the local board? It will be seen that the last clause contains an express reservation of the rights of private owners, but the same is not extended to this clause.

(*g*) See the extensive signification of this word in sect. 2, *ante*.

(*h*) According to sect. 50.

(*i*) As to the recovery of this penalty see sect. 129, *post*.

(*k*) See note (*c*) on sect. 79, *ante*, p. 131.

any washing or other substance produced in the manufacture or supply of gas, or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks is fouled, shall forfeit to the said local board for every such offence the sum of *two hundred pounds*, and, after the expiration of twenty-four hours notice in writing from them in this behalf (*k*), a further sum of *twenty pounds* for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled;

And every such penalty shall be recoverable, with full costs of suit, by action of debt (*l*);

And if any water supplied by, belonging to, or under the management or control of the said local board, be fouled *in any manner* (*m*) by the gas of any such proprietor or person as last aforesaid, he shall forfeit to the local board for every such offence a sum not exceeding *twenty pounds* (*n*), and a further sum not exceeding *ten pounds* for every day whilst the offence is continued after the expiration of twenty-four hours notice in writing (*k*) from the said local board in this behalf;

(*k*) As to the service and authentication of notice see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(*l*) See sect. 133, *post*, and see the provisions in 18 & 19 Vict. c. 121, ss. 23—25, in the Appendix.

(*m*) Two mischiefs are provided for: one is the wilful causing of washings from the gasworks to flow into the waterworks of the local board of health, for which the heavy penalty of 200*l*. is imposed; the other is the negligent or careless act on the part of the proprietor of the gasworks which fouls the water of the board, and for this a penalty of 20*l*. is imposed. These provisions relating to gasworks are introduced from 3 & 4 Will. 4, c. 90, and 10 & 11 Vict. c. 15, s. 21.

(*n*) *Quære*, whether the smaller penalty is recoverab summarily, or by action of debt, as the larger one?

And for the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person the said local board may (*a*) lay open and examine any pipes, conduits, and works from which the gas is supposed to escape;

Provided that before beginning so to do twenty-four hours *notice* (*b*) in writing be given to the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, of the time at which the examination is intended to be made;

And if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, conduits, or works examined, the expenses of the examination shall be paid and borne by the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, and be recoverable from him in the summary manner hereinafter provided (*c*);

But if it appear that the water has not been so fouled, then such expenses, and all damages occasioned by the examination, shall be paid by the said local board out of the general district rates levied under this Act, and be recoverable from them in the summary manner hereinafter provided (*d*).

(*a*) See in sect. 143, *post*, the powers given to enforce the admission of the examiners.

(*b*) See sect. 143, *post*, and 21 & 22 Vict. c. 98, s. 61. It will be observed that as in many cases it will be difficult to ascertain to whom these works belong, the notice may be given to the managers of them.

(*c*) See sect. 129, *post*, and as to the appeal of the party aggrieved, sect. 120, *post*.

(*d*) The only clause which appears to be referred to her

Houses for Reception of the Dead.

Power to provide premises for the reception of the dead previously to interment.

LXXXI. And "for the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor," be it enacted, that the local board of health may, if they shall think fit, provide, fit up, and make *byelaws* (*e*) with respect to the management and charges for the use of rooms or premises in which corpses may be received and decently and carefully kept previously to interment;

And the said local board may, upon proper application, and subject to such regulations and at such rates and charges as shall be prescribed by any such *byelaws*, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment.

Burial Grounds.

Burial grounds, &c. dangerous to

LXXXII. And be it enacted (*f*), that if upon the representation of the local board of health, and

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is sect. 129, which, however, is not aptly framed to meet the case of proceedings against the local board.

(*e*) As to the making of byelaws, see sect. 115, *post*. See the provision as to the provision of such receptacles by burial boards in 15 & 16 Vict. c. 85, s. 42, incorporated in 16 & 17 Vict. c. 134.

(*f*) It will be proper to refer to the provisions contained in the several statutes lately passed which regulate interments: 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, 17 & 18 Vict. c. 87, 18 & 19 Vict. c. 128, and 20 & 21 Vict. c. 81, and the commentaries by Mr. Scott and Mr. Glen thereon.

This clause is practically determined for the future. But see the provision contained in 21 & 22 Vict. c. 98, s. 49, *post*, whereby the local board of health may become a burial board.

It will be seen that the clause gives no power to the local board to act in the matter beyond making a representation to the general board of health.

health may be prohibited.

after inquiry and report by a superintending inspector, notified to the lord bishop of the diocese, and made, notified, and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act, and after *inquiry by such other ways and means as the general board of health may think fit to direct, the said general board shall certify (such certificate to be published in the* London Gazette, *and in some one or more of the public newspapers usually circulated within the district,) that any burial ground situate within any district to* which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same, by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within a convenient distance from such burial ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which such certificate relates, except in so far as may be allowed by such certificate;

And whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary to this enactment, shall for every such offence be liable to a penalty of *twenty* pounds (*a*).

(*a*) See, as to the recovery of this penalty, sect. 129, *post*.

As to interments within churches or burial grounds newly erected or formed.

LXXXIII. And be it enacted (*b*), that no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship, built in any district after the passing of this Act, and no burial ground shall be made or formed within any district after the passing of this Act, *without the consent of the general board of health first had and obtained* (*c*), unless the same be made or formed upon land purchased or authorized by parliament to be appropriated for the purpose of being used as a burial ground before the passing of this Act;

And whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial ground constructed, made, or formed contrary to this enactment, shall for every such offence be liable to a penalty not exceeding *fifty pounds*, which may be recovered by any person (*d*), with full costs of suit, in an action of debt (*e*).

PURCHASE OF LANDS.

Powers to local boards to purchase lands, &c. under 8 & 9 Vict. c. 18.

LXXXIV. And be it enacted (*e*), that the local board of health, by agreement, may purchase, or take upon lease, sell, or exchange, any lands or premises for the purposes of this Act [(*f*) *and the Lands Clauses Consolidation Act*, 1845, *except the parts and enactments of that Act with respect to*

(*b*) This clause conferred no power upon the local board, and is now superseded by other enactments.

(*c*) This consent was confined to the burial ground, and not to the interment in churches, and is of course now unattainable.

(*d*) See however the restriction contained in sect. 133, *post*.

(*e*) See in 21 & 22 Vict. c. 98, the additional powers conferred upon the local board.

(*f*) The following passage in Italics is repealed by 21 & 22 Vict. c. 98, s. 75, which makes other provisions for the incorporation of "The Lands Clauses Consolidation Act, 1845."

the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties, and costs, and with respect to lands acquired by the promoters of the undertaking, but which shall not be wanted for the purposes thereof, shall, in so far as the same is consistent with this Act, be incorporated with this Act; and for the purposes of this Act, the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the local board of health mentioned in this Act;]

And all lands and premises which shall be purchased, hired, or taken on lease by the local board of health of any non-corporate district shall be conveyed, demised, and assured to such local board and their successors, in trust for the purposes of this Act, and shall be accepted, taken, and held by them as a body corporate (*f*).

CONTRACTS OF THE LOCAL BOARD.

Contracts by local board.

LXXXV. And be it enacted, that the local board of health may enter into all such contracts as may be necessary for carrying this Act into execution;

And every such contract whereof the value or amount shall exceed *ten pounds shall* (*g*) be in

(*f*) It may here be observed that no clause confers upon the local board of a non-corporate district the entire powers of a corporation. Moreover the above clause does not, as is usual, give any name which is to be used by the local board, and though sect. 35 requires them to cause a seal to be made for their use, it is not declared to be a *common seal*.

(*g*) Note the use of this word. It has been considered by many persons that the provisions of this clause were directory only. But the Court of Common Pleas have lately decided the contrary, so far as relates to the first requisites of the statute, and have held that they are imperative, so that a contract not entered into conformably with the requisites of this clause is invalid. The case before the court was one in which the board of a non-corporate district engaged with a

writing, and (in the case of a non-corporate district) sealed with the seal of the local board, by whom the same is entered into, and signed by five or more members thereof, and (in the case of a corporate district) sealed with the common seal, and *shall* (*h*) specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed;

And every contract *so* entered into, and duly executed by the other parties thereto, shall be binding on the local board by whom the same is executed, and their successors, and upon all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes:

Provided always, that the said local board may compound with any contractor or other person in

Composition for penalties in respect of

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builder to perform certain works at a sewer, but there was no contract under seal. The works were executed, but the board, when sued, pleaded that there was no contract under seal, and this was held to be a valid defence. The court proceeded upon the ground that the local board must charge the rates with the costs of this contract, and that they could not do so unless they fulfilled the exigency of the statute by entering into the contract in strict conformity with its requisitions. *Frend* v. *Dennett*, 4 Jur. (N. S.), 897.

This decision is in conformity with *Homersham* v. *Wolverhampton Waterworks Company*, 6 Exc. 137; *Lamprell* v. *The Guardians of Billericay Union*, 18 L. J. R., Exc. 282; 3 Exc. R. 283; and *Kirk* v. *The Bromley Union*, 12 Jur. 85, 2 Phill. 640, but not quite reconcilable with *Saunders* v. *St. Neots Union*, 10 Jur. 566; 8 Q. B. 810; and *Clark* v. *Cuckfield Union*, 16 Jur. 686; 21 L. J. R., Q. B. 349, and the later cases on the subject of the execution of contracts by corporate bodies.

(*h*) The principle of the above decision applies to the specification of these several matters. With reference to the question as to the nature of the contract itself, see the note on sect. 98, *post*.

breach of contracts.

respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompence as to such local board may seem proper :

Estimates to be made before commencing works.

Provided also, that *before* (*a*) contracting for the execution of any works under the provisions of this Act the said local board shall obtain from the surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial matter as of the annual expense *of repairing the same* ;

Also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, *or* for executing and also maintaining the same in repair during a term of years or otherwise (*b*) :

As to contracts above

Provided also (*c*), that before any contract of the

(*a*) This proviso, however, is only directory, and the obtaining the estimate and report from the surveyor is not a condition precedent to the entering into the contract. Therefore the local board will be liable for a breach of the contract entered into for the performance of works though the estimate and report were not obtained. *Howell* v. *Mayor, &c. of Worcester*, 9 Exc. 457.

(*b*) Upon this proviso the Court of Queen's Bench decided, as between the board of health and their constituents, that "If the work may be both executed and repaired under the provisions of the Act there must be an estimate and report on the execution *and* the repair; but if the work may be only executed *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would be the estimate and report on repair where none can be done." *Cunningham* v. *Local Board of Wolverhampton*, 7 E. & B. 114.

(*c*) This proviso also seems to be directory only. This

value or amount of *one hundred pounds* or upwards is entered into by the said local board ten days public notice at the least shall be given expressing the nature and purpose thereof, and inviting tenders for the execution of the same ; the value of 100*l.*

And the said local board shall require and take sufficient security for the due performance of the same.

RATES.

[LXXXVI. ** And be it enacted (*d*), that whenever any expenses are incurred or to be incurred by the local board of health in making, enlarging, altering, arching over, covering, or enclosing any sewer vested or to be vested in them by this Act, or purchased or acquired by them by virtue thereof, or in or about any other works, matters, and things of a permanent nature, and executed or done for the benefit of any district or part of a district, the said local board shall make and levy, in respect of the premises situate in the district or part of a district for the benefit of which the expenses are incurred or to be incurred, a rate or rates to be called *special district rates*, of such amount as will be sufficient to discharge the amount of such expenses, and interest thereon, within such period, not exceeding Special district rate.

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appears to be the distinction to be drawn from the cases as to the different parts of the clause. Some of the requisites specify the form, manner, and contents of the contract itself. Both parties can and ought to be cognizant thereof, and consequently each must sustain the result of a failure to comply therewith. The other requisites affect only one of the parties, and consequently the neglect or failure thereof will not prejudice the other party in respect of his claim arising out of the engagement entered into under this clause.

(*d*) Repealed by 21 & 22 Vict. c. 98, s. 54, which abolishes entirely the power of making a special district rate in future. See the note thereon.

thirty years, as the said local board shall in each case determine (*e*):

Provided always, with respect to the cost of making any such new sewer, that if it appear to the said local board that any premises were sufficiently drained before the new sewer was made they shall deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the said local board may, under all the circumstances of the case, deem to be just (*f*). **]

District fund account to be kept.

LXXXVII. And be it enacted, that the treasurer shall keep a separate account, to be called "The District Fund Account," and the monies carried to such account under the directions of this Act shall be applied by the local board of health in defraying such of the expenses incurred or to be incurred by the said local board in carrying this Act into execution, and not otherwise expressly provided for, as they may think proper;

General district rate.

And the said local board (*g*) shall from time to time, when and as often as occasion may require,

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(*e*) In *Dorling* v. *Epsom Board of Health*, 5 E. & B. 471, the Court of Queen's Bench held a special district rate to be valid which was imposed upon the whole district for works of a permanent nature from which a part of the district could derive no direct or immmediate benefit.

A question has been raised as to whether the local board could make a rate for the whole sum payable by three annual instalments, or whether they were bound to make one rate for the whole to be paid in one year, or to make successive rates in successive years. The Court of Queen's Bench were so far of opinion that the first course was correct, that they issued a rule to the justices to enforce a rate so made. *Ex parte Grumpsall Local Board*, 20 J. P. 771.

(*f*) A similar proviso is contained in 21 & 22 Vict. c. 98, s. 29.

(*g*) Though it is not desirable that a local board should act in levying rates if not duly constituted, it is nevertheless very

make and levy, in addition to any other rate (*h*), a rate or rates to be called "general district rates," for defraying such expenses as are charged upon that rate by this Act, and such other expenses of executing this Act in any district *as are not provided for by any other rate* (*i*), or defrayed out of the said district fund account.

[LXXXVIII. ** And be it enacted (*k*), that the said special and general district rates shall be made and levied upon the occupier (except in the cases herein-after provided) of all such kinds of property

Property assessable to general and district rates.

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doubtful whether the legality of the election of the board of management can be tried in resisting a district rate levied by them. *Howitt* v. *Manfull*, 6 A. & E. 736. In that case the court had required the justices to grant their distress warrant, (see 20 J. P. 772,) upon which distress the action of replevin was brought. This point was not absolutely decided, because the board held that the local board was legally constituted. It was held that the validity of the election of members of a board of guardians could not be questioned upon a *mandamus* to enforce a contribution for the relief of the poor. *Q.* v. *Guardians of St. Andrew's, Holborn*, 10 A. & E. 736.

(*h*) The rates which can be now levied by the local board are, the general district rate, the water rate, and the private improvement rate, and perhaps, in certain special cases, a burial rate.

(*i*) A question arose upon these words in respect of the rate to be levied for the repairs of the highways, and the cases of *Reg.* v. *Worthing Road Trustees*, 3 E. & B. 989; *Elmer* v. *Norwich Local Board of Health*, ib. 517; *Hanson* v. *Epsom Local Board of Health*, 5 E. & B. 599; *Moseley* v. *Ely Local Board of Health*, 6 E. & B. 518; *Barber* v. *Jessop*, 1 H. & N. 578; and *Reg.* v. *Taff Vale Railway Company*, 22 J. P. 21, were decided upon the subject. The decision at first was that where the district was coterminous with the parish, a general highway rate might be laid, though where it comprised a part of a parish only, or several parishes, a district rate, and not a highway rate, was to be levied; but ultimately the courts decided that the local board of health could not levy a highway rate. See, however, the note on sect. 117, *post*.

(*k*) Repealed by 21 & 22 Vict. c. 98, s. 55, but re-enacted with slight modifications.

as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property ascertained by the rate (if any) for the relief of the poor made next before the making of the respective assessments under this Act;

And for the purpose of making any such assessment the local board of health, or any person appointed by them so to do, may from time to time, at all reasonable times, inspect, take copies of or make extracts from, any rate for the relief of the poor within their district, or any assessments by which the same are made;

And whosoever, having the custody of such last-mentioned rate or assessment, refuses to permit such inspection, or the taking of any such copy or extract, shall for every such offence be liable to a penalty not exceeding *five pounds:*

If in any district there be no rate for relief of the poor, rates shall be made in manner prescribed by 6 & 7 Will. 4, c. 96.

Provided always, that if in any district or part of a district there be no rate for the relief of the poor, the said special and general district rates shall be made upon an estimate of the net annual value of the several premises liable thereto in such district or part of a district, by a fit person appointed by the local board of health in that behalf, and such estitimate shall be made, as near as circumstances will permit, in the manner prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," or any other Act for the time being in force for regulating parochial assessments:

Provided also, that the occupier of any land (*b*) used as arable, meadow, or pasture ground only, or

(*b*) Land occupied by a booth, used at the time of races.

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 be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof:

Exemption under local Acts.

Provided also, that if within any district or part of a district any kind (*c*) of property shall before the passing of this Act have been exempted from rating by any local Act, in respect of all or any of the purposes for which general or special district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general or special district rates under this Act. **]

Rates may be prospective or retrospective.

LXXXIX. And be it enacted, that the local board of health may make and levy the said [*special* (*d*) *and*] general district rates, or any [*or either of them*], prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses which may have been incurred at any time within six months before the making of the rate (*e*);

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but not otherwise, was held to be properly assessed at its full value, and not at the reduced rate. *Reg* v. *Briscoe*, 20 J. P. 52.

(*c*) See the decisions upon this proviso, which has led to much discussion, in the note upon 21 & 22 Vict. c. 98, s. 55, *post*.

(*d*) Abolished by 21 & 22 Vict. c. 98, s. 54.

(*e*) See, as to retrospective rates, 21 & 22 Vict. c. 98, s. 54,

Assessment to district rates in case of unoccupied premises.

And if at the time of making any general [*or special*] district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged upon any person in respect of the same whilst they continue to be unoccupied;

And if any such premises are afterwards occupied during any part of the period for which the rate was made, and before the same shall have been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made;

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post. If the rate purport to be made for the purposes of the Act, it would seem that it is valid in itself, and that any objection with reference to retrospectiveness would properly arise upon the payment by the board of the debt. The effect of the clause is therefore to legalise retrospective payments out of the rate, provided the charges or expenses have been incurred within six months before the rate. No validity is given to payments in respect of debts incurred beyond that time, except where the charges are expressly authorized by this Act. But since the decision of *Waddington* v. *The City of London Union*, in Exc. Cham., 22 J. P. 755, it will perhaps be a good ground of appeal that the rate is to be applied to pay debts due beyond the limited time. In determining what is the meaning of the term *charges*, reference must be made to *Reg.* v. *Rotheram Local Board of Health*, 22 Jur. 261; there it was held that a judgment recovered against a local board of health was a charge, and that the satisfaction thereof having been postponed by mutual agreement for a definite period, the six months did not begin to run until the expiration of that period, so that a rate could be levied within six months therefrom, and as the judgment was not satisfied the court issued a *mandamus* to the local board of health to make a rate to discharge the judgment.

Apportionment of rates between outgoing and incoming tenants, &c.

And if any owner or occupier assessed or liable to any such rate cease to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier (*f*);

And in every such case, if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable;

Parts of district may be separately assessed.

And the said local board *may* (*g*) from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the pur-

(*f*) See the provision in 17 Geo. 2, c. 38, s. 12, in reference to the poor rate. Under that statute, however, the person who is assessed is liable to the overseers for the whole of the rate, but is empowered to settle with the incoming tenant as to the proportions which each shall bear between them. By the provisions in the text the outgoing occupier is entitled to pay only a proportionate part to the board of health. Hence it must be to the interest of every ratepayer not to pay his rate as long as he can postpone it, so as to have the benefit of any possible abatement. The framer of this Act has lost the true spirit of that statute, which intended to secure the rate to the parish in full, but to provide equitably between the two occupiers. It is assumed that the rate will be made for a certain period, whereas the rate must be made at the time when there is a demand for money for the payment of charges.

(*g*) This word is not to be read as compulsorily, but according to its proper meaning as discretionary. *Dorling* v. *Epsom Board of Health*, 5 E. & B. 471. See the case of *Howell* v. *London Dock Company*, 8 E. & B. 212, for the decision of the Court of Queen's Bench upon a similar provision in 18 & 19 Vict. c. 120, s. 159.

poses of this Act, and make a separate assessment upon any such part for and in respect of all or any of the purposes for which the same is formed;

And every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act:

Provided always, that if any expenses are incurred or to be incurred in respect of two or more parts of a district in common the same shall be apportioned between them in a fair and equitable manner (*b*).

Private improvement rates.

XC. And be it enacted, that whenever the local board of health have incurred or become liable to any expenses (*c*) which by this Act are or by the said local board shall be declared to be "private improvement expenses," the said local board may, if they shall think fit, make and levy upon the occupier of the premises in respect of which the expenses shall have been incurred, except in the cases herein-after provided (*d*), in addition to all other rates, a rate or rates to be called *private improvement rates*, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding *five* pounds in the hundred, in such period not exceeding *thirty years* as the said local board shall in each case determine (*e*):

(*b*) See sect. 107, *post*, and 21 & 22 Vict. c. 98, s. 63, *post*.

(*c*) Apparently the local board must either pay those expenses out of the funds raised by their other rates, or borrow the sum required by them for those expenses in the first instance. See the duty imposed upon the local board in regard to such borrowing by 21 & 22 Vict. c. 98, s. 57, and in sect. 58 a mode of securing the repayment to the lender by means of a rentcharge to issue out of the premises.

(*d*) See the proviso following, and the clause empowering compositions by landlords.

(*e*) See the power of appeal against the decision of the local board in sect. 120, *post*, p. 174.

Provided always, that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge upon and be paid by the owner of the premises so long as the same continue to be unoccupied (*f*).

Proportion of private improvement rate may be deducted from rent.

XCI. And be it enacted, that if the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the *rackrent* (*g*), he shall be entitled (*h*) to deduct *three-fourths* of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of *three-fourths* of the rate as his rent bears to the rackrent;

And if the landlord from whose rent any deduction is made under the provision last aforesaid is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than *twenty years* is unexpired, *but not otherwise*, he

(*f*) See 21 & 22 Vict. c. 98, s. 62, *post*.

Quære.—Is the owner liable for the arrears due from the previous occupier? The more equitable construction leads to a negative conclusion, though under the next section he might have been bound to allow a large portion of the rate if paid.

(*g*) See the meaning of this word in sect. 2, *ante*.

(*h*) But this will be controlled by the language of the covenants contained in the lease. See sect. 97, *post*; and see in *Smith* v. *Humble*, 15 C. B. 321, an illustration of the principle of deduction of a tax chargeable on the owner from the rent paid to him.

may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him (*h*), and so in succession with respect to every landlord (holding for a term of which less than *twenty* years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof:

Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (*i*).

Redemption of special district and private improvement rates.

XCII. Provided always, and be it enacted, that at any time before the expiration of the period for which any [*special district rate* (*k*)] or private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the local board of health the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same (*l*).

Water rate.

XCIII. And be it enacted, that whenever and so

(*h*) Thus, the rent received by the landlord being 100*l.* and the rent paid by him being 20*l.*, if the sum deduted by the tenant be 10*l.*, the landlord may deduct 2*l.* from the rent paid to the owner in fee. This provision appears to lead to this result, that when the landlord's term is reduced below twenty years, he can no longer make the deduction though he will continue liable to allow it.

(*i*) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

(*k*) No special district rate can be imposed hereafter.

(*l*) This provision is extended, by 21 & 22 Vict. c. 98, s. 58,

long as any premises are supplied with water by the local board of health (*m*), for the purposes of *domestic use* (*n*), cleanliness, or drainage, they shall make and levy, in addition to any other rate, a water rate upon the occupier, except (*o*) as hereinafter provided:

And the rate so made shall be assessed upon the net annual value of the premises, ascertained in the manner herein-before (*p*) prescribed with respect to the said [*special and*] general district rates;

And when several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses shall be charged with the payment of water rates, in the same manner as if each house had been supplied with water by a separate pipe:

Agreements with Universities.

Provided always, that in any district to be called the Oxford or Cambridge district the local board of health, *with the consent of the said general board* (*q*)

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to the rentcharges granted under it. See also the provision contained in sect. 146, *post*, whereby the local board are empowered to extend the time for the repayment of expenses by the owner, though perhaps that clause does not extend to the above-mentioned rates.

(*m*) See sect. 76, *ante*.

(*n*) The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling house, and used for the sole accommodation of the occupier, was held to be *for domestic use* in *Busby, app., The Chesterfield Waterworks and Gaslight Company, resp.*, 22 Jur. 757; 27 L. J., Q. B. 238.

(*o*) *Quære*, what is here referred to? Perhaps the agreement with the Universities. Mr. Lawes in his edition of the Act refers to the clause which renders the owners liable to be assessed instead of the occupiers.

(*p*) In sect. 88.

With reference to this and the next clause refer to the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, ss. 68, 69, 70.

(*q*) Now dispensed with. See 21 & 22 Vict. c. 98, s. 8, *post*.

may supply water to any hall, college, or premises of the University within such district, upon such terms with respect to the mode of paying for such supply as shall from time to time be agreed upon between such University, or any hall or college thereof, and the said local board (*f*).

Water rate payable in advance.

XCIV. And be it enacted, that the said water rate shall be payable in advance (*g*);

Power to stop water in case of non-payment of rates.

And whenever any person supplied with water under the provisions of this Act neglects to pay the water rate due from him, upon demand, the local board of health may prevent the water from flowing into the premises of the defaulter in such manner as they may think fit, and may recover the arrears due, together with the expenses of stopping the supply, in the manner herein-after provided (*h*) with respect to the recovery of rates made under the authority of this Act:

Provided always, that the stopping or cutting off any supply of water by the said local board under this enactment shall not relieve any person from any penalty (*i*) or liability to which he would have been otherwise subject.

(*f*) See 21 & 22 Vict. c. 98, s. 72, *post*, as to the local boards at Oxford and Cambridge.

(*g*) This enactment can rarely be of any practical avail, except in the case of newly built or newly occupied houses, as the occupation takes place at uncertain and varying times, whereas the water rates must generally be laid at fixed times, and be assessed upon the then occupiers of the premises, and this is so provided in 10 & 11 Vict. c. 17, s. 70. But as the rate is a payment for supply, the enactment meets the objection that the water not having been supplied the party assessed ought not to be called upon to pay. See, as to the time when rates under this Act are payable, sect. 103, *post*.

(*h*) See sect. 103, *post*, and 10 & 11 Vict. c. 17, s. 74.

(*i*) See sect. 54, *ante*.

[XCV. ** Provided always, and be it enacted (*k*), that when the net annual value of any premises liable to assessment under this Act does not exceed the sum of *ten pounds*, or whenever any premises liable to such assessment are let to weekly or monthly tenants, or in separate apartments, and the rents become payable or are collected at any shorter period than quarterly, the local board of health may from time to time, if they shall think fit, compound with the owner of such premises for the payment of all or any of the rates to be made under this Act, upon such reduced estimate of the net annual value, not being less than two-thirds or more than four-fifths of the net annual value at which the premises are then assessed, as the said local board shall deem to be reasonable; and any owner who shall refuse to enter into such composition shall be rated to and pay the rates assessed upon such premises in respect of which the composition is offered (*l*); and if at any time the amount of composition, or any rate to which an owner is assessed as last aforesaid, be due and unpaid, the same may be levied by distress and sale of the goods and chattels of the owner in default, wheresoever they may be found, or of the occupier or occupiers of the premises, in the same manner as herein-after provided with respect to the recovery of rates made under this Act:

Composition for and recovery of rates upon tenements under the annual value of ten pounds, &c.

Provided always, that no such owner shall be assessed in respect of any increased rent which may become payable to him by reason of his so com-

(*k*) Repealed by 21 & 22 Vict. c. 98, s. 55, which provides, however, for composition for rates.

(*l*) This was a singular provision. If the owner refused the composition offered he was compelled to pay in full. The new provisions are more reasonable.

pounding for or becoming liable to any rates as aforesaid:

Provided also, that the occupier or occupiers of any such premises as last aforesaid shall be liable to distress and sale of his or their goods and chattels for the nonpayment of such amount of composition or rates as may become due in respect of the premises occupied by him or them during his or their tenancy, but shall never be liable to pay any greater sum than the amount of the rent actually due from him or them for such premises;

And he or they may deduct any amount paid by him or them from the rent due, or from time to time becoming due, from him or them, unless there be an agreement to the contrary;

And the receipt for the amount paid by him or them shall to that extent be, as against the owner in default, a sufficient discharge for rent. **]

Power to reduce or remit rates on account of poverty.

XCVI. Provided also, and be it enacted, that it shall be lawful for the local board of health to reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof (*a*).

Act not to affect existing agreements between landlord and tenant.

XCVII. Provided also, and be it enacted, that nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement which shall have been made or entered into between landlord and tenant before this Act is applied to the district in which the premises are situate in respect of which the lease, contract, or agreement was made (*b*).

(*a*) Such remission would not deprive the person of a parliamentary franchise on the ground of receiving parochial relief.

(*b*) See the case of *Sweet, app.*, and *Seager, resp.*, 2 C. B. (N. S.), 119, as to the construction of a covenant in a lease to pay future rates and taxes.

Estimate to be prepared before making rates.

XCVIII. And be it enacted, that the local board of health before proceeding to make any general [*or special* (*c*)] district rate or private improvement rate under this Act, *shall* cause an estimate (*d*) to be prepared of the money required for the purposes (*e*) in respect of which the rate is to be made, showing

(*c*) See note (*d*) on sect. 86, *ante*.

(*d*) This estimate appears to be a necessary precedent condition; indeed the estimate is stated by the Court of Queen's Bench to be analogous to the title to a poor rate, and if it contain any illegal purposes it is bad. *Reg.* v. *Worksop Local Board of Health*, 21 J. P. 451. Hence objection can be taken to the validity of the rate by a ratepayer on appeal against the same if the purposes are not set forth in the estimate.

(*e*) In considering what are legal or illegal purposes, it is to be remarked that the charges of an accountant employed to investigate the accounts of a local board were held by the justices at quarter sessions to be illegal, being under the circumstances of the case in their judgment unnecessary, and the Court of Queen's Bench held that this was a question for the sessions, and declined to reverse their decision. *Reg.* v, *Worksop Local Board of Health*, 21 J. P. 451.

Again, it was held by the same court that a local board could not make a district rate to pay the costs of defending certain quo warranto informations brought against individual members of the board, which did not impeach the validity of the whole board, nor the expenses of opposing a local bill brought into parliament by a gaslight company in their district for an increase of powers. But the expenses of opposing proceedings in chancery against the board for certain works which they had caused to be executed were held to be a legal charge, although the suit was not ended when payment was proposed to be made. *Reg.* v. *Marris*, 21 J. P. 581; 28 L. T. 266. It was also decided that as the rate was made for some items which were illegal, it was altogether void.

As to applications to parliament by local boards, or the opposition thereto at the costs of the rates, see *A. G.* v. *Andrews*, 2 M'N. & G. 225, 13 Jur. 669; *Bright* v. *North*, 2 Ph. 216; *A. G.* v. *Wigan*, 23 L. J. R., Ch. 429; *Reg.* v. *Commissioners of Norfolk Sewers*, 15 Q. B. 549; *A. G.* v. *Eastlake*, 17 Jur. 301, in all of which the question has been whether the boards have proceeded beyond the reasonable application of the powers intrusted to them.

In regard to what is a proceeding by a public board *ultra vires*, it will be well to refer to the *East Anglian Railway*

the several sums required for each of such purposes, the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value;

And the estimate so made shall forthwith, after being approved of by the said local board, be *entered in the rate book* (*e*), and be kept at their office, open to public inspection during office hours thereat.

Notice of rate.

XCIX. And be it enacted, that public notice of intention to make any general [*or special*] district rate, and of the time at which it is intended to make the same, and of the place where a statement of the proposed rate (*f*) is deposited for inspection,

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Company v. *The Eastern Counties Railway Company*, 11 C. B. 775, and particularly to the late case of *Bateman* v. *The Mayor, &c. of Ashton-under-Lyne*, 3 H. & N. 323, where it was held that a waterworks company having certain powers for the supply of water to a district might lawfully apply to parliament for the extension of those powers, and consequently contract with an engineer for the supply of plans and estimates essential to such application, though Bramwell, B., differed from the rest of the court in this judgment. See commentaries upon this decision in *The Law Times* for September and October, 1858.

It seems to be established that where public boards take proceedings in parliament to protect the property under their control and management, the expenses which they incur are chargeable upon the funds under their disposal; but if they originate parliamentary measures for the purpose of increasing their property or extending their powers, they must rely upon obtaining express sanction from the legislature for charging the costs upon any of their funds. In cases where the local board do take any such proceedings, they should previously obtain the consent of the ratepayers. Per Lord Campbell, C. J., in *Reg.* v. *Marris*, 28 L. T. 266.

(*e*) The proper mode of carrying this regulation into effect appears to be the entering the estimate in a page of the book preceding the rate. The local board must be careful, besides this estimate, to cause the rate to have a good *title*, otherwise it will be void. *Reg* v. *Byrom*, 12 Q. B. 326; *Moulton Overseers* v. *Eastern Counties Railway*, 5 E. & B. 974.

(*f*) It is by no means clear what is meant by this state-

shall be given by the local board of health in the week immediately before the day on which the rate is intended to be made, and *at least* (*g*) seven days previously thereto (*h*);

But in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given (*i*).

Rates to be open to inspection.

C. And be it enacted, that any person interested in or assessed to any rate made under this Act may inspect the same (*k*), and any estimate made previously thereto, and may take copies of or extracts therefrom, without fee or reward;

And whosoever, having the custody of such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall for every such offence be liable to a penalty (*l*) not exceeding *five pounds*.

Description of owner or

CI. And be it enacted, that whenever the name

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ment; probably it is the draft of the proposed rate, which being open to inspection, may be corrected, if erroneous, before the same is signed.

(*g*) These words are construed by the courts to signify that both days are to be exclusive. *R.* v. *Justices of Shropshire*, 8 A. & E. 173.

(*h*) It is not apparent for what object this notice is to be given, as no ratepayer can interfere to prevent the rate from being made.

(*i*) But if it be shown that the notice was *not* given, the question will arise whether this notice was a necessary condition precedent, or the clause directory only. It will be seen hereafter that the Court of Queen's Bench has determined that the publication of the rate according to sect. 103 is not a condition precedent, and there are no words of avoidance here.

(*k*) That is, the rate; and thus it appears that this is a different inspection from that referred to in the previous section. The estimate is that which is required by sect. 98.

(*l*) As to the recovery of the penalty, see sect. 129, *post*.

occupier in rates, if his name be unknown.

of any owner or occupier liable to be rated under this Act is not known to the local board of health, it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description (*a*).

Rates may be amended.

CII. And be it enacted, that the local board of health may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appear to the said local board that he has been underrated or overrated, or by making any other alteration which will make the rate conformable to the provisions of this Act;

And no such amendment shall be held to avoid the rate:

Provided always, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal (*b*) therefrom as he would have had if the matter of amendment had appeared

(*a*) Notwithstanding the facility which is thus given to the local board of health, it is, nevertheless, most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings where the name of the party proceeded against is not stated; moreover, if it can be shown that the name was known to the local board of health, it may perhaps be held that the use of the term *owner or occupier* is not justified. Again, it may be well questioned whether, although these words be used, the assessment will be available against an *owner* or *occupier* who may succeed to the premises.

(*b*) See sect. 135, *post*. Doubtless a ratepayer may appeal against the reduction of another person's rate if he find it out.

on the rate originally made, and with respect to him the amended rate shall be considered to have been made at the time when he first eceived *notice* of the amendment

And in the case of any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted as aforesaid, the rate shall not be payable by him until *seven* days after *such notice* shall have been given (*c*) to him.

Rates made under this Act to be published as poor rates, and collected as the local board shall appoint.

CIII. And be it enacted, that all rates made or collected under the authority of this Act shall be published *in the same manner as* poor rates (*d*), and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with *any other rate* (*e*) or tax, as the local board of health shall from time to time appoint;

Justices may summon persons for nonpayment, and in de-

And if any person assessed to any such rate fail (*f*) to pay the same when due, and for the space of *fourteen* days after the same shall have

(*c*) As to the service of notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to its authentication; but it seems that the usual demand note would be sufficient notice within this section.

(*d*) The 21 & 22 Vict. c. 98, s. 54, (2,) dispenses with publication in cases of private improvement rates. But the Court of Queen's Bench have decided that the rates made under the above section are not void if not published in the same manner as the poor rate, there being no words of avoidance in this Act as in 17 Geo. 2, c. 3. *Lefeuvre* v. *Miller*, 3 Jur. (N. S.), 1255; 26 L. J., M. C. 175.

(*e*) This must mean some other rate or tax over which the local board of health has a control. It often proves inconvenient to have several rates and taxes collected together, and therefore the authority which levies a rate ought to have exclusive power of regulating its collection. It cannot be presumed that the legislature intended that such power should be interfered with by the local board.

(*f*) The language used in the warrant set out in the schedule is *hath refused.*

fault may recover by distress.

been lawfully demanded (*e*) in writing, any justice *may* (*f*) and he is hereby empowered to summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid;

And in case the defaulter fail to appear according to the exigency of the summons, or no sufficient cause for nonpayment be shown, the justice *may* (*f*), by warrant under his hand and seal, cause the same (*g*) to be levied by distress of the goods and chattels of the defaulter:

Provided always, that if no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom such warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the last-mentioned justice shall endorse his signature upon the said warrant, and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied off the last-mentioned goods and chattels, in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction (*h*);

And if any person quit or be about to quit any premises without payment of any rate then due

(*e*) The 21 & 22 Vict. c. 98, s. 54, (5,) and s. 75, provide for the notice of demand of the rate.

(*f*) It is presumed that this is not a discretionary power conferred upon the justice, but that he must act ministerially, and the Court of Queen's Bench have decided that the justices cannot, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate. *Reg.* v. *Justices of Derbyshire*, 20 J. P. 772.

(*g*) The 21 & 22 Vict. c. 98, s. 54, extends this to the costs of the levy.

(*h*) This is analogous to the provision in 54 Geo. 3, c. 170, s. 12, relating to the poor rate.

from him in respect of such premises under this Act, and refuse to pay the same after lawful demand thereof in writing (*i*), any justice having jurisdiction where such person resides or his goods are found may and he is hereby empowered to summon him to appear, at a time and place to be mentioned in the summons, to show cause why the rate so due should not be paid;

And in case the defaulter fail to appear, or no sufficient cause for nonpayment be shown, the justice may, by warrant under his hand and seal, cause the sum to be levied by distress of the goods and chattels of the defaulter (*j*).

Form of distress warrant.

CIV. And be it enacted, that warrants of distress for the recovery of any rate payable under the authority of this Act may be in the form contained in the schedule (D.) (*k*) annexed to this Act, or to the like effect;

Penalty upon constables refusing to levy.

And any constable authorized by any such warrant who shall (*l*) neglect or refuse to make distress *or sale* (*m*), pursuant to the same, after being required

(*i*) See note (*e*), *ante*. It is to be noticed that the words apply to *refusal*, which is active, and do not extend to *neglect*, but in many cases the neglect may be considered equivalent to refusal.

(*j*) If the poor rate cannot be obtained by distress warrant, the defaulter may be committed to prison for three months, under the 43 Eliz. c. 2, s. 11, and 13 & 14 Vict. c. 45, but no power of imprisonment is given for default of distress in the case of these rates, so that the only means of recovering them is by process against the personal property of the ratepayer.

(*k*) See 21 & 22 Vict. c. 98, s. 54, *post*.

(*l*) It is not necessary to prove *wilful* neglect. *King* v. *Burrell*, 12 A. & E. 460; 9 L. J., Q. B. 357.

(*m*) The constable does not usually sell goods distrained; that is done by the collector or person levying the rate, through a sworn broker. However, in the schedule, it will be seen that the warrant is directed to the collector *and* constable.

so to do by a collector of the district in which the rate in arrear was made, shall be liable to a penalty not exceeding *five pounds* (*n*).

Quota of rates to be paid by the Universities.

CV. Provided always, and be it enacted (*o*), that nothing in this Act shall be deemed to alter or interfere with the liability of the Universities of Oxford and Cambridge respectively to contribute in the proportion of and manner specified in any local Act under which the Oxford and Cambridge commissioners respectively now act towards the expenses of paving and pitching, repairing, lighting, and cleansing, under the powers of any such local Act, the several streets, lanes, ways, alleys, passages, and places within the jurisdiction of such commissioners respectively;

And in case any difference shall arise between either of the said Universities and the local board of health with respect to the proportions and manner in which the University shall contribute towards any expenses under this Act, and to which the University is not liable under any such local Act, the same shall be settled *by the general board of health* (*p*):

Provided also, that all rates, contributions, and sums of money which may become payable under this Act by the said Universities respectively, and their respective halls and colleges, may be recovered from such Universities, halls, and colleges, in the same manner as in all respects rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

(*n*) See sect. 129, *post*, as to the recovery of this penalty.

(*o*) See 21 & 22 Vict. c. 98, s. 82, as to the local boards to be constituted at Oxford and Cambridge, wherein the authorities of the Universities, and of the city and town respectively, are to be combined.

(*p*) This provision now fails.

Evidence of rates.

CVI. And be it enacted, that the production of the books purporting to contain any rate or assessment made under this Act shall alone, and without any other evidence whatsoever, be received as *primâ facie* evidence of the making and validity of the rates mentioned therein (*q*).

Mortgage of Rates.

Rates may be mortgaged.

[CVII. * * And be it enacted (*r*), that the local board of health may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of this Act, borrow and take up at interest, on the credit of the rates authorized to be made or collected under this Act, any sums of money necessary for defraying any such costs, charges, and expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said local board may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective rates upon the credit of which the sums are borrowed;

And the respective mortgagees shall be entitled to a proportion of the rates comprised in their respective mortgages mentioned to have been advanced (*s*);

(*q*) Sect. 137, *post*, provides that no rate shall be vacated for want of form, but if the rate show on the face of it that it is defective in substance (as if there be no estimate, or if it appear to be made for illegal purposes), it is presumed that objection may nevertheless be taken to it with success. Hence it is incumbent upon local boards to prepare their rates with proper attention and care. The text only makes the production *primâ facie* evidence.

(*r*) Repealed by 21 & 22 Vict. c. 98, s. 57, for the future, though the provision is re-enacted with a few slight alterations. Mortgages made under this Act will, however, continue in force. See ss. 9 and 54 of that Act.

(*s*) See the form of security in the schedule (B). These

No priority amongst mortgagees.

And each mortgagee shall be repaid the sums so advanced, with interest, without any preference over the others of them by reason of any priority of advance or the date of his mortgage:

Provided always, that the money borrowed under the authority of this Act shall be borrowed only for works of a permanent nature, and shall not at any time exceed in the whole the assessable value for one year of the premises assessable under this Act within the district or part of the district for or in respect of which such money shall be borrowed, and shall (as far as practicable) be borrowed upon the credit of the respective rates applicable to the works, matters, or things in respect of which the money is required;

And the money borrowed for the purpose of defraying any costs, charges, or expenses incurred or to be incurred in respect of part of a district only shall be charged (as far as practicable) upon the credit of any separate rates made or to be made for the purposes of such part;

And in case any such cost, charges, or expenses shall apply to or be incurred in respect of two or more of such parts, the money borrowed in respect of the same shall be equitably apportioned by the local board upon any rates made or to be made for the purposes of such parts respectively (*d*). **]

Commissioners of public works may make advances to local boards under 5 & 6 Vict. c. 9.

CVIII. And be it enacted, that the commissioners acting in the execution of an Act passed in the second session of the fifth year of Her Majesty's reign, intituled "An Act to authorize the Advance of

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provisions in reference to the repayment have not been re-enacted in the new Act.

(*d*) See sect. 89, *ante*, p. 148.

Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorizing the Issue of Exchequer Bills for the like Purposes," and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, may, if they shall think fit, make advances to the local board of health of any district, for the purposes of this Act, upon the security of the rates to be levied by such board under this Act, and without requiring any further or other security than a mortgage of such rates.

Money to be borrowed at lower rates of interest, to pay off securities bearing a higher rate.

CIX. And be it enacted, that if the local board of health can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they shall think fit, so borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorized to mortgage under this Act with payment of the sum so borrowed, together with the interest thereon, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed upon mortgage.

Power to borrow money to pay off former mortgages.

CX. And be it enacted, that if at the time appointed by any mortgage deed for payment of the principal money secured thereby the local board of health are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the

whole or any part of the said principal monies, and may secure the repayment of the same, and the interest to be paid thereon, in the same manner in all respects as in the case of monies borrowed for defraying costs, charges, and expenses incurred by the local board of health in the execution of this Act (*a*).

Form of Mortgage.

CXI. And be it enacted, that every mortgage authorized to be made under this Act shall be by deed (*b*), truly stating the date, consideration, and the time and place of payment (*c*), and shall (in the case of a non-corporate district) be sealed with the seal of the local board of health by or on the part of whom the same is executed, and be signed by five or more members thereof, or (in the case of a corporate district) be sealed with the common seal, and may be made according to the form contained in the schedule (B.) to this Act annexed, or to the like effect (*d*);

Register of mortgages.

And there shall be kept at the office of the local board of health a register of the mortgages upon each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names

(*a*) This clause favours the propensity of all public boards to keep in debt. It will require very great forbearance to enable a public board to pass by this tempting authority.

(*b*) Which is exempt from stamp duty. See sect. 151, *post*. Though, as appears from the next section the transfer of them ortgage will not be exempt, such transfer being of no benefit to the public.

(*c*) The repayment is not, as in the case of loans authorized by the Poor Law Act, required to be made by instalments, but power is now given by 21 & 22 Vict. c. 98, s. 57, to make it so. Sect. 113, *post*, provided for the redemption of the debt by the means of a sinking fund, and this is still preserved in the new Act.

(*d*) The schedule to 21 & 22 Vict. c. 98, contains a form of rentcharge to be granted by the local board.

and description of the parties thereto, as stated in the deed (*e*);

And every such register shall be open to public inspection during office hours at the said office, without fee or reward;

And any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding *five pounds* (*f*).

Transfer of mortgages.

CXII. And be it enacted, that any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed *duly stamped*, truly stating its date and the consideration for the transfer;

Register of transfers.

And such transfers may be according to the form contained in the schedule (C.) to this Act annexed, or to the like effect;

And there shall be kept at the office of the local board of health a register of the transfers of mortgage charged upon each kind of rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall (*g*) be produced to the clerk, who shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer;

(*e*) The total omission to register, or any delay in the registration, will not invalidate the creditor's claim, though until he had registered probably he would not be able to compel payment of principal or interest.

(*f*) See sect. 129, *post*, as to the recovery of this penalty.

(*g*) This clause does not prohibit the registration after this period, nor invalidate the transfer if not registered within the time, though previous to the registration the local board are not bound to recognize the transfer.

And upon any transfer being *so* registered the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby;

And every such transferee may in like manner transfer his estate and interest in any such mortgage;

And no person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage or any money secured thereby.

Interest to be paid half yearly.

[CXIII. ** And be it enacted (*a*), that the interest secured by any mortgage authorized to be made under this Act shall, unless otherwise provided, be paid half-yearly;

Mortgage debts to be paid off by means of sinking fund.

And in order to pay off any monies borrowed and secured by any such mortgage the local board of health shall in every year, until the same be paid off, appropriate and set apart, as a sinking fund, such sum as, together with the interest from time to time to accrue thereon, will in the period of *thirty years* amount to a sum sufficient to repay the monies borrowed and secured by any such mortgage, and shall from time to time cause such sinking fund, and the interest thereon, to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise;

And whenever the said local board are enabled to pay off one or more of the mortgages charged upon the same property or rate, and are not able to

(*a*) Repealed by 21 & 22 Vict. c. 98, s. 57, though the portion relating to the sinking fund is re-enacted.

pay off the whole of the mortgages so charged, they shall, in default of arrangement between the local board of health and the mortgagees, decide by lot the order in which the same shall be paid off. **]

Receiver may be appointed in certain cases.

CXIV. And be it enacted, that if at the expiration of six months from the time when any principal money or interest has become due upon any mortgage of rates made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to *two justices* (*b*), who are hereby empowered, *after hearing the parties*, to appoint in writing under their hands and seals some person to *collect and receive* the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid ;

And upon such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid (*c*) to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them :

Provided always, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to *one thousand pounds*, or unless a joint application shall be made by two or more mortgagees or other persons to

(*b*) See sect. 2, *ante*.

(*c*) The practical effect of this would be the payment by the collectors of the rates which they collect to the receiver.

whom there may be due, after such lapse of time and demand as last aforesaid, monies collectively amounting to that sum (*d*).

BYELAWS.

Byelaws of local board not to be in force till confirmed by secretary of state.

CXV. And be it enacted, that all byelaws (*e*) made by the local board of health under and for the purposes of this Act shall be in writing under their seal (*f*), and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal;

And the said local board may by any such byelaws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of *five* pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of *forty* shillings for each day after written notice (*g*) of the offence from the said local board (*h*);

And the said local board may alter or repeal any such byelaws by any subsequent byelaws, sealed and signed or (in case of a corporate district) sealed, as last aforesaid:

(*d*) See the extension of the power of appointing a receiver, in the case where there shall be failure to elect or a lapse of the local board of health, in 21 & 22 Vict. c. 98, s. 10; in such case the receiver may *make* as well as receive and collect the rate.

(*e*) The board not being incorporated have no general power to make byelaws independently of the provisions of the Act. *Q.* v. *Mary Wood*, 5 E. & B. 49.

(*f*) As to this seal see sect. 35, *ante*, p. 81. It will be found that the making of byelaws are authorized by ss. 34, 37, 55, 62, 64, 66, and 81 of this Act, and by ss. 32, (3,) (4,) 34, and 50, (2,) of 21 & 22 Vict. c. 98, and by several sections of the incorporated Acts.

(*g*) See sect. 150, *post*, as to the service, and 21 & 22 Vict. c. 98, s. 61, as to the authentication of notice.

(*h*) The recovery of the penalty for the breach of the byelaw is provided for in sect. 129, *post*.

Provided always, that all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty :

Provided also, that no such byelaws shall be repugnant to the laws of England or to the provisions of this Act, and the same shall not be of any force or effect unless and until the same be submitted to and confirmed by one of Her Majesty's principal secretaries of state, who is hereby empowered to allow or disallow the same, as he may think proper (*i*) :

Notice of confirmation, &c.

Provided also, that no such byelaws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which such byelaws relate one month at least before the making of such application (*k*);

And for one month at least before any such application a copy of the proposed byelaws shall be kept at the office of the local board of health, and be open during office hours thereat to the inspection of the ratepayers (*l*) of the district to which such byelaws relate, without fee or reward (*m*);

(*i*) The confirmation by the secretary of state, however, gives no validity to a byelaw not warranted by the provisions of the Act. *Q.* v. *Mary Wood*, 5 E. & B. 49.

(*k*) These provisions will enable any person to apply to the secretary of state with the view of preventing the confirmation of a byelaw.

(*l*) It is presumed that any person who is actually rated to the current rate would be a ratepayer within the meaning of this clause, and that the definition given in sect. 20 is not applicable. But whether persons occupying rateable property not actually rated would be within the clause is doubtful.

(*m*) The omission of this regulation would not as it seems invalidate the byelaws.

And the clerk shall furnish every such ratepayer who shall apply for the same with a copy thereof or of any part thereof, on payment of *sixpence* for every *one hundred* words contained in such copy.

Byelaws to be printed, &c.

CXVI. And be it enacted, that all *byelaws* made by the local board of health in pursuance of this Act shall be printed, and hung up in the office of the said local board;

And copies thereof shall be delivered to any ratepayer (*m*) of the district to which such byelaws relate, upon his application for the same.

Powers transferred, &c.

Local board to be surveyors of highways;

CXVII. And be it enacted, that the local board of health within the limits of their district shall, exclusively of any other person whatsoever, execute the office of and be *surveyor of highways*, and have all such powers, authorities, duties, and liabilities as any surveyor of highways in England is now or may hereafter be invested with or be liable to by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act (*n*);

And the inhabitants of any district shall not in respect of any property situate therein be liable to

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(*m*) See note (*l*) *ante*, p. 171. It will be observed that for copies of the proposed byelaws a payment is to be paid, but not so in regard to the byelaws when made.

(*n*) This section left the power of the local board to make highway rates or to provide for the repairs of the highways out of the general district rate uncertain. Some local boards levied highway rates. But several cases were brought before the Courts as noticed in note (*i*) on sect. 87, *ante*, by which it was ultimately determined that such highway rates were not valid. The 17 & 18 Vict. c. 69 (dated 31st July, 1854) confirmed all highway rates made prior to that Act by

the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways within any parish, township, or place, or part of any parish, township, or place, situate beyond the limits of such district (*o*):

but existing surveyors to recover rates in arrear.

Provided always, that the several persons who at the time when this Act is applied to any district are surveyors of highways within the same district may recover any highway rate made in respect of the said district, and then remaining unpaid, in the same manner as if this Act had not been passed;

And the money so recovered shall be applied, in the first place, in reimbursing themselves any expenses incurred by them as such surveyors, and in discharging any debts legally owing by them on account of the highways within their jurisdiction;

And the surplus (if any) shall be paid by them to the treasurer, and carried (*p*) to the district fund account mentioned in this Act:

Provided also, that neither the allowance by justices, nor the signature by the local board of health, shall be necessary in the case of any rate made by the local board of health under this Act (*q*).

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any local board of health, and indemnified the persons acting under the authority of such board in the enforcing of them. But the whole question is set at rest for the future by the provisions now contained in 21 & 22 Vict. c. 98, s. 37, which does not, however, expressly repeal this section, though it makes additional provisions.

(*o*) See however the provision in 21 & 22 Vict. c. 98, s. 37, No. (4), as to this.

(*p*) By 21 & 22 Vict. c. 98, s. 37, No. (6), it is to be carried to another account. It will be seen that sect. 87 above, p. 142, provides for the application of monies carried to the district fund account.

(*q*) The 21 & 22 Vict. c. 98, s. 37, No. (5), contains a similar proviso in regard to the highway rate to be made by the local board hereafter. The local board do not by this section

Existing liabilities to make sewers, &c., not to be discharged.

CXVIII. And be it enacted, that, notwithstanding the application of this Act to any district, the liability (*b*) of any *person* (*c*) whomsoever to defray or contribute towards the expense of making, completing, altering, amending, or maintaining any sewer, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving or flagging or putting in order any street or part thereof within the district, shall, if incurred previously to the time when this Act is so applied, continue, and the same may be enforced, as if this Act had not been passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

Mortgage of rates to be made only with approval of general board.

[CXIX. ** And be it enacted (*d*), that it shall not be lawful for the local board of health to borrow or take up at interest any sum or sums of money upon the credit of any rates authorized to be made or collected under this Act, without the previous consent of the general board of health.**]

Parties aggrieved by

CXX. And be it enacted, that if in any case in

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obtain any power over turnpike roads. *Swinburn* v. *Robinson*, 32 L. T. 123.

(*b*) This liability exists either *ratione tenuræ*, or under the provision of some local Act of parliament. The first class contains the cases where lands are held upon condition that the holder shall keep some public work, such as sea walls or great sewers, in repair. The second class is of great variety, and depends necessarily upon the terms of the particular statute which usually, for a special benefit to the party, has imposed the obligation of repairing and sustaining some public work of the nature above adverted to. Very common instances will be found in awards under inclosure Acts, where the commissioner has imposed the obligation of keeping drains passing by, or through, or under the allotment, in repair upon the allottee.

(*c*) This word includes corporations. See sect. 2.

(*d*) Repealed by 21 & 22 Vict. c. 98, s. 57, for the future.

which the local board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improvement expenses, any person shall deem himself to be aggrieved by the decision of the said local board thereupon, he may, within *seven* days after notice (*e*) of such decision, address a memorial to the *said general board* (*f*), stating the grounds of his complaint;

proceedings of local board as to recovery of certain expenses may appeal to the general board.

And the *said general board* may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive upon the said local board (*e*);

And if the said local board shall have proceeded to recover such expenses in a summary manner, *the said general board* may, if *they* shall think fit, direct the said local board to pay to the person so proceeded against such sum as *they* may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

General Superintendence.

CXXI. And be it enacted, that during any inquiry by a superintending inspector *under this Act* (*g*) he may and he is hereby empowered to summon before him any persons whomsoever, and to

Superintending inspectors may summon witnesses, call for plans rates, &c.

(*e*) It is not provided that it shall be conclusive upon the memorialist, who perhaps may still resort to his remedy of appeal under sect. 135, *post*, if there be sufficient time before the sessions. Indeed, it seems that the object of the clause is to grant relief to a person where he has no legal remedy, as the board are to make such order as may be equitable.

(*f*) Now to one of the secretaries of state: see 21 & 22 Vict. c. 98, s. 65: who may make the order under this section. As to the obligation of his order, and the enforcing thereof, see sect. 80 of that statute.

(*g*) These powers are conferred upon the persons employed by the secretary of state under 21 & 22 Vict. c. 98, by s. 80.

examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry, and he may by any such summons require any parochial officer, or any officer of or acting under any corporation, guardians, or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of parliament in force within the district or place to which any such inquiry may relate, to produce before him any surveys, plans, sections, rate books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of such inquiry, and such inspector may examine, inspect, or take copies of any such books, surveys, plans, sections, and documents, or any of them, or part thereof;

And whosoever wilfully disobeys any such summons, or prevents any such inspector from examining, inspecting, or taking copies as last aforesaid, or refuses to answer any question put to him by such inspector for the purposes of the said inquiry, shall be liable to a penalty not exceeding *five* pounds (*a*):

Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid (*b*) or tendered to him;

And no person shall be required in any case, in obedience to any such summons, to travel more than *ten* miles from his place of abode.

(*a*) See sect. 129 as to the recovery of this penalty.

(*b*) These charges must be paid by the person serving the summons, and that person will receive the amount from his employer. Such employer may be the superintending inspector, or some other person who has applied to the inspector for the summons.

[CXXII. ** And be it enacted (*c*), that the accounts of the receipts and expenditure of the local board of health shall be audited and examined once in every year at the least, at such time or times as shall be appointed by such local board, in case of a corporate district, by the auditors of the corporate borough, whereof the whole or part is within such district, As to audit of accounts.

And in case of a district exclusively consisting of the whole or part of two or more corporate boroughs, or of one or more of such boroughs, and also of part of any such borough or boroughs, by such two of the auditors for the time being of the corporate boroughs respectively whereof the whole or part is within such district as shall from time to time be appointed by the local board of health,

And in case of any other district as soon as can be after the 25th day of March in every year, by the auditor of accounts relating to the relief of the poor for the district for the audit of such accounts, or for the parish or union in which such district under this Act is comprised, or if any district under this Act be partly situate in two or more parishes, unions, or districts for the audit of accounts, by such one of the auditors for the time being of the parishes, unions, or districts for the audit of accounts (whereof the whole or part is within such district under this Act) as shall from time to time be appointed by the local board of health;

And for the purposes of any audit and examination of accounts under this Act every such auditors or auditor may, by summons in writing, require the production before him of all books, deeds, con- Power to auditor to require production of books, &c.

(*c*) Repealed by 21 & 22 Vict. c. 98, s. 60, though the substance of this clause is re-enacted.

tracts, accounts, vouchers, and all other documents and papers which they or he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before them or him at any such audit and examination or adjournment thereof, and to make and sign a declaration with respect to the same;

Penalty on persons for neglect.

And if any such person neglect or refuse so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall be liable for every neglect or refusal to a penalty of *forty shillings*, and if he falsely or corruptly make or sign any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury;

And all accounts certified by the auditors or auditor acting under this Act shall be final and conclusive to all intents and purposes (*a*);

And such auditors or auditor shall in respect of each audit be paid by the local board of health, out of the general district rates levied under this Act, such reasonable remuneration as they shall from time to time by order in writing determine and appoint:

Provided always, that before each audit and examination of accounts under this Act the clerk shall give *ten* (*b*) days' notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers usually

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(*a*) This is not continued in the new Act, but on the contrary, an appeal is given against the auditor's decision.

(*b*) This is now by the new Act *twenty*.

circulated within the district for which the audit and examination will be made;

And a copy of the accounts to be audited and examined shall be deposited in the office of the local board of health, and be open, during office hours thereat, to the inspection of all persons interested, for seven days before the audit and examination; Accounts previous to audit to be deposited, and open to inspection, &c.

And all such persons shall be at liberty to take copies of or extracts from the same without fee or reward;

And within *fourteen* days after the audit and examination shall have been completed the auditors or auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk, who shall cause the same to be deposited in the office of the local board of health, and to be published in some one or more of the public newspapers usually circulated in the district to which it relates.**]

ARBITRATION.

CXXIII. And be it enacted (*c*), that in case of dispute (*d*) as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for (*e*), and in case of any matter which Mode of referring to arbitration.

(*c*) Those clauses relating to arbitration are taken from the Lands Clauses Consolidation Act 1845, 8 & 9 Vict. c. 18, ss. 25—37, now incorporated herewith by 21 & 22 Vict. c. 98, s. 75, *post*, and printed in the Appendix.

(*d*) See sect. 144, *post*, which refers certain questions, where the claim is under 20*l*., to two justices. The 21 & 22 Vict. c. 98, s. 64, enables two justices, where *any* matter in dispute is less than 20*l*., to settle the same by arbitration.

(*e*) *Quære* whether this exception refers to any other part of the Act than sect. 144.

by this Act is authorized or directed to be settled by arbitration (*b*), then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator, to whom the matter shall be referred;

And every such appointment when made on the behalf of the local board of health shall (in the case of a non-corporate district) be under their seal and the hands of any five or more of their number (*c*), or under the common seal in case of a corporate district, and on the behalf of any other party under his hand, or if such party be a corporation aggregate under the common seal thereof;

And such appointment shall be delivered to the *arbitrators* (*d*), and shall be deemed a submission to arbitration by the parties making the same;

And after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of *either* (*e*) party operate as a revocation;

And if for the space of *fourteen* days after any such matter shall have arisen (*f*), and notice in wri-

(*b*) Sects. 69, 75, and 105 of this Act, and ss. 69, 74, of 21 & 22 Vict. c. 98, contain special references to arbitration.

(*c*) The Court of Exchequer have lately held that where a person agreed with a waterworks company that a person nominated by two others should be appointed as arbitrator, and such person being so appointed, and awarded to the claimant a sum exceeding 50*l*., the latter was entitled to the costs of the arbitration. *Martin* v. *The Leicester Waterworks Company*, 3 H. & N. 263: 37 L. J., Exc. 432. See also *Collins* v. *South Staffordshire Railway Company*, 7 Exc. 5.

(*d*) See the interpretation of this word in sect. 2.

(*e*) These words appear at first sight to be inapplicable to the local board, but they obviate any question which might arise from the death of any one of the members who would sign the appointment of the arbitrator.

(*f*) With reference to notice from the local board, see sect. 150, and 21 & 22 Vict. c. 98, s. 61, as to its service and authentication.

ting by one party who has himself duly appointed an arbitrator to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties;

And the award (*g*) of any arbitrator or arbitrators appointed in pursuance of this Act shall be binding, final, and conclusive upon all persons, and to all intents and purposes whatsoever (*h*).

Death, &c. of one of several arbitrators;

CXXIV. And be it enacted, that if before the determination of any matter so referred any arbitrator die, or refuse or become incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead;

And if he fail so to do for the space of seven days after notice in writing (*i*) from the other party in

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(*g*) Sect. 151 exempts the award from stamp duty.

(*h*) These words are somewhat more emphatic than those used in the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 25, but the effect appears to be the same. In the case of *In re Stroud*, 8 C. B. 502, the Court of Common Pleas inquired into the merits of an award when facts were stated for their opinion by the arbitrator, though it was objected that the award was final. They confirmed the award, but left the question open as to whether they could have set it aside. In the course of the argument Maule, J., observed: "It is conceded that the court may interfere where the arbitrator has exceeded or fallen short of the authority conferred upon him." It will be seen by sect. 137, *post*, that the award is not to be vacated, quashed, or set aside for want of form, nor to be removable by *certiorari* or any other writ or process, but awards made by arbitrators are questioned in the courts of law without a writ of *certiorari*, or other process. The award itself may be produced by the party possessing it, verified by affidavit, and if it be in court it can be there examined.

(*i*) See note (*f*) on the last section.

that behalf, the remaining arbitrator may proceed *ex parte*;

And every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made;

of single arbitrator.

And in case a single arbitrator die, or become incapable to act, before the making of his award, or fail to make his award within *twenty-one* days after his appointment, or within such extended time, if any, as shall have been duly appointed by him (*a*) for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made.

Appointment of umpire by the parties;

CXXV. And be it enacted, that in case there be more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire die, or become incapable to act, the arbitrator* shall forthwith appoint another person in his stead;

* *Sic in stat.*

by quarter sessions.

And in case the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the court of general or quarter sessions shall, on the application of any such party, appoint an umpire;

And the award of the umpire shall be binding, final, and conclusive upon all persons and to all intents and purposes whatsoever (*b*);

And in case the arbitrators fail to make their award within *twenty-one days* after the day on which the last of them was appointed, or within

(*a*) There is no power expressly given to the arbitrator to extend the time for his making the award, but such a power is to be inferred from this section and sect. 126.

(*b*) See note (*h*) on sect. 123.

such extended time, if any, as shall have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire;

And the provisions of this Act with respect to the time for making an award, and with respect to extending [*to*]* the same in the case of a single arbitrator, shall apply to an umpirage.

*Sic in stat.

Time within which award must be made.

CXXVI. Provided always, and be it enacted (*c*), that the time for making an award under this Act shall not be extended beyond the period of three months from the date of the submission or from the day on which the umpire shall have been appointed (as the case may be).

Power to arbitrator to require production of documents.

CXXVII. And be it enacted, that any arbitrator, arbitrators, or umpire, appointed by virtue of this Act, may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath;

As to costs of reference.

And the costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or of the umpire (in case the matters referred are determined by an umpire under the power herein-before contained in that behalf);

Submission may be made a rule of court.

And any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts (*d*) on the application of any party thereto.

Declaration to be made by arbitrator and umpire.

CXXVIII. And be it enacted, that before any arbitrator or umpire shall enter upon any such

(*c*) This clause, by implication, enables the arbitrator to extend the time; there is no power given to him expressly to do so.

(*d*) See in sect. 2 the interpretation of this word.

reference as aforesaid, he shall make and subscribe the following declaration before a justice of the peace; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1848.

"*A. B.*"

And such declaration shall be annexed to the award when made;

And if any arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor.

LEGAL PROCEEDINGS.

Recovery of damages, &c.

CXXIX. And be it enacted (*e*), that in all cases in which the amount of any damages, costs, and expenses is by this Act directed to be ascertained or recovered in a summary manner the same may be ascertained by and recovered *before two justices* (*f*), together with such costs of the proceedings as the justices may think proper (*g*);

(*e*) Sect. 39, *ante*, provides for the proceedings to be taken against the collectors of rates by the local board, and sect. 103 provides for the recovery of rates from ratepayers in arrear. It must be observed that though 8 & 9 Vict. c. 18, s. 136, now incorporated herewith, provides for the recovery of forfeitures, penalties, and costs, (see Appendix,) yet the 21 & 22 Vict. c. 98, s. 7, renders the penalties recoverable as under this Act.

(*f*) See note on sect. 2. As regards the ascertaining of expenses it does not appear that any clause refers this to the justices; but sect. 145 enables justices to ascertain the amount of compensation for damage under 20*l*.

(*g*) The proceedings for the recovery of the penalty must be commenced within six months of the commission of the offence. 8 & 9 Vict. c. 18, s. 140, *post*, in Appendix, and 11 & 12 Vict. c. 43, s. 11. But see 21 & 22 Vict. c. 98, s. 62, *post*, as to the commencement of the time in respect of certain summary applications for the recovery of expenses.

And if the sums adjudged be not paid by the party against whom the adjudication is made the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication;

And any penalty imposed by or under the authority of this Act, or any *byelaw* made under this Act, the recovery whereof is not otherwise expressly provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before *two justices* (*h*), together with such costs of the proceedings as they may think proper;

And if the sums adjudged be not paid by the party against whom the adjudication is made the same may be levied by distress and sale of his goods and chattels (*i*), by warrant under the hands and seals of the justices making the adjudication;

And such justices or either of them may order that any offender convicted as last aforesaid be detained and kept in safe custody until return can be conveniently made to the last-mentioned warrant, unless he give sufficient security, by way of recognizance or otherwise, for his appearance on the day appointed by the return, such day not being more than eight days from the time of taking the security;

And if before issuing such warrant, or upon the return thereof, it appear to the satisfaction of the last-mentioned justices that no sufficient distress can be had within their jurisdiction, they may, by warrant under their hands and seals, cause the offender to be committed to gaol, there to remain, without

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(*h*) See note (*f*), *ante*, p. 184. (*i*) See sect. 131.

bail, for any term not exceeding three months, unless such penalty and costs be sooner paid (*a*).

Form of conviction.

CXXX. And be it enacted, that the justices before whom any person is convicted of any offence against the provisions of this Act may cause the conviction to be drawn up according to the form and directions contained in the schedule (E.) annexed to this Act, or to the like effect;

And any conviction so drawn up shall be valid and effectual to all intents and purposes (*b*).

Mode of proceeding before justices.

CXXXI. And be it enacted, that in proceeding before any justice or justices under the provisions of this Act, in any case in which the mode of proceeding is not specially prescribed (*c*), any one justice may summon the party charged to appear before the justice or justices by whom the matter is to be determined at a time and place to be named;

And upon the appearance of the party charged, or in his absence upon proof of service of the summons upon him personally, or by leaving a copy thereof at his last known place of abode or business, the last-mentioned justice or justices may hear and determine the matter, and for that purpose examine the parties or any of them, and their witnesses, on oath;

(*a*) As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action will not be maintainable, (*Vestry of St. Pancras* v. *Batterbury*, 2 C. B. Rep. (N. S.), 477, and the cases there cited, and *Mayor of Blackburn* v. *Parkinson*, 32 L. T. 91,) except where such remedy is reserved by the statute itself.

(*b*) This conviction shall not be quashed or vacated for formal defect, neither can it be removed into the superior courts by *certiorari*. See sect. 137, *post*.

(*c*) Special provisions are contained in ss. 39, 103.

And the costs of all such proceedings shall be in the discretion of the last-mentioned justice or justices ;

Distress how to be levied;

And where in this Act any sum of money whatsoever is directed to be levied by distress and sale of the goods and chattels of any party, the overplus arising from such sale shall, after satisfying such sum, and the costs and expenses of the distress and sale, be returned to him, on demand ; (*d*)

not unlawful for want of form.

And no distress levied under the authority of this Act shall be unlawful, nor shall any party making the same be a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall he be a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case (*d*).

Justices though members of local board may act under this Act.

CXXXII. And be it enacted, that justices of the peace, being also members of any local board of health, may, *if acting in petty sessions* (*e*), notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under this Act.

Common informers not to sue without

CXXXIII. And be it enacted, that no proceedings for the recovery of any penalty incurred under

(*d*) See 8 & 9 Vict. c. 18, s. 138, *post*, in the Appendix.

(*e*) Note the limited extent of this authority. The justice is not empowered to act alone, nor at the quarter sessions. The 5 & 6 Vict. c. 57, s. 15, contains a similar provision with reference to *ex officio* guardians. See also the 16 Geo. 2, c. 18, in regard to the acting of justices who may be ratepayers of the district in the enforcing of the rates.

consent of attorney-general.

the provisions of this Act shall be had or taken *by any person other than by a party grieved* (*d*), or the local board of health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where any such penalty is directed to be paid to the churchwardens and overseers of the poor), without the consent in writing of Her Majesty's attorney-general *first* had and obtained (*e*);

Proceedings for penalties to be taken within six months.

And that no such penalty shall be recovered unless proceedings for the recovery thereof shall have been commenced within six calendar months after the commission or occurrence of the offence upon which the penalty attaches (*f*);

Application of penalties.

And if the application of the penalty be not otherwise provided for, one-half thereof shall go to the informer, and the remainder to the local board of health of the district in which the offence was committed:

Provided always, that if the said local board be the informer they shall be entitled to the whole of the penalty recovered;

And all penalties or sums recovered on account

(*d*) A ratepayer in the district of the local board of health is not a party grieved by a member of the board voting in a matter wherein such member has an interest, so as to enable the former to maintain an action for a penalty without the consent of the attorney-general, *Boyce* v. *Higgins*, 14 C. B. 1. When a person disqualified is returned as a member of the board and acts, a defeated candidate at the election, or a ratepayer in the district, is not *a party grieved* within the meaning of this clause. *Hollis* v. *Marshall*, 2 Hurl. & N. 755.

(*e*) Where the consent of the attorney-general is necessary, the obtaining thereof should be alleged in the declaration. If not stated therein the declaration may be demurred to, or the want of it may be pleaded, or after verdict for the plaintiff the court will arrest the judgment, or will stay the further proceedings in the action upon motion. *Ibid.*

(*f*) See the statute 35 Eliz. c. 5, for the limitation of penal actions.

of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the *district fund* account mentioned in this Act (*g*).

Liability to penalty not to relieve from other liabilities.

CXXXIV. And be it declared and enacted, that, notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed (*h*).

Appeal to quarter sessions.

CXXXV. And be it enacted, that any person who shall think himself aggrieved by any rate made under the provisions of this Act, or by any order (*i*), conviction, judgment, or determination of or by any matter or thing done by any justice or justices, in any case in which the penalty imposed or *the sum adjudged* (*k*) shall exceed the sum of twenty shillings, may appeal to the court of general or quarter sessions holden next (*l*) after the making of the rate objected to, or accrual of the cause of complaint ;

(*g*) See sect. 87, *ante*, p. 142, and as to the application, see 21 & 22 Vict. c. 98, s. 67.

(*h*) It will be proper to refer to the powers given by the Nuisances Removal Act, 18 & 19 Vict. c. 121, ss. 28, 30, to the local authority to institute proceedings for the abatement or prevention of nuisances.

(*i*) Whether there can be an appeal against an order of justices ordering payment of a rate which itself has not been appealed against, is open to doubt. See *Ricardo* v. *Maidenhead Local Board of Health*, 2 H. & N. 257. The clauses relating to appeals in 8 & 9 Vict. c. 18, *post*, in Appendix, are now incorporated herewith by 21 & 22 Vict. c. 98, s. 75.

(*k*) These words seem to signify the sum adjudicated upon, and therefore where justices by order reciting the making of three several district rates, amounting to 4*l*. 5*s*. 6*d*. altogether, ordered them to be paid, with costs, and the amount to be levied by distress in default of payment, the Court of Exchequer, in the case cited in the last note, intimated their opinion that such order might be appealed against. See also *Reg*. v. *Justices of Warwickshire*, 6 E. & B. 837.

(*l*) See the proviso following.

But the appellant shall not be heard in support of the appeal unless within fourteen days after the making and publication (*e*) of the rate appealed against, or accrual of the cause of complaint, he give to the local board of health or justice or justices by whose act he may think himself aggrieved *notice in writing* stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal;

And the said court, upon hearing (*f*) and finally determining the matter of the appeal, shall and 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 and purposes whatsoever (*g*):

Provided always, that if there be not time to give such notice and enter into such recognizance (*h*) *as aforesaid* before the sessions holden as last aforesaid,

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(*e*) It is not always easy for parties to be aware of the actual making of the rate, though sect. 99 requires notice of the intention to make the rate to be given. And there may be no publication at all; see note on sect. 103, and 21 & 22 Vict. c. 98, s. 54. In the late case of *Reg.* v. *Nuisance Removal Committee of Middleton*, 32 L. J. 124, the Court of Queen's Bench held that a rate was not made within the meaning of similar words until notice of the rate had been served upon the party.

(*f*) Where the Court of Quarter Sessions heard an appeal against an order of justices, and quashed the same, and awarded costs to the appellant, the Court of Exchequer refused to issue a writ of prohibition to stay the judgment, on the ground that the court should not have heard the appeal. *Ricardo* v. *Maidenhead Local Board of Health*, 2 H. & N. 257.

Reference should be made to 12 & 13 Vict. c. 45, in regard to the proceedings at the sessions on the trial of the appeal.

(*g*) See also sect. 137, following.

(*h*) By an accidental omission the purport of the recognizance has not been stated.

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 (*i*).

Power of sessions upon appeals against rates.

CXXXVI. And be it enacted, that the said court of general or quarter sessions shall upon appeals under this Act against any rate have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of general or quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, upon appeals with respect to rates for the relief of the poor (*k*);

And the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded upon the last-mentioned appeals (*l*):

Provided always, that, notwithstanding the quashing of any rate appealed against, all monies charged

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(*i*) See 12 & 13 Vict. c. 45, s. 1. Additional powers appear to be given to the quarter sessions by 8 & 9 Vict. c. 18, s. 147, herewith incorporated.

(*k*) The 41 Geo. 3, c. 23, ss. 1, 6, provides for the amending and quashing of poor rates, and the 17 Geo. 2, c. 38, and 41 Geo. 3, c. 23, s. 8, provide for the awarding and recovery of costs in appeals against such rates.

(*l*) That is, by indictment for disobedience of an order of quarter sessions by warrant of distress, or according to 12 & 13 Vict. c. 45, s. 18, by process out of the Court of Queen's Bench, as upon a rule of that court for enforcing of which a remedy is given by 1 & 2 Vict. c. 110.

by such rate shall, if the court before whom the appeal is heard think fit so to order, be levied as if no appeal had been made, and such monies, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (*l*).

No rate or proceeding to be quashed for want of form, &c.

CXXXVII. And be it enacted, that no rate (*m*), nor any proceeding to be had touching the conviction of any offender against this Act, nor any order, award, or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form (*n*), or be removed or removable by *certiorari* (*o*), or other writ or process whatsoever into any of the superior courts.

Proceedings in case of non-corporate districts.

CXXXVIII. And be it enacted, that the local board of health of any non-corporate district may sue (*p*) and be sued in the name of the clerk for the

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(*l*) This provision is the same as that in 41 Geo. 3, c. 23, s. 1, respecting the poor rate.

(*m*) Where the sessions confirmed a rate made under this Act, subject to a case, the Court of Queen's Bench held that this section prevented them from granting a *certiorari* to bring it before them. *Reg.* v. *Fielding*, 17 J. P. 343.

But this objection did not prevail when the rate was quashed by the sessions, subject to a case. *Reg.* v. *Worksop Local Board of Health*, 21 J. P. 451. See also the cases cited, *post*, upon 8 & 9 Vict. c. 18, s. 145, in the Appendix, where the proceeding shows a want of jurisdiction.

(*n*) See also 12 & 13 Vict. c. 45, s. 7.

(*o*) This clause did not prevent the Court of Queen's Bench from removing a conviction by a magistrate for a breach of an illegal byelaw made by a local board of health, and confirmed by the secretary of state, the magistrate holding himself concluded by the confirmation. Upon the hearing the court quashed the conviction. *Q.* v. *Mary Wood*, 5 E. & B. 49. The ground of the decision was, that the byelaw being illegal was not a matter done in the execution of the Act.

(*p*) The Vice-Chancellor, Kindersley, decided that the local

time being for or concerning any contract, matter, or thing whatsoever relating to any property, works, or things vested or to become vested in them by reason of the provisions of this Act, or relating to any matter or thing whatsoever entered into or done, or intended to be entered into and done by them, under the provisions of this Act (*q*);

Actions, &c., in name of clerk.

And in any action of ejectment brought or prosecuted by such local board it shall be sufficient to lay the demise in the name of the said clerk;

Mode of describing property of local board.

And in proceedings by or on the part of such local board against any person for stealing or wilfully injuring or otherwise improperly dealing with any property, works, or things belonging to them

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board of health of a non-corporate district could not apply to the Court of Chancery in their name, as a corporate body, for the appropriation of money paid into that court. Their petition should have been in the name of their clerk, and the payment to their treasurer. *Ex parte Llanelly*, 17 Jur. 107.

(*q*) It was held, however, by the Court of Queen's Bench that an action on the case was not maintainable against the clerk to the local board for not paying the salary of an organist, which salary was claimed as payable under certain monies of which the local board had become trustees, it being alleged that the board had sufficient funds for the purpose. The court held that the proper remedy, if any, was by a *mandamus* or a bill in equity. *Edwards* v. *Lowndes*, 1 E. & B. 81.

Where the action is brought against the clerk, and the plaintiff succeeds, he can sign judgment against the defendant, and apparently he is entitled to enforce the same by the usual process against the defendant's goods and his person. The concluding part of the clause contemplates such proceedings, and provides an indemnity to the clerk for what he may pay. In *Kendall* v. *King*, 17 C. B. 483, doubts are stated as to how far the judgment against the clerk of a public board would in fact be available to the plaintiff. But those doubts arose out of the peculiar nature of the case. Generally the remedy to enforce such a judgment would, it is conceived, be by *mandamus* to the local board. See *Hall* v. *Taylor*, cited in sect. 37, *ante*.

Higgs v. *Dixon*, 27 L. J., Q. B., is the case of an action against a local board of health for infringing a patent.

or under their management, it shall be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the said clerk, and all legal proceedings by, on the part of, or against such local board, under this Act may be preferred, instituted, and carried on in his name;

Actions, &c. not to abate.

And no proceedings whatever shall abate or be discontinued by the death, resignation, or removal of the clerk, or by reason of any change or vacancy in such local board by death, resignation, or otherwise (*a*):

Clerk to be reimbursed expenses.

Provided always, that the clerk in whose name any such action or suit, complaint, information, or proceeding may be brought, preferred, instituted, or defended as aforesaid, shall be fully reimbursed, out of the general district rates to be levied under this Act, all such costs, charges, damages, and expenses as he shall or may be or become liable to pay, sustain, or be put unto by reason of his name being so used.

Notice of action.

CXXXIX. And be it enacted, that no writ or process shall be sued out against or served upon any superintending inspector, or any officer or person acting in his aid, *or under the direction of the general board of health*, nor against the local board of health, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or *person whomsoever acting under the direction of the said local board* (*b*), for

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(*a*) Probably, however, the entry of a suggestion on the roll will be requisite in the case of actions at common law, and perhaps a bill of revivor may be necessary in suits in equity.

(*b*) A person contracted with a local board to dig wells for

anything done or intended to be done under the provisions of this Act, 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 (*c*);

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 afterwards, and shall

Limitation of actions.

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them according to a specification prepared by the surveyor, the works to be done to his satisfaction, and the digging to be entirely under his direction, and he having power to reject materials and dismiss the workmen with whom he was *dismissed*. The contractor left a hole which had been made for the purposes of the work without a light by night, and a passenger fell into the hole and was injured. It was held by the Court of Queen's Bench, in an action against the contractor, that a notice of action was required by the above section. *Newton* v. *Ellis*, 5 E. & B. 115; 24 L. J. R., Q. B. 337. Where an action is brought against a local board of health by a contractor for a breach of contract, notice of action is not required under this section. *Davies* v. *Corporation of Swansea*, 8 Exc. Rep. 808.

Where a local board enter into a contract *ultra vires*, and cannot pay the contractor out of the rates, individual members of the board are not personally liable to the contractor. *Bailey* v. *Cuckson*, 32 L. T. 124.

(*c*) The party need not, when he is doing the act, be cognizant of this provision, nor is he prevented from claiming the benefit of it by departing slightly from it. *Read* v. *Coker*, 13 C. B. 850.

Venue.

be laid and tried in the county or place where the cause of action occurred, *and not elsewhere* (*a*);

General issue.

And the defendant shall be at liberty to plead the general issue (*b*), and give this Act and all special matter in evidence thereunder;

Tender of amends, &c.

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) with the general issue or other plea or pleas (*c*);

And if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly;

Money may be paid into court.

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

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(*a*) This does not deprive the court of their common law power to change the venue where in their judgment the ends of justice require that they should do so. *The Itchin Bridge Company* v. *The Southampton Local Board of Health*, 27 L. R., Q. B. 128.

When an action is brought and judgment is recovered against a local board of health, that board are not prevented from satisfying the judgment though six months have elapsed from the accrual of the debt on which the judgment shall be founded, notwithstanding sect. 89. Nor are the board prevented from obtaining a postponement of the satisfaction of the judgment for a period exceeding six months. *Reg.* v. *Rotherham Local Board of Health*, 22 Jur. 261. See, however, *Waddington* v. *City of London Union*, in Exch. Ch., 22 J. P. 755.

(*b*) See *Beaver* v. *The Corporation of Manchester*, 8 E. & B. 44, when a special plea justifying under a local Act similar to this statute was held good.

(*c*) See 8 & 9 Vict. c. 18, s. 135, in Appendix.

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.

Persons acting in execution of Act not to be personally liable.

CXL. And be it enacted, that no matter or thing *done* (*e*) or contract entered into by the local board of health, nor any matter or thing done by any

(*e*) But the local board, notwithstanding the language of this clause, are liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the execution of works which they order to be done. In such a case the action is properly brought against the clerk of the board, as the damages will be payable out of the rates. *Ruck* v. *Williams*, 27 L. J. R., Exc. 357; 3 H. & N. 308.

It may be well to state, that in this case the local board had ordered a new sewer to be constructed in their district under a contract and plans which did not provide for a "penstock or flap," which was requisite to prevent the plaintiff's premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged. This was held to be negligence on the part of the local board, for which they were liable.

Where negligence is proved on the part of those employed or contracted with by any public body to execute works, and that negligence is shown in the manner of executing those works, the body is not liable for injury which results from it. *Steel* v. *The South-Eastern Railway Company*, 16 C. B. 550. But if the damage arises out of the works themselves, or if the body are really the parties executing the works, they are liable. *Scott* v. *Corporation of Manchester*, 1 H & N. 59. Of course a public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions. See *Holden* v. *The Liverpool New Gas and Coke Company*, 3 C. B. 1. Neither is such a board responsible for accidents arising out of extraordinary causes, where all reasonable care has been taken to prevent such as would arise from ordinary causes. Thus a waterworks company were held not liable for damage arising out of a frost of unusual severity. *Blyth* v. *Birmingham Waterworks Company*, 2 Jur. (N.S.), 333; 11 Exc. 781. Where a public board let a navigation and omitted to give notice to the lessee to repair, and in consequence of

superintending inspector, or any member of the said local board, or by the officer of health, *clerk* (*f*), surveyor, inspector of nuisances, or *other* officer or *person* (*g*) whomsoever acting under the direction of the said local board, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever (*h*);

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the want of repair a barge-owner sustained loss, the commissioners were held not to be liable to him on the ground of their omission, the loss not necessarily resulting therefrom. *Walker* v. *Goe*, 3 H. & N. 395; 27 L. J., Exc. 427.

(*f*) The clerk is necessarily liable to an action according to sect. 138, but the clause extends to prevent his actual and personal responsibility.

(*g*) These words will exempt from personal liability every one who has *bonâ fide* contracted with the local board to do some act under their directions, though he may thereby cause a damage to another person which the act itself does not justify or excuse. *Ward* v. *Lee & another*, 7 E. & B. 426; 26 L. J. R., Q. B. 142. The remedy in such a case, according to the judgment of the court, would be against the local board, who would be reimbursed out of the district rate.

Notwithstanding these general words of reimbursement, it will be a question to be determined hereafter whether the individual members of a local board who may knowingly by their acts involve such board in expenses in consequence of their illegal proceedings, cannot be held personally responsible. See the new audit clause in 21 & 22 Vict. c. 98, s. 60.

(*h*) But the local board of health will be liable to the contractor in an action on the contract if broken, and he will not be compelled to proceed in equity, or by *mandamus*, in the first p'ace, or in an action on the case for the recovery of his damages. *Nowell* v. *The Mayor, &c. of Worcester*, 9 Exc. Rep. 457; *Payne* v. *Mayor of Brecon*, 3 H. & N. 572; 27 L. J., Exc. 495. The judgment, if given against a municipal corporation, will not, however, operate as a charge upon the real estate belonging to it, unless the lords of the treasury, upon a special memorial, enable this to be done. *Arnold* v. *Mayor, &c. of Gravesend*, 25 L. J. R., Ch. 777. Nor, as it seems, upon the other property of the corporation. *Pallister* v. *Mayor of Gravesend*, 9 C. B. 774; *Arnold* v. *Ridge*, 13 C. B. 745. As already noticed it may, however, be enforced by a *mandamus*. But upon that application it will be open to the board to show

And any expense incurred by any such local board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting as last aforesaid, shall be borne and repaid out of the general district rates levied under the authority of this Act.

Miscellaneous.

Orders in council and provisional orders may be amended, and districts extended.

[CXLI. ** And be it enacted (*i*), that Her Majesty may from time to time alter or amend any order in council made under or in pursuance of the provisions of this Act, by any subsequent order in council, in such manner as Her Majesty, by and with the advice of Her privy council, may think proper;

And if at any time it appear to the general board of health that any provisional order made by them under this Act should be altered or amended, or that the boundaries of any district should be altered or extended, they shall make a provisional order under their hands and seal of office accordingly:

Provided always, that no order in council or provisional order as last aforesaid shall be made until such proceedings have been taken in and with respect to the district and parts to be affected thereby as are herein-before required to be taken previously to the original constitution of a district under this Act;

And no such provisional order shall be of any force or effect without the previous authority of parliament, as herein-before prescribed with respect to provisional orders made under this Act. **]

Publication of orders in council, &c.

CXLII. And be it enacted, that all orders in

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that the contract entered into was void by reason of some provision in this Act, or because it was *ultra vires*.

(*i*) Repealed by 21 & 22 Vict. c. 98, s. 77, which contains special provisions to carry out the object of this section.

council under this Act shall take effect and be in full force and operation within the district to which they apply from and after a day which shall be specified in such orders for that purpose (*b*);

And a copy of every such order shall be published in the *London Gazette*, and shall be laid before parliament in the month of January in every year, if parliament be then sitting, or if parliament be not then sitting, then within one week after the next meeting thereof;

Reports of superintending inspectors, &c. to be laid before parliament.

[And whenever any provisional order of the general board of health is submitted to parliament for confirmation, the said general board shall present to both houses of parliament a copy of all reports of any superintending inspector with respect to the parts to which the provisional order relates, and of all memorials forwarded to the said general board with respect to such reports] (*c*).

Entry upon lands for the purposes of this Act.

CXLIII. And be it enacted, that in case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose (*d*) of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (*e*), and the owner or occupier of such lands or premises shall refuse to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the local board of health may, upon notice (*f*)

(*b*) See in 21 & 22 Vict. c. 98, s. 20, when this Act is henceforth to come into operation in any new district.

(*c*) This provision is now at an end.

(*d*) Several clauses in this Act contain special provisions for the entry upon premises for other purposes than those contained above.

(*e*) See sect. 41, *ante*.

(*f*) As to this notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

to such owner or occupier, apply to *two justices* (*g*) for an order authorizing the members of such local board, and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them, and if no sufficient cause shall be shown against the same the said justices may make an order (*h*) authorizing the same accordingly, and thereupon any superintending inspector, the local board of health, or any member thereof, *the surveyor*, and inspector of nuisances, and any person authorized by any such superintending inspector, local board, surveyor, or inspector of nuisances, may, at all reasonable times between the hours of *ten* in the forenoon and *four* in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as shall be specified in the said order, without being subject to any action or molestation for so doing :

Provided always, that, except in case of emergency (*i*), no entry shall be made, or works commenced under the powers of this enactment, unless *twenty-four hours* at the least previously thereto

(*g*) See sect. 2. The Nuisances Removal Act, 1855, sect. 11, contains a provision by which a justice may issue an order to persons who have the custody of premises, to admit the local authorities or their officers to inspect such premises where nuisances are said to exist, to examine the course of drains, and to execute or inspect works ordered by justices to be done under that Act. The Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 84, incorporated herewith, contains an authority to enter without consent for particular purposes.

(*h*) Which order cannot be removed into the Court of Queen's Bench. See sect. 137.

(*i*) The person who enters must determine at his peril whether the case be one of emergency. Therefore it will be the safest course to give this notice, unless the emergency be very clear.

notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

Compensation in case of damage by local board.

CXLIV. And be it enacted, that full compensation shall be made, out of the general [*or special*] district rates to be levied under this Act, to all persons sustaining any damage (*i*) by reason of the exercise of any of the powers of this Act (*j*);

And *in case of dispute as to amount* (*k*) the same shall be settled by arbitration in the manner provided by this Act (*l*), or if the compensation claimed

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(*i*) This means damage which the Act itself does not excuse or justify. See note on sect. 78, *ante*, p. 118.

(*j*) Where there has been damage, but the local board deny their liability, the Court of Queen's Bench will grant a writ of *mandamus* to the board to make compensation on the application of the person aggrieved, in which proceeding both the liability and the amount of damage can be tried. *Q.* v. *Burslem Board of Health*, 22 J. P. 400.

(*k*) If the local board do not dispute their liability for damage, if any, but deny that there is any damage, the case is one for arbitration under this clause. *Bradby* v. *The Southampton Local Board of Health*, 4 E. & B. 1014. The distinction is thus expressed by Erle, J.: "Where there is a dispute whether the act complained of was done by the local board, or as to something which would, if found for the local board, show that there was no liability to make compensation, then the dispute is not within the jurisdiction of the arbitrators, but when the dispute is as to whether the damage was more or less, *or nominal*, the case is within their jurisdiction."

In this case the local board made a sewer through the land of B., who claimed compensation. The board maintained that he was not damaged, and consequently not entitled thereto. B. called upon them to proceed to arbitration, which they refused to do. He took steps under sect. 123, and the arbitrator made an award, *ex parte*, which the Court of Queen's Bench upheld.

A similar decision was expressed by Wood, V. C., in *The Bradford Local Board of Health* v. *Hopwood*, July, 1858. See 23 J. P. 561.

(*l*) See sect. 123, *ante*, p. 179, and see the new provisions in 21 & 22 Vict. c. 98, s. 64, *post*.

do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner (*m*).

[CXLV. ** And be it declared and enacted (*n*), that nothing in this Act shall be construed to Sewers, &c. of commissioners of

(*m*) The recovery will be under sect. 129, *ante*, p. 184.

(*n*) Repealed by 21 & 22 Vict. c. 98, s. 68, which, however, re-enacts similar provisions with amplifications. It will be remembered that though sect. 43 vests all sewers in the local board, there is an exception of sewers such as those described above. That and the subsequent sections relating to sewers, in conjunction with the above section, have led to much discussion, and have produced considerable litigation. Local boards of health anxious for the public good, by their endeavours to extend their sewers and provide for their sewerage, have, in some cases, infringed the private rights of individuals, who have applied to the courts of law for redress or interference. Thus, in *Oldaker* v. *Hunt*, 1 Jur. (N. S.), 785, 6 De G. M. & G. 376, 19 Beav. 485, a local board of health proposed to carry a sewer through certain fields into the river Avon at a certain spot. The owners of those fields which adjoined the river had watering places therein, they had also a several fishery in the river, though they were not otherwise interested in the bed of it; and had not given their consent to the works. The Master of the Rolls granted an injunction to prevent the board of health from proceeding with the sewer, and this injunction was confirmed by the Lords Justices on appeal, assisted by Cresswell and Williams, JJ. The opinion of the court was, that the parties complaining were interested in the river by reason of their watering places, independently of their right to the fishery, which also appeared to the judges to be fairly included under the term *land*.

In the later case of *Attorney-General* v. *The Luton Local Board of Health*, 2 Jur. (N. S.), 180, it appeared that the local board carried the whole drainage of the town of Luton into the river Lee, which flowed through the lands of the relator, who had a mill on its banks, though it was not a public navigable river; there had been a drainage into it from a few houses previous to 1848, but the works of the local board greatly increased the sewerage, and polluted the water to such an extent that sheep could no longer be washed in it. It was held by Vice-Chancellor Wood that the local board could not justify their proceedings, and that as the relator was interested in the river, and had not given his consent, he was entitled to an injunction to restrain them from proceeding

sewers, private watercourses, &c. not to be used without consent.

authorize the local board of health to use, injure, or interfere with any sluices, floodgates, sewers, groynes, sea defences, or other works already or hereafter made under the authority of any commissioners of sewers appointed by the crown, or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or

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further with their works. He also held that the public nuisance was a sufficient ground for the injunction. Reference must also be made to the case of the *Attorney-General* v. *The Town Council of Birmingham*, 22 J. P. 561, where a local board were restrained by the vice-chancellor from conveying their sewage into a river, and thereby polluting a stream in which private individuals had peculiar and special rights.

Again, in the case of *The Manchester, Sheffield, and Lincolnshire Railway Company* v. *The Worksop Board of Health*, 26 L. J. R., Ch. 345, it was held that a local board of health could not justify the making a sewer which would have the effect of polluting an existing canal belonging to the complainants, and therefore the board were restrained from allowing the house drainage to communicate with a main sewer which ran into the canal.

These were cases in which complaints were made against the local board for polluting streams, and thus interfering with the rights of persons; but in others the questions have arisen as to the power of the local board to intercept the supply of water, and they have been such as have been the subject of discussion in all times, namely, the rights of individuals in running streams, pools, or ponds. The full discussion of the law applicable to those rights cannot be entered into here. The local board of health have been in the position of a private individual disputing as to his right to enjoy or to divert the flowing stream, to intercept it for irrigation or other purposes, as or against a riparian owner, to pollute or to prevent the pollution of the water, or, lastly, to drain, or restrain the drainage of underground or percolating streams. In one important case which lately came before the Court of Exchequer, and was the subject of appeal to the Exchequer Chamber, the right of a local board of health by means of their wells to drain the underground streams from the soil of a neighbouring landholder was established. *Chasemore* v. *Richards*, 2 H. & N. 168. In the elaborate judgments pronounced by Cresswell, J. and Coleridge J., who dissented from the judgment of the rest of

private Act of parliament, or for the purpose of irrigating lands, or to use, injure, or interfere with any watercourse, stream, *river*, dock, basin, wharf, quay, or towing path in which the owner or occupier of any *lands*, mills, mines, or machinery, or the proprietors or undertakers of any canal or navigation, shall or may be interested, without consent in writing first had and obtained (*a*); and that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under any local or private Act of parliament for the drainage, preservation, or improvement of land, or for or in respect of any mills, mines, machinery, canal, or navigation as last aforesaid (*b*). **]

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the court, will be found an elegant exposition of much of the legal doctrine applicable to this important subject of property. In another case where a canal company was empowered by their local Act to supply their canal with water from all streams, brooks, and water courses within one thousand yards of the canal, it was held that they had no ground of complaint against a local board of health, who having run a sewer under a road within that distance, made open gratings through which the rain and other surface water fell into the sewer. *The Manchester, Sheffield, and Lincolnshire Railway Company* v. *The Worksop Board of Health*, 25 L. J. R., Ch. 25, and 26 Ib. 344.

(*a*) Although this consent is thus required to be given in writing, it has been sought to stay summary applications to the Court of Chancery for injunction against the works of the local board by averments of laches, such being argued as an equivalent for consent. But the defence was not successful in *Attorney-General* v. *Luton Board of Health*, 2 Jur. (N.S.), 180, where there had been much negotiation and correspondence before the commencement of the suit.

(*b*) It must be observed that this clause prohibits the doing of the works adverted to without consent in writing first obtained; thus it prevents the operation of the law laid down in *Stainton* v. *Woolrych*, 26 L. J. R., 300, that works planned by public boards under statutes may be executed, though they tend to the injury of neighbouring landowners, and consequently even without notice to them, though they may be entitled to compensation for the damage done.

Local board may allow owners time for repayment of expenses.

CXLVI. And be it enacted, that in any case in which the local board of health may have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by this Act, the said local board may, if they think fit, allow such owner time for repayment, and receive the same by such annual instalments, not being less than *one-thirtieth part* of the entire sum, together with interest at the rate of five pounds in the hundred upon the sum from time to time remaining unpaid, as they, under the circumstances of each case, may consider to be just (*a*);

But although time for repayment be allowed as last aforesaid, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment at the times respectively appointed for payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed.

False evidence punishable as perjury.

CXLVII. And be it enacted, that every person who upon any examination on *oath* (*b*) under the provisions of this Act shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

(*a*) By several provisions the local board are empowered to do certain works for the benefit of private property, and recover the expenses either summarily or by a rate, and in the latter case they may extend the rate over thirty years. This clause, which is thus introduced among miscellaneous enactments, enables the local board to extend the time for the repayment of the expenses, where they do not resort to a rate, to thirty years by annual instalments. This appears to differ in little from the improvement rate. In 21 & 22 Vict. c. 98, s. 58, will be found the new measure for creating rent-charges.

(*b*) See the interpretation of this word in sect. 2.

Penalty for obstructing officers, defacing boards, &c.;

CXLVIII. And be it enacted, that whosoever wilfully obstructs any superintending inspector, or any member of the local board of health, or any officer or person duly employed in the execution of this Act, or destroys, pulls down, injures, or defaces any board (*c*) upon which any byelaw, notice, or other matter is inscribed, shall, if the same were put up by authority of the local *or* [*general board of health*], be liable for every such offence to a penalty not exceeding *five pounds* (*d*);

upon occupiers preventing execution of works.

And 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 (which may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect), require such occupier to permit the execution of the works required to be executed, provided that the same appear to such justice to be such as are necessary for the purpose of obeying or carrying into effect the provisions of this Act (*e*);

And if within a reasonable time after the making (*f*) of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding *five*

(*c*) The 21 & 22 Vict. c. 98, s. 66, provides a penalty upon any person injuring the works or materials of the local board.

Refer to *Frost* v. *Lloyd*, 11 Jur. 59, as to the pleadings in the case of an obstruction.

(*d*) See sect. 129, as to the recovery of this penalty.

(*e*) See also the provision in the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 37. It appears by the form of the order given in the schedule, that the occupier must be summoned before the justices previous to the issuing of this order.

(*f*) In the Nuisances Removal Act the word used is *service*, but as the time referred to in the text is a *reasonable* one, that will be properly construed by considering when the notice was served.

pounds (*a*) for every day afterwards (*b*) during the continuance of such refusal;

Occupiers to disclose owner's name.

And if the occupier of any premises, when requested by or on behalf of the local board of health to state the name of the owner of the premises occupied by him, shall refuse or wilfully omit to disclose or wilfully mis-state the same, any justice may, on oath made before him of such request, and refusal, omission, or mis-statement, summon the party to appear before him or some other justice at a time and place to be appointed in such summons, and if after being so summoned he neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding *five pounds* (*c*).

Consents of board of health and local board to be in writing.

CXLIX. ** And be it enacted, that (*d*) whenever the consent, sanction, or approval or authority of the general board of health is required by the provisions of this Act, the same shall be in writing under their seal and the hands of two or more members thereof; **

And whenever the consent, sanction, approval, or authority of the local board of health is so required the same shall (in the case of a non-corporate district) be *in writing* (*e*) under their seal and the

(*a*) See sect. 129, as to the recovery of this penalty.

(*b*) "Afterwards" must mean after the refusal.

(*c*) See sect. 129 as to the recovery of this penalty.

(*d*) Though these matters will not occur hereafter, yet it may be necessary to prove them in regard to past transactions.

(*e*) See further 21 & 22 Vict. c. 98, s. 61, which enables the clerk of the board to authenticate certain documents by his

hands of *five* or more of them, or (in case of a corporate district) under their common seal.

Service of notice upon local board;

CL. And be it enacted, that any summons, notice, writ, or proceeding of any kind whatsoever to be served upon the local board of health may be so served by being left at or sent through any post-office, directed to the local board of health, at their office, or by being delivered there to the clerk personally (*f*);

upon owners and occupiers.

And in all cases in which any notice is by this Act required to be given to the owner or occupier of any premises it shall be sufficient to address the notice to [them *] by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description;

*Sic in stat.

And the notice shall be served upon [them] or one of them, as the case may require, either personally or by delivering the same to some inmate of his or their place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown,) upon any inmate of the last-mentioned premises, or if such premises be unoccupied, then, in case the notice is required to be served upon the occupier, (and in case of the owner also, if his residence be unknown,) it shall be sufficient to fix the notice upon some conspicuous part of the premises:

Provided always, in the case of notices to the owner, that, although his place of abode be known

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signature. It is observed by Kindersley, V. C., in *Ex parte Llanelly*, 17 Jur. 108, that a local board of health, if other than a corporate borough, is not made a corporation by this Act.

(*f*) See the provision in the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 134, now incorporated herewith.

to the local board of health, yet if it be not within the limits of their district it shall be sufficient for them to transmit any notice, directed to him by name, through the post.

Exemptions from stamp duty.

CLI. And be it enacted, that no advertisement inserted or caused to be inserted by *the general* or local board of health in the *London Gazette* or any paper or publication under this Act, or for the purpose of carrying the same into effect, nor any deed, award, submission, instrument, contract, agreement, or writing, made or executed by (*a*) [*the said general*] or local board, their officers or servants, under or for the purposes of this Act, nor any appointment by [*the general*] or local board of any officer or person under this Act, shall be chargeable with any stamp duty whatever ;

Exemption from window duty in certain cases.

And in case any vault, cellar, or underground room of any house containing, at the time of the passing of this Act, *seven windows* or lights only, shall have been let or occupied separately as a dwelling before the passing of this Act, without any external window, or such an external window as is required by the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms, and it shall become necessary, by reason of such provisions, to make such an external window as is required thereby (*b*), in order that such vault, cellar, or underground room may lawfully be let or occupied separately as a dwelling, the making only of such external window shall *not* render any person liable in respect of such house *to*

(*a*) It is by no means clear that by these words a conveyance *to* the local board will be exempt from stamp duty, though a lease executed *by* them would be.

(*b*) In sect. 67, *ante*, p. 115.

the duties payable for a house having eight windows or lights (*c*), anything in any Act of parliament to the contrary notwithstanding.

Amendment of Act, &c.

CLII. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present session of parliament.

SCHEDULES

TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A.)

Form of Voting Paper.

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer

Directions to the Voter (*d*).

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote (*e*).

(*c*) By the statute 14 & 15 Vict. c. 36, the duties upon houses according to the number of windows therein were abolished.

(*d*) Unfortunately this form does not specify the number of persons to be elected. When the district is divided into wards, under 21 & 22 Vict. c. 98, s. 24, *post*, this paper must be altered accordingly.

(*e*) Sect. 25, *ante*, p. 71, requires the witness to write the name of the voter also.

If a proxy vote he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nominators.	Address of the Nominators.
.	.	.	.	.	.
.	.	.	.	.	.
.	.	.	.	.	.

I vote for the persons in the above list against whose names my initials are placed.

(Signed) _____

or the mark of (*c*) _____

(*d*) Witness to the mark.

or _____ Proxy for _____

SCHEDULE (B.) (*e*)

Form of Mortgage of Rates.

BY virtue of the Public Health Act, 1848, the local board of health for the district of ——, in consideration of the sum of —— paid to the treasurer of the said district by *A. B.* of ——, for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and

(*c*) Here must be the mark and the name of the voter.
(*d*) Here must be the name of the witness.
(*e*) See ss. 107, 111; see in 21 & 22 Vict. s. 89, schedule, the form of the rentcharge to be granted hereafter.

assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of —— doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates (*f*), to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of ——, with interest at the rate of —— per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared, that the said principal sum shall be repaid on the —— day of —— at [*place of payment*]. Dated this —— day of —— One thousand eight hundred and——

[*In case of a non-corporate district, to be signed by five members at least of the local board of health, and sealed with* their seal (*g*); *in case of a corporate district, to be sealed with the common seal.*]

Schedule (C.) (*h*)

Form of Transfer of Mortgage.

I *A. B.* of ——, in consideration of the sum of —— paid to me by *C. D.* of ——, do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage bearing date the —— day of ——, and made by the local board of health for the district of ——, for securing the sum of ——, and interest thereon at —— per

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(*f*) See sect. 107.
(*g*) That is, the seal of the local board.
(*h*) See sect. 112. This deed must be stamped.

centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal, this —— day of —— One thousand eight hundred and ——

A. B. (L.S.)

SCHEDULE (D.) (*a*)

Form of Distress Warrant.

To *A. B.*, Collector of Rates, and to all Constables and Peace Officers.

County of ——— [*or* Borough, *&c.*] to wit. } WHEREAS complaint hath been duly made by *A. B.*, one of the collectors for the district of ——, under and by virtue of the Public Health Act, 1848, that *C. D.* of, *&c.*, hath not paid and *hath refused* (*b*) to pay the sum of —— duly assessed upon him in and by a certain rate bearing date on or about the —— day of —— in the year of our Lord One thousand eight hundred and ——, although the same hath been duly demanded of

(*a*) See sect. 104.

(*b*) The language of the clause is *fail to pay*, which may not be accompanied with any actual *refusal*; where there has been no refusal the warrant should be framed according to the facts.

him : And whereas it appears to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the said county [*or* borough, *&c.*], as well upon the oath of the said *A. B.* as otherwise, that the said sum of —— hath been duly demanded in writing by him from the said *C. D.*, and that the said —— *hath refused* to pay the same for the space of fourteen days after such demand made, and *doth refuse* to pay the same : And whereas the said *C. D.* hath been duly summoned to appear before me to show cause why the said sum should not be paid by him, and not having shown to me any sufficient cause why the same should not be paid : These are therefore, in Her Majesty's name, to command you to levy the said sum of ——, and also the sum of ——, the cost of proceeding to obtain this warrant, by distress and sale of the goods and chattels of the said *C. D.*, and your reasonable charges of taking, keeping, and selling the said distress, rendering to him the overplus (if any), on demand ; and if sufficient distress cannot be found of the goods and chattels of the said *C. D.*, that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, the —— day of —— in the year of our Lord——

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

SCHEDULE (E.) (*a*)

Form of Conviction.

County of ——— [*or* Borough, *&c.*] to wit. } BE it remembered, that on the —— day of —— in the year of our Lord ——, *A. B.* is convicted before me [*or* us] —— one [*or* two] of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of —— [*here describe the offence generally, and the time and place when and where committed, in the words of this Act, or as near thereunto as may be,*] contrary to the Public Health Act, 1848; and I [*or* we] do adjudge that the said *A. B.* hath forfeited for his said offence the sum of [*amount of penalty adjudged*], and that he do pay to *C. D.* the further sum of —— as and for his costs in this behalf.

Given under my hand and seal [*or* our hands and seals], the day and year first above written.

(Signed) (L.S.)

(L.S.)

SCHEDULE (F.)

Form of Order to permit Execution of Works by Owners (*b*).

County of ——— [*or* Borough, *&c.*] to wit. } WHEREAS complaint hath been made to me, *E. F.*, Esquire, one of Her Majesty's justices

(*a*) See sect. 130.

(*b*) See sect. 148, and the form given in the Nuisances Removal Act, 1855, Sched. G.

of the peace in and for the county [*or* borough, *&c.*] of —— by *A. B.*, owner within the meaning of the Public Health Act, 1848, of certain premises, to wit, a house [*as the case may be*] situate in —— Street [*as the case may be*] 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.* doth prevent the said *A. B.* from [*here describe the works generally, according to circumstances, for instance, thus:* constructing and laying down, in connexion with the said house, a covered drain, so as to communicate with a [sewer *or* drain] of the local board of health of the district of ——, *or* a sewer, *&c.* which the local board of health of the district of —— are entitled to use, *as the case may require*, such sewer being within one hundred feet of the said house]: and whereas the said *C. D.*, having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are 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 permit the said *A. B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this —— day of —— in the year of our Lord One thousand eight hundred and——

E. F. (L.S.)

THE

PUBLIC HEALTH ACT, 1858.

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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.]

"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: 20 & 21 Vict. c. 38.

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" (*a*), shall, upon the discon- Powers of general board of health under 18 & 19 Vict. c. 116 added to those of the privy council.

(*a*) See this statute in the Appendix. Sect. 5 requires the

tinuance 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.

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

II. The privy council may from time to time issue such regulations as they think fit for securing the *due qualification* (*b*) 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 (*c*);

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.

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privy council to issue orders for putting in force the provisions of that Act for the prevention of diseases, and the subsequent clauses enabled the general board of health to issue the requisite regulations. But as the privy council are now to issue the regulations, their preliminary order will be superfluous.

The local authority is required to carry the regulations into execution, and in districts under 11 & 12 Vict. c. 63, and 21 & 22 Vict. c. 98, the local board of health will constitute the local authority. Sect. 13, which is excepted in the text, refers to the authentication of the regulations of the board of health.

(*b*) The 21 & 22 Vict. c. 90, requires that every public vaccinator should be registered under the provision of that Act.

(*c*) There are three statutes applicable to the subject of vaccination, 3 & 4 Vict. c. 29, 4 & 5 Vict. c. 32, and 16 & 17 Vict. c. 100. They are printed in the Appendix.

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; Privy council to appoint medical officer, &c.

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 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.

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

the privy council the proceedings had and taken under this Act during the preceding year ending on the thirty-first day of December.

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 authentication 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 áll 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.

Proceedings for penalties under vaccination Acts.

VIII. Proceedings for penalties under the Acts for the time being in force on the subject of vaccination (*a*) may be taken on the complaint of any registrar employed for the registration of births, deaths, and marriages, public vaccinator, or officer authorized by the board of guardians or by the overseers respectively, and the cost of such proceedings *shall* (*b*) be defrayed out of the common fund of the union, or out of the poor rates of any parish not included in a union.

Short title, and continuance 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*) See 3 & 4 Vict. c. 29, and 16 & 17 Vict. c. 100, which prescribe penalties for breach of the regulations regarding vaccination, but omit to provide for the fund to bear the costs of the prosecution. It must be remembered, however, that the whole of this Act is temporary only.

(*b*) The 7 & 8 Vict. c. 101, s. 59, which enables boards of guardians to pay the costs of certain prosecutions, requires the poor law board to determine what fund shall be charged therewith. The section in the text settles the charge in reference to the costs of prosecution for breach of the vaccination laws, by directing them to be defrayed out of the common fund of the union.

THE

LOCAL GOVERNMENT ACT, 1858.

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21 & 22 VICT. CAP. 98.

AN ACT TO AMEND THE PUBLIC HEALTH ACT, 1848, AND TO MAKE FURTHER PROVISION FOR THE LOCAL GOVERNMENT OF TOWNS AND POPULOUS DISTRICTS.

[2ND AUGUST, 1858.]

"WHEREAS it is expedient to amend the Public "Health Act, 1848, and to make further provisions "for the local government of towns and populous "districts in England:" 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; that is to say,

Short title.

I. This Act may be cited for all purposes as "The Local Government Act, 1858."

Interpretation of terms.

II. (*a*) The word "borough," or "corporate borough," when used in this Act, or *in any Act*

(*a*) Similar definitions were given in 11 & 12 Vict. c. 63, s. 2, and in 12 & 13 Vict. c. 94, s. 10, *ante*, p. 32.

conferring powers of a public nature on the corporate bodies of boroughs by their council (*b*), shall include all cities, *ports*, cinque ports, or corporate towns mentioned in the schedules to the Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales, and all Boroughs incorporated by Charter granted or to be granted in pursuance of that or any subsequent Act."

5 & 6 Will. 4, c. 76.

Limits of Act.

III. This Act shall not extend to Scotland or Ireland, and it shall not be adopted by any place within the limits of the metropolis as defined for the purposes of the Act of the session holden in the eighteenth and nineteenth years of her present Majesty, intituled "An Act for the better Local Management of the Metropolis" (*c*).

18 & 19 Vict. c. 20.

Provisions of this Act and 11 & 12 Vict. c. 63, to be construed together.

IV. This Act shall be construed together with, and be deemed to form part of the Public Health Act, 1848:

Words used in this Act shall be interpreted in

(*b*) Note the extreme generality of these words, which do not occur in the other interpretations of the word borough. It appears that the most unusual course has been adopted of interpreting a word in other Acts of parliament which is also used in this. Whether the courts will give a universal application to these words, or confine the clause to other statutes *in pari materiâ*, will be a question for the future. But a limited application is more in accordance with ordinary judicial construction. Mr. Taylor, in his edition of this statute, refers to an Act, 18 & 19 Vict. c. 70, which contained an omission so as to raise a doubt as to its application to *cities*, and he considers that this omission will be supplied by this interpretation. Such a construction may be useful in that instance, but it may prove that the general construction will lead to inconvenience in other instances.

(*c*) See the limitation of 11 & 12 Vict. c. 63, in sect. 1, *ante*,

the sense assigned to them in the said Public Health Act (*d*):

Byelaws framed under this Act shall be subject to confirmation, enforced, and dealt with in all other respects as byelaws under the said Public Health Act (*e*);

And the provisions of each of the said Acts shall, so far as may be consistent with the provisions of this Act, respectively be applicable to all matters and things arising under the other Act.

Period at which this Act to take effect.

V. This Act shall take effect (*f*) from the first day of September, 1858, in places where the Public Health Act, 1848, is already in force, wholly or *partially*:

Not to affect qualification or powers of local boards.

Provided always, that nothing in this Act shall affect the qualification (*g*) and number of the

p. 28. The analogous Act for Scotland is 13 & 14 Vict. c. 33, and for Ireland 17 & 18 Vict. c. 103. The limits of the metropolis are defined by 18 & 19 Vict. c. 120, which, however, excludes the city of London. That is excluded from the operation of the 11 & 12 Vict. c. 63, s. 1, and apparently from this Act, inasmuch as the *city* is certainly *within* the limits of the metropolis.

(*d*) See 11 & 12 Vict. c. 63, s. 2, *ante*, p. 28. See also the interpretations in the several incorporated Acts set out in the Appendix.

(*e*) For the confirmation of byelaws refer to 11 & 12 Vict. c. 63, s. 115, *ante*, p. 170, and for the enforcing thereof to sect. 129, *ante*, p. 182.

(*f*) These words will require much caution in their application as regards districts formed under the Public Health Act of 1848. There will be no difficulty in a general application of the new provisions, but where that Act is only partially in force, serious confusion may arise by the incorporation of the whole of them; there is, indeed, a certain saving in the latter part of this clause, but that would not be found to be a complete protection.

(*g*) Note, that as regards local boards of health under 11 & 12 Vict. c. 63, nothing is here reserved except the qualification and number of the members.

members of local boards of health in such places, or any power, right, privilege, or liability of any board of *improvement commissioners* exercising powers of the Public Health Act, 1848, or of any town council or local board of health, under or by virtue of any general or local Act of parliament *other* than the said Public Health Act.

Powers, &c. of local boards under this Act to be the same under 11 & 12 Vict. c. 63, &c.

VI. Local boards under this Act shall, subject to this Act, have all the powers, rights, duties, and liabilities of local boards of health constituted under the Public Health Act, 1848, and the Acts incorporated therewith.

Construction of terms, for portions of this Act, &c., in Acts hereafter incorporated.

VII. In the construction, for the purposes of this Act, of the Acts hereinafter incorporated (*c*), the expression "the Special Act" shall mean "the Public Health Act, 1848, as brought into operation within the district, and this Act;" the "limits of the Special Act" shall mean the "limits of the district;" "the passing of the Special Act" shall mean the date of the coming in force of this Act, or, in the case of districts under the Public Health Act, 1848, the 1st day of September, 1858; and "the local board" shall, according to the tenor of the incorporated Act, be deemed to be "the promoters of the undertaking," "town commissioners," commissioners, or "undertakers;" and all penalties incurred under the incorporated Acts shall be recovered in the same way as penalties incurred under the Public Health Act, 1848 (*d*), and be

(*c*) See ss. 35, 44, 45, 50, 75. The words thus defined will be found in the model Acts referred to.

(*d*) See ss. 129, 133, *ante*, pp. 184, 188.

applied in aid of the purposes of that Act and this Act (*e*).

Provision in relation to exercise of powers under Public Health Act requiring sanction of general board of health.

VIII. Whenever the sanction, consent, direction, or approval of the general board of health is required by law to the exercise of the powers of local boards of health or boards of improvement commissioners, such powers may, from the 1st day of September, 1858, be exercised without *such* sanction, consent, direction, or approval, or *any* sanction, consent, direction, or approval in lieu thereof, except in so far as is provided by this Act:

Provided always, that all sanctions for the mortgage of rates given by the general board of health (*f*) before the passing of this Act shall continue in full force and effect until all monies the borrowing of which is thereby sanctioned have been borrowed.

Proceedings, contracts, &c. begun or made under any section of 11 & 12 Vict c. 63, repealed by this Act may be proceeded with.

IX. All proceedings, contracts, matters, and things respectively begun or made under any section of "The Public Health Act, 1848," repealed by this Act (*g*), may respectively be proceeded with and enforced as if no such repeal had taken place;

And all powers exercised or byelaws made under any such section shall continue in force until the

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(*e*) See 11 & 12 Vict. c. 63, 133, *ad fin.*, *ante*, p. 188, and sect. 67, *post*, as to the application of penalties.

(*f*) This refers to sect. 119, *ante*, p. 174, and of course applies to cases of loans not yet completed. Where the loans have been completed with the sanction of the general board of health, this clause will in no respect apply.

(*g*) Namely, ss. 53, 55, 56, 61, 62, 72, 84, 86, 88, 95, 107, 113, 119, 122, 141, 145.

new powers and byelaws authorized by this Act are brought into operation;

And no such repeal shall affect any *decree* or *order* of the High Court of Chancery, or (*a*) of any other court of justice, that has been obtained previously to the passing of this Act.

Powers of sect. 114 of 11 & 12 Vict. c. 63., for appointment of receiver, may be exercised in event of failure to elect a local board.

X. The powers of the *one hundred and fourteenth section* of "The Public Health Act, 1848" (*b*), for the appointment of a receiver, may be exercised in the event of a failure to elect a (*c*) local board, or of the lapse of a local board from death, resignation, disqualification, or otherwise, of the persons elected to serve on such local board;

And in case of such failure or lapse any receiver appointed under that section may *make* (*d*) as well

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(*a*) The word *judgment* should have been inserted. But *quære* whether the execution on the decree, order, or judgment may not be affected in some cases where it has not been completed before the passing of the Act, unless the first part of this clause can be rendered applicable to such execution.

(*b*) See *ante*, p. 169. This clause is framed to remedy the mischief arising out of the case where, after heavy expenses had been incurred by the local board of health, and money borrowed upon the rates, the board failed for want of due election. As the board did not exist, no rates could be assessed to discharge the unliquidated claims, nor to pay the interest on the loans. The creditors might have sued and recovered judgments, but could only have taken in execution what personal goods were possessed by the defunct board, assuming that such goods were liable to seizure, which is by no means certain.

(*c*) The appointment is required by 11 & 12 Vict. c. 63, s. 114, to be made by two justices after hearing the *parties*. But the appointment in the text must be made *ex parte*, if one of the parties referred to in the former Act be the local board of health, since in the very case provided for there will be no such party.

(*d*) There will arise some questions as to the form and other incidents connected with the making of the rate, because the

as collect and receive rates as directed in that section, or such rates as are required to satisfy all liabilities of the local board, and may receive and recover all arrears due to the said local board, and apply the same to meet such liabilities;

And any such receiver shall have the same powers with respect to other creditors (*e*) of the local board as he has by the said section with regard to mortgagees.

Course of proceeding in event of failure to elect a local board.

XI. In the case of any failure to elect a local board, or of any lapse of a local board as aforesaid, it shall be lawful for the owners and ratepayers of the district, by resolution, *as herein-after provided* (*f*), for the adoption of this Act, to proceed to election of a new local board in the manner (*g*) provided by this Act, with the same qualification of members from property or rating as the lapsed local board, and the result of such election shall be signified to one of Her Majesty's principal secretaries of state by the person conducting it (*h*), in the same

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requisitions of 11 & 12 Vict. c. 98, regarding the district rate, appear to be only capable of being discharged by the local board itself.

(*e*) The apportionment among the creditors who expect to be paid at once, and among the mortgagees who only expect to receive their interest until the time when the repayment of the principal is due, will require much care and attention on the part of the receiver.

(*f*) See next section.

(*g*) It must be carefully observed that the manner of election is according to the new Act, though neither a new district, nor a new local board, will be created. The lapse is treated as a suspension, and the statute authorizes a revival of the board.

(*h*) It is by no means clear who this person is to be. Under 11 & 12 Vict. c. 63, s. 21, *ante*, p. 64, the chairman of a board in existence is to be the returning officer at the annual

manner as is herein-after directed with regard to the adoption of this Act;

And all the rights and liabilities of the former local board shall attach to the new local board as if there had been no lapse before the election thereof, and from the date of such election all powers of any receiver to *make* (*i*) rates under the preceding section shall determine.

AS TO ADOPTION OF ACT AND CONSTITUTION OF LOCAL BOARDS.

Act to be adopted by resolution of council, improvement commissioners, or owners and ratepayers.

XII. This Act may be adopted,

(1.) In corporate boroughs (*k*) to which the Public Health Act, 1848, has not been applied, by a resolution of the council assembled at a meeting held for the purpose (*l*):

Provided always, that this Act shall not be adopted in corporate boroughs until after the election of councillors on the first day of November one thousand eight hundred and fifty-eight:

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election of the members. But in the case provided for in the text there will be no chairman, and there is no specific provision for the appointment of a returning officer.

(*i*) The right of the receiver to collect them is not taken away, but that will be of course unnecessary if the new board proceed to pay the debt and interest.

(*k*) See the definition in sect. 2, *ante*, p. 225.

(*l*) It is a question whether the council can act spontaneously or whether an application from the ratepayers referred to in the next section is not a necessary requisite to precede the action of the council. The minute of information circulated by the secretary of state, does not point out that it is requisite. Yet it is difficult to read sect. 13, and not come to the conclusion that such requisition is a precedent condition. Otherwise it is not easy to explain the purport of that section. The effect of the two clauses appears to be that the ratepayers are to require the mayor or chairman, as the case may be, to

(2.) In other places under the jurisdiction of a board of *improvement commissioners* (*l*), where all or part of the commissioners are elected by ratepayers, or by owners and ratepayers, by a resolution of such improvement commissioners assembled at a meeting held for the purpose (*m*):

(3.) In all other places having a known (*n*) *or* defined boundary, by a resolution of the owners (*o*) and ratepayers (*o*):

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summon the council or board, and such council or board may then adopt the Act.

(*l*) There is no legal definition of the term *improvement commissioners*. In some cases local Acts have been obtained in general terms for the improvement of towns, but oftentimes commissioners are appointed under local Acts for paving, lighting, watching, and in other respects providing for the management of the locality without any such title as above. In the Common Lodging House Act, 14 & 15 Vict. c. 28, s. 2, and in the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 126, s. 2, there is a definition of an "Improvement Act," but it is too extensive for this statute.

(*m*) See note (*g*) on 11 & 12 Vict. c. 63, s. 34, *ante*, p. 79.

(*n*) This is a very vague term. It is not clear by whom the boundary is to be known. Doubtless general reputation must be referred to, and this is oftentimes a matter of considerable uncertainty. The boundaries of parishes indeed are for the most part well known, and so are those of townships and chapelries, especially where they maintain their own poor separately. There are many places where the boundaries have been defined by statute. Occasionally, also, districts have been settled by orders in council and similar authority under the general statutes applicable to new ecclesiastical parishes. In these cases the text can be safely applied.

(*o*) See in 11 & 12 Vict. c. 63, s. 2, the definition of *owner*, and in sect. 20 that of *ratepayer*, and it is to be presumed that these definitions will apply to the text. But the restrictions upon the voting of owners imposed by the latter section, requiring the statement of the property to be sent a certain time beforehand, cannot apply. As it will be a serious question whether the local board will be legally constituted if this requisition be invalid, and as the qualification of persons act-

But no such resolution passed by any council or board of improvement commissioners shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such council (*e*) or board of commissioners are usually given, nor unless two-thirds of the *members present at the meeting concur in the resolution of such adoption* (*f*); and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from day to day.

As to summoning meetings for purpose of preceding section.

XIII. (1.) Meetings for the purpose of the preceding sections shall be summoned on the requisition in writing of any *twenty* ratepayers (*g*) *or* owners (*g*);

In corporate boroughs, by the mayor;

In other places, under the jurisdiction of such improvement commissioners as aforesaid, by the chairman of the said commissioners;

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ing as owners may prove not to be good, it will be found most prudent to obtain the signatures of the prescribed number of ratepayers whose qualification can be easily established. Again, it is not clear whether the requisitionists must be all ratepayers or all owners, or whether they may be partly of one class and partly of another, but it is certain that they may be all of one class.

(*e*) See 5 & 6 Will. 4, c. 76, s. 69, which requires one-third part of the council to be present.

(*f*) Note, that there must be two-thirds of the members present to concur. It will not suffice that there should be two-thirds of those voting on the question. See *In re Eynsham*, 12 Q. B. 398; *Q.* v. *Overseers of Christ Church*, 7 E. & B. 409; 26 L. J., R. M. C. 68.

(*g*) See note (*o*), p. 233.

In places having known *and* (*h*) defined boundaries, not being corporate boroughs, or towns under the jurisdiction of such improvement commissioners as are hereinbefore mentioned (*i*), by the churchwardens or one of them, or if there are no churchwardens, the overseers or one of them, or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by one of Her Majesty's principal secretaries of state (*j*);

(2.) In such places as last aforesaid the summoning officer shall, upon such requisition (*k*), fix a time and place for holding such meeting, and shall forthwith give notice thereof

Notice of meeting.

By advertisement in some one or more of the newspapers circulated in the place;

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed (*l*):

(*h*) Here it will be observed that the conjunction *and* is used, whereas in the last section the disjunctive *or* is used. However the variance will make no difference in the interpretation.

(*i*) In sect. 12.

(*j*) To obtain this appointment there must be a communication to the secretary of state, who must be satisfied of the inability or refusal of the proper officer to perform the duties.

(*k*) This officer must satisfy himself of the sufficiency and legality of the requisition.

(*l*) The church and chapel referred to in the text must mean, according to the interpretation of similar words in 1 Vict. c. 45, church and chapel of the established church. See note (*c*) on 11 & 12 Vict. c. 63, s. 9, *ante*, p. 40.

Meeting to choose chairman.

(3.) The meeting, on its assembling together, shall choose one of its number as chairman (*y*), who may, with the consent of a majority of the persons present (*z*), adjourn the same from day to day:

Rules as to passing of resolutions of owners and ratepayers.

(4.) The chairman shall propose to the meeting the resolution for the adoption of the Act, and the meeting shall decide for or against such adoption:

Provided, that if any owner or ratepayer (*a*) shall demand that such question be decided by a poll of the owners and ratepayers, such poll shall be taken by voting papers in the Form (A.) given in the schedule to this Act, in the same way, and with the same conditions as to notice of voting (*b*), delivery, filling up, collection, examination, declaration of the result, custody of voting papers, penalty for neglect or refusal to comply with the provisions of the Act, scale of votes, and in all other respects whatsoever as is provided in the Public Health Act, 1848, in respect of the election of local boards of health;

And if no poll is demanded, or if the demand

(*y*) Hence the summoning officer will not necessarily be the chairman, neither will the common law rule, which regulates the precedence in all meetings of vestries, govern in this case.

(*z*) Upon these words refer to the note (*f*) on sect. 12, *ante*.

(*a*) See note (*o*) on sect. 12, *ante*.

(*b*) See sect. 23, *ante*, p. 66, as to the notice; sect. 24, p. 67, as to the delivery; sect. 25, p. 69, as to the filling up; sect. 26, p. 70, as to the collection; sect. 27, p. 73, as to the examination, declaration (or, as it is there termed, certificate) and custody of the voting papers; sect. 28, p. 75, as to the penalty for neglect; and sect. 29, p. 75, as to the scale of votes. As to the custody of the voting papers, the provisions will not be applicable if the proposal be rejected.

for a poll is withdrawn by the parties making the same, a declaration by the chairman shall in the absence of proof to the contrary (*c*), be sufficient evidence of the decision of such meeting (*d*):

(5.) If any person (*e*) fabricates, in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable, on conviction before *two justices* (*f*), to be imprisoned in the common gaol or house of correction for any period not exceeding *three* months, with or without hard labour. Penalty for forging, &c., of voting papers.

XIV. In cases where any place hereby authorized to adopt this Act includes within its limits any less place which, if it were not so included, would Provision as to less place included within the limits of a greater.

(*c*) It will not, however, be conclusive in itself.

(*d*) There is no provision for the costs of these proceedings, whatever be the result.

(*e*) This clause is taken from 14 & 15 Vict. c. 105, s. 3, with reference to the election of guardians, though the language is slightly altered. It is well to state that several prosecutions have taken place upon that clause, and persons have been convicted of offences under it. At the last spring assizes for Yorkshire, three persons were convicted before Byles, J., of a common law offence for conspiring to defeat the due election of guardians, by causing forged proxy appointments to be issued and acted upon at such election, and sentenced to imprisonment. *Q.* v. *Beckwith and others.*

(*f*) See 11 & 12 Vict. c. 63, s. 2, *ante*, p. 31.

of itself be authorized to adopt this Act, such less place shall not be entitled to adopt this Act unless the greater place within the limits of which it is included has refused to adopt the same, or unless it has been determined by one of Her Majesty's principal secretaries of state, in manner hereinafter mentioned (*g*), that such less place ought, as respects the adoption of this Act, to be excluded from the limits of such greater place.

Power for partial adoption of Act.

XV. Any corporation or body of commissioners exercising powers for sanitary regulations (*h*) under the provisions of any local Act may adopt *any part* or parts of this Act by resolution of the council or commissioners (*i*), and such resolution shall in every case be passed and forwarded to one of Her Majesty's principal secretaries of state, as provided in this Act for the adoption thereof (*k*), and thereupon the part or parts of this Act named in such resolution shall be in force within the district comprised in such local Act as fully and effectually as if such part or parts of this Act had been enacted in such local Act :

(*g*) See sect. 17, *post*. Hence, if a city comprising several parishes be formed into a district, no parish therein can adopt the Act unless it had been excluded from the district under that section.

(*h*) There is no legal definition of what is *a sanitary regulation*, and much difficulty will exist in applying the words of the text. It is presumed that these latter words are connected with the corporation as well as the commissioners, which corporation, by the use of the word council, refers to a municipal corporation.

(*i*) No previous requisition from the ratepayers or owners is necessary in this case; and it will be seen that the commissioners are not limited to such as are elected by the ratepayers of any place. Neither is the consent of the secretary of state, nor any Act of parliament, required to complete the proceeding, except in the cases specially provided for.

(*k*) See sect. 19, *post*.

Provided always, that when the parts of this Act thus adopted confer any power of borrowing money, such power shall be exercised subject to the provisions of this Act with respect to borrowing (*l*).

ADOPTION OF ACT BY PLACE NOT HAVING A KNOWN OR DEFINED BOUNDARY.

Provision as to settling boundaries on petition.

XVI. (1.) Any place (*m*) not having a known or (*n*) defined boundary may petition one of Her Majesty's principal secretaries of state to settle its boundary for the purposes of this Act:

Rules as to petitions for settlement of boundaries.

(2.) The petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the ratepayers (*o*) resident within such boundaries, and shall be supported by such evidence as the said secretary of state may require:

(3.) Upon the receipt of such petition the secretary

(*l*) See ss. 57, 78.

(*m*) This word has no legal nor peculiar popular meaning. It is altogether indefinite and unlimited. But the phraseology of the clause is not very happily chosen. The inhabitants of a *place* may petition, or a petition may be presented from a place, but the place itself is not competent to present a petition.

(*n*) Note, that the disjunctive copulate is here used, nevertheless it is difficult to see why the two words are introduced: every *defined* boundary must be a *known* boundary, though every *known* boundary is not necessarily a *defined* one, if that word signifies one which has been delineated or described in a map or in words. At the close of the section the conjunctive copulate is used. See note (*h*) or sect. 13, *ante*.

(*o*) The owners are not introduced into this clause, which applies to the residents, and as owners are not necessarily residents, they are probably omitted on this ground, though it certainly would seem reasonable that if non-resident owners may apply for the rejection of the Act, as they may, according to the next section, they should also have a voice for the settlement of the boundaries.

of state may direct inquiry (*a*) to be made as to the genuineness of the petition, and as to the propriety of the proposed boundaries; and

(4.) Fourteen days' notice of the time, place, and subject of such inquiry shall be given (*b*) in the place to which it refers:

(5.) The said secretary of state may, upon consideration of the matter, either dismiss the petition altogether (*c*), or make order (*d*) as to the boundaries of the place:

He may also make order as to the costs of the proceedings under this section and the parties by whom such costs are to be borne (*e*):

Any place may adopt this Act when boundary settled.

(6.) Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known *and* defined boundary, and may adopt this Act accordingly (*f*);

(*a*) See sect. 80, *post*, as to the power of the officer making the inquiry.

(*b*) It is not stated who is to give this notice, but the officer who will make the inquiry is the proper person to do so. No precise kind of notice is prescribed; therefore he can exercise his own judgment in the matter, and doubtless will be careful to give ample notice according to the practice of the place.

(*c*) It thus appears that the local government to be established by the Act cannot be acquired absolutely in all places. In the non-corporate districts, described in the text, the secretary of state may refuse to sanction the adoption, by refusing to settle the boundaries.

(*d*) This order will be conclusive. See sect. 78.

(*e*) Though the secretary of state may make the order, it does not appear how this order is to be enforced, if the parties decline to obey it, since the courts of law do not recognize the order of a secretary of state like an order of justices. If indeed this petition be considered as an *appeal* made to the secretary of state, then sect. 81, *post*, provides for the due enforcement of his order, but it is not what is usually understood as an *appeal*.

(*f*) As to when it shall come into operation, see sect. 19.

And for the purpose of enabling it so to do a summoning officer shall be appointed by the order settling the boundaries, whose duty it shall be *forthwith* (*g*) to take all such steps as may be necessary for convening a meeting of the *ratepayers* (*h*) to decide as to the adoption of this Act;

And if such officer dies, becomes incapable, neglects or refuses to perform his duties, the said secretary of state may, on the application of any four *ratepayers*, appoint another officer in his room.

APPEAL AGAINST ADOPTION OF ACT.

Power to appeal, by petition, against resolution to adopt this Act.

XVII. (1.) In cases where a resolution adopting this Act has been passed in any place, if any number, being not less than one-twentieth of the owners *and* (*i*) ratepayers *of such place* (*k*), such twentieth to be one-twentieth in number of the owners *and* (*i*) ratepayers of the place,

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(*g*) This word is interpreted to mean with all convenient speed.

(*h*) The owners are omitted here, but doubtless it is not intended that they shall not be summoned. By sect. 13 they are empowered to vote thereat.

(*i*) The owners and ratepayers must join in the petition, and if the reference be made to the objectors numerically, there must be one-twentieth of the owners and ratepayers taken together. In many places it will be almost impossible to determine this in any reasonable time. It is easy to ascertain the ratepayers, but in populous places it is very difficult to discover all the owners, and, unless they are all discovered, the proper numerical proportion cannot be determined. The difficulty will not be so great in reference to the property, as that can be ascertained from the poor rate with reasonable accuracy.

(*k*) This applies to the whole of the proposed district; there-

taken together, *or* the owners *and* ratepayers in respect of one-twentieth of the *rateable* (*a*) property in the place, are desirous that the whole or any part of such place should be excluded from the operation of this Act, they may present a petition to one of Her Majesty's principal secretaries of state, *appealing* (*b*) against such resolution, and praying that such exclusion may be made:

Such petition to be presented to secretary of state.

(2.) Such petition shall be presented within *twenty-one days* from the date of the passing of the resolution appealed against, and shall, where the exclusion of part of a place only is prayed for, state,

(1.) The part of the place proposed to be excluded, accompanied with an explanatory plan; and

(2.) The reasons for such exclusion (*c*):

It shall be subscribed (*d*) by the owners *and* ratepayers presenting the same:

Power to secretary of

(3.) Upon the receipt of any such petition as afore-

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fore if all the owners and ratepayers of any particular part of it should object, their objection will be unavailing unless they constitute one-twentieth part of the whole proposed district.

(*a*) This means the property rateable to the poor rate, and according to *Baker* v. *Marsh*, 24 L. J. R., Q. B. 1, will doubtless be construed to apply to the *net rateable value.*

(*b*) In this case the petition will be an appeal.

(*c*) The reasons for the exclusion are only required by the Act in the cases where a part of the district is sought to be excepted, but it is obviously necessary to show the grounds for the appeal in every case.

(*d*) The subscription must be by the parties themselves. It is very doubtful whether an agent is competent to subscribe, within the legal meaning of this section. See *Toms, app., Cuming, resp.*, 8 Scott, N. R. 910.

said, the said secretary of state may direct inquiry (*e*) in the proposed district, — State to direct inquiry to be made.

As to the genuineness of the petition (*f*); and

As to the matters alleged in such petition:

(4.) Fourteen days notice of the time, place, and subject of such inquiry shall be given (*g*); — Notice of inquiry.

(5.) The said secretary of state shall make order with respect to the matter in question on such appeal (*h*), and such order shall be binding on the place in respect of which it is made, and there shall be stated in such order the time at which this Act is to come into force (*i*). — Order to be made by secretary of state.

XVIII. It shall be lawful for any owner or ratepayer who disputes the validity of the vote *for* (*k*) the adoption of this Act to appeal within *fourteen days* from the declaration of the *vote* (*l*) to one of — Appeal to secretary of state in case of alleged invalidity of vote for adoption of this Act.

(*e*) See, as to this, ss. 79, 80, *post*.

(*f*) This must mean not only as to the signatures, but as to the qualification of the persons signing.

(*g*) See note (*b*) on sect. 16, p. 240.

(*h*) Apparently, the secretary of state may order that the Act shall not be adopted in the place at all. It will be a question whether a default in any of the preliminary matters will render the order of the secretary of state void. As the inquiry is only a matter which, in his discretion, he may order, any default therein would not do so, but a defect in the petition might have this effect.

(*i*) It thus appears that the appeal will have the effect of postponing the commencement of the local board's powers. See further, sect. 20, *post*.

Note, that though there is no provision here in reference to the costs of this appeal, as in sect. 16, nevertheless sect. 81 will enable the secretary of state to make an order relative thereto, which can be enforced as this on appeal.

(*k*) No appeal is given from the vote rejecting the adoption of the Act. This is unnecessary, because the proceedings may be renewed at any time.

(*l*) *Quære*, what is meant by the declaration of the vote?

Her Majesty's principal secretaries of state, setting forth the grounds on which he disputes the validity of such vote, and it shall be lawful for any of Her Majesty's principal secretaries of state, on such appeal, to direct inquiry (*j*) by any officer employed by him in the execution of this Act into the circumstances of the case, and to issue such order thereon as he may deem requisite to determine the questions (*k*) arising on such appeal, and as to the validity or invalidity of such vote (*l*).

GENERAL PROVISIONS IN RELATION TO ADOPTION.

Notice as to adoption of Act to be given to secretary of state.

XIX. Whenever a resolution adopting this Act has been passed in any place, notice thereof shall be given to one of Her Majesty's principal secretaries of state by the following persons; that is to say,

In corporate boroughs, by the mayor:

In other places under the jurisdiction of such improvement commissioners as aforesaid, by the chairman of the board of commissioners:

In other places, by the summoning officer:

Probably it should have been the declaration of the decision, as in sect. 13, No. (4), *ante*, p. 237.

(*j*) See ss. 79, 80, *post*.

(*k*) It will be seen that the order will dispose of two sets of questions. 1st. Those arising on the appeal. 2nd. Those on the validity of the vote. The first will relate to the qualification of the appellant, the due promptitude of the appeal, or the sufficiency of the statement, or something else of a like character. The second will involve all the inquiries arising out of the conduct of the election itself.

(*l*) A provision somewhat similar exists in 5 & 6 Vict. c. 57, s. 8, in regard to questions arising on the election of guardians. By sect. 81, *post*, this order of the secretary of state is declared to be binding and conclusive. Nevertheless, if there have been some defect in the original proceedings so as to prevent the jurisdiction of the secretary of state, the order may, it is presumed, as in the cases of orders of justices, be impeached on such ground.

The notice so sent shall be in writing under the hand of the officer hereby required to give the same;

And it shall be the duty of such last-mentioned officer to publish a copy of such notice in manner following; that is to say,

By advertisement for three successive weeks in some one or more of the newspapers circulated in the place (*m*):

By causing a copy of such notice (*n*) to be affixed to the principal doors of every church and chapel in such place to which notices are usually affixed:

And when such notice has been so given (*o*), and the time for such appeal (*p*) has expired, or such appeal has been dismissed, a notice shall be published in the *London Gazette*, by one of Her Majesty's principal secretaries of state, that this Act has been adopted within such place.

Provision as to the time when this Act shall take effect.

XX. Whenever any resolution adopting this Act has been passed in any place this Act shall, at the expiration of *two months* (*q*) from the date of the passing of such resolution, or in the event of an appeal, or of a division of the district into wards as hereinafter provided (*r*), then at such time as may

(*m*) The question arises here, as on the previous sections, out of what funds the expenses of those proceedings are to come. There is no reference to the poor rate, neither is there any charge upon the future district rates, unless 11 & 12 Vict. c. 63, s. 30, *ante*, p. 76, can be held to apply to those proceedings.

(*n*) See note (*l*) on sect. 13, *ante*, p. 235.

(*o*) This means the notice to the secretary of state.

(*p*) *Id est*, the appeal provided for by ss. 17, 18, *ante*.

(*q*) *Id est*, calendar months.

(*r*) See sect. 24, *post*.

be mentioned in the order made on such appeal (*a*), or in the order setting out wards, have the force of law within such place (*b*);

And the expiration of such period of two months, or such date as may be mentioned in the said order as the time for this Act to come into force, shall be called *the date of the constitution of the district:*

Provided that the provisions of this Act relating to purposes already included in any local Act in force within the district with relation to any of the purposes of the Public Health Act, 1848, or this Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals for their own pecuniary benefit, notwithstanding the adoption of the Act, as hereinbefore provided, shall not come into operation until an order has been made and confirmed, as hereinafter prescribed (*c*), for the future execution, repeal, or alteration of the said local Act.

As to objections made to adoption of this Act.

XXI. No objection shall be made at any trial or in any legal proceeding to the validity of the adoption of this Act, or to any *order* (*d*) made in

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(*a*) See sect. 17, No. (5), *ante*, p. 243.

(*b*) Previous to this time, therefore, nothing can be done under the Acts. Mr. Taylor, in his note upon this section, seems to consider that certain steps can be taken in the interval of the two months or other period; but it is difficult to hold that those steps, if they require the sanction of the Act to render them valid, can be of any avail if the Act be not then in force in the place—or, in other words, before *the date of the constitution of the district.*

(*c*) See sect. 78, *post.*

(*d*) According to sect. 81, *post*, the order made by the secretary of state is to be binding and conclusive; therefore, it is difficult to conceive how any objection can be made to the order, unless the execution by the secretary of state is called in question, or some preliminary proceedings are impeached. See note (*l*) on the last section.

pursuance of this Act, or to any proceedings upon which such order was founded, unless the objector has given *fourteen days* previous notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made;

And no objection whatever in respect of the matters mentioned in this section shall be admissible *at any trial* or in any legal proceeding after the expiration of *six* calendar months from the date of the constitution of the district (*e*).

Proof of adoption.

XXII. Publication of a notice by a secretary of state once in the *London Gazette*, and by the mayor, chairman of the board of improvement commissioners, or summoning officer, respectively, for three successive weeks in any newspaper published and circulated in the town or district that this Act has been adopted in any place, shall be conclusive evidence *of such adoption* (*f*).

Provision as to payment of costs, &c. incurred in relation to adoption.

XXIII. In cases where this Act has been adopted by any place, all costs, charges, and expenses incurred by any of Her Majesty's principal secretaries of state, in relation to any such adoption, or to any proceedings connected therewith, or which such secretary is required to take under this Act, and not

(*e*) Note, that however valid the objection may have been at the commencement of the legal proceedings, if six months expire it will fail at the trial or any other proceeding subsequent to that date. This is a singular and unusual—if not unprecedented—enactment, and it is difficult to see the effect or the consequences of it; but reference must be made to the next section, according to which the publication in the *London Gazette* is to be *conclusive* evidence of the adoption.

(*f*) If this section means that this publication is to conclude all questions as to the legality of the steps taken in regard to the adoption, for what object was the enactment in the last section respecting the adoption of the Act passed?

hereby otherwise provided for, shall, to such amount as *the treasury* (*b*), by order, think proper to direct, become a charge upon the general district rates levied in such district under the authority of this Act, and be repaid to the treasury by annual instalments *not exceeding five* (*c*), together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid (*d*).

CONSTITUTION OF LOCAL BOARDS.

Local boards how constituted.

XXIV. The duty of carrying into execution this Act shall be vested in a local board; and such local board shall be,

(1.) In corporate boroughs, the mayor, aldermen, and burgesses acting by the council:

(2.) In other places under the jurisdiction of such a board of improvement commissioners as hereinbefore mentioned (*e*), the board of commissioners:

(3.) In other places, such number of elective members as may be determined by a resolution of the owners and ratepayers, passed in manner in which resolutions for the adoption of this

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(*b*) This is not the customary title. It should have been "the Commissioners of Her Majesty's Treasury." See 11 & 12 Vict. c. 63, s. 2, *ante*, p. 30, and as to their acts the statute 12 & 13 Vict. c. 89.

(*c*) See note (*b*) on 11 & 12 Vict. c. 63, s. 11, *ante*, p. 48.

(*d*) No provision is made for the expenses when the adoption of the Act is refused by the secretary of state, and it will be seen that the section refers to the costs incurred by him, and not to costs incurred by any other party.

(*e*) See sect. 12, *ante*, p. 233.

Act are hereinbefore directed to be passed, at any meeting held for the purpose of adopting this Act (*f*), or at any meeting to be summoned by the summoning officer for the purpose of this section;

But no person shall be qualified to be a member of such local board unless he is at the time of his election, and so long as he shall continue in office by virtue of such election, *resident* within the district for which or for part of which he is elected, *or within seven miles thereof* (*g*), and is seised or possessed of real (*h*) or personal estate, or both, to the value of not less than *five hundred pounds* in districts containing less than *twenty thousand* (*i*) inhabitants, or to the value of not less than *one thousand* pounds in districts containing *twenty thousand* or more inhabitants,

Or rated to the relief of the poor of such district, or of some parish within the same,

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(*f*) It will generally be most convenient that the number of members should be settled at the first meeting, and the number appointed should be such as to be divisible by three, as one-third are to go out of office every year. It does not appear that the number of the board can be afterwards altered by any authority.

(*g*) See note (*k*) on 11 & 12 Vict. c. 63, s. 16, *ante*, p. 56.

(*h*) This is the same qualification as that prescribed in 11 & 12 Vict. c. 63, s. 16; but the amount was then determined by the general board of health in their provisional order for each particular district. Here it is fixed according to a settled scale for all. It will be observed that no locality is assigned to the position of the real estate.

(*i*) It is usual to refer to the last census for the number of inhabitants. This can be done readily when the place is a borough or parish, but there will be much difficulty in cases where the place had no previous known boundary. The qualification therefore depends upon an element of great uncertainty in many places, and apparently may vary from year to year.

upon an annual value (*e*) of not less than *fifteen pounds* in districts containing less than *twenty thousand* inhabitants, or on an annual value of not less than *thirty pounds* in districts containing *twenty thousand* or more inhabitants;

Provided that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected,

Or if two or more persons be jointly rated in respect of any property which, if equally divided between them, would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected, but the property shall not at the same time qualify the owner and the occupier thereof (*f*):

District may be divided into wards with sanction of secretary of state.

(4.) Local boards of health in districts where the Public Health Act, 1848, *is applied*, may, with the sanction of one of Her Majesty's principal secretaries of state (*g*), divide their district into separate wards, and declare what proportion of the members of the local board is to be elected by each ward:

In districts where this Act is adopted, the

(*e*) This means the net rateable value. See note (*n*) on 11 & 12 Vict. c. 63, s. 16, *ante*, p. 57.

(*f*) See note (*p*) on 11 & 12 Vict. c. 63, s. 16, *ante*, p. 57.

(*g*) This division into wards is adopted from 5 & 6 Will. 4, c. 76, s. 39, relating to municipal corporations, and 7 & 8 Vict. c. 101, s. 19, relating to boards of guardians in parishes and unions. The first part of the paragraph refers to the districts formed prior to the Act, and enables the local board of health themselves, without appeal or control, to make the division. The second part applies to new districts to be formed hereafter. The sanction may, it is presumed, be given by letter signed by the secretary or under secretary of state. See 25 L. J., Ch. 776.

owners *and* ratepayers may (*h*) by resolution direct a petition to one of Her Majesty's principal secretaries of state to divide the district into wards, for the purpose of election of the local board, and to declare what proportion of the members of the local board shall be elected by each ward, and the said secretary of state may by his order make such division (*i*) and declaration after such inquiry as he shall deem necessary, and fourteen days notice shall be given of the time, place, and object of such inquiry (*k*);

And if any member be elected in more than one ward, he shall within three days notice thereof choose, or, in default of his choosing, the local board at their next meeting shall decide for which one of the wards the member shall serve, and he shall thereupon be held to be elected in that ward only, and a vacancy shall be held to exist on account of the other ward or wards (*l*);

No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than

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(*h*) This should be done at the meeting when the adoption of the Act is resolved upon, though it may be determined at a subsequent one to be held prior to the election of the board. The owners and ratepayers are to join in the resolution.

(*i*) The 7 & 8 Vict. c. 101, s. 19, requires four hundred rated houses, at least, to be comprised in each ward; but there is no limit to the discretion of the secretary of state in the text.

(*k*) See notes on sect. 16, *ante*, p. 240.

(*l*) See the analogous provision in 11 & 12 Vict. c. 63, s. 14, p. 54.

he is entitled to in respect of property in that ward (*m*);

But subject to these limitations, any rate-payer or owner may, by notice in writing (*n*) delivered to the clerk of the local board, or in case of the first election to the person appointed to conduct that election, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he do not give such notice he shall not be entitled to vote for any ward in which he does not reside (*o*):

As to election of local boards.

(5.) The election of local boards shall be conducted in the manner directed by the Public Health Act, 1848, for the election of local boards of health (*p*);

And the summoning officer (*q*) shall conduct the first election;

And the members of the local board shall take such declaration (*r*), continue in office for the same time (*s*), and be liable to such disqualifications (*t*) and penalties, as the members of

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(*m*) See 7 & 8 Vict. c. 101, s. 21.

(*n*) No time is specified when this notice is to be given, but it must clearly be before the voting papers are sent out, otherwise the clerk cannot direct the voter's paper.

(*o*) This is similar to 7 & 8 Vict. c. 101, s. 21, in which a difficulty has arisen in reference to the last words of this paragraph. If an elector omits to give notice, and does not reside within the district, he will not be able to vote at all.

(*p*) See 11 & 12 Vict. c. 63, ss. 21—28, *ante*, pp. 66—75, so far as relates to the election in non-corporate districts not under boards of commissioners.

(*q*) He is pointed out by sect. 16, No. (6), *ante*.

(*r*) See 11 & 12 Vict. c. 63, s. 17, *ante*, p. 58.

(*s*) See 11 & 12 Vict. c. 63, s. 13, *ante*, p. 51, which requires one-third of the members to go out of office every year.

(*t*) See 11 & 12 Vict. c. 63, s. 19, *ante*, p. 59, and sect. 25,

local boards of health under the said Public Health Act as altered by this Act:

(6.) If any person nominated, or any person on his behalf, give at least one clear day's notice in writing to the returning officer, before the delivery or collection of the voting papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer shall make his arrangements so as to enable the person appointed by him to be so accompanied;

Provided that no such agent shall interfere in any respect in the delivery or collection of the voting papers (*u*):

(7.) Any casual vacancy occurring by death, resignation, disqualification, or otherwise in the local board may be filled up *within one month* (*x*) by the local board out of qualified persons, but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred: As to casual vacancies.

(8.) In the case of districts not consisting of boroughs or towns under the jurisdiction of such improve- As to first meeting of local board.

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post. It is right here to notice that many persons are exempted from serving this office. See Burn's J. P. with reference to the Appointment of Overseers, and 21 & 22 Vict. c. 90, s. 35, as to registered medical practitioners.

(*u*) He will do well to refer to sect. 13, No. (5), *ante*, p. 237. It will be the duty of the agent to see that the papers are completely, duly, and honestly delivered and collected by the proper parties, and thus he will act as a check upon such officer and the agent of the opposing candidates. If he violates this provision, he will be liable to an indictment for a misdemeanor, in acting contrary to a statute.

(*x*) It is probable that this time is only directory, as in 11 & 12 Vict. c. 63, s. 12, *ante*, p. 51, which refers to selected members of the board. It does not appear that casual vacancies in the elective members of the board could have been supplied under that Act.

ment commissioners as aforesaid, the first meeting shall be held on such day, not more than *ten days* after the election (*h*) of the local board, and at such place, as the returning officer may, by notice sent by post or delivered to each member of such board, appoint.

Disqualification of members of local boards.

XXV. Notwithstanding anything contained in the Public Health Act, 1848,

(1.) No member of a local board shall vacate his office

By reason of his being interested in any sale or lease of any lands, or any loan of money to the local board (*i*) :

(2.) Nor by absenting himself from meetings of the board, if he be not absent from the district for more than six months at one and the same time (*k*), unless in case of illness (*l*),

Nor by reason of his being interested in any contract with the local board as a shareholder in any company established under the provisions

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(*h*) The election here probably means the declaration of the result of the election by the returning officer, though some may consider that the day when the voting papers are collected is the day of election. Such a construction might lead to inconvenience.

(*i*) See 11 & 12 Vict. c. 63, s. 19, *ante*, p. 59.

(*k*) See 11 & 12 Vict. c. 63, s. 18, *ante*, p. 59.

(*l*) *Quære* the meaning of these words. The signification naturally appears to be that a person absent for a period less than six months through illness would be disqualified, whereas, if absent for any other cause, the result would be different. It was perhaps intended to exempt from the operation of the clause the cases where persons are absent through illness, but it will be difficult to extract this meaning legally out of the clause. Indeed there appears to be a serious error in the first part of number (2), by the use of the word *district*. Apparently if the member be not absent from the district, his absence from the board is not material, unless he be ill. This was clearly not intended, but what intention can be elicited from the language actually used?

of the Joint Stock Companies Acts or any of them, with or without a limited liability (*m*),

Provided no member of a local board, being a shareholder, shall vote on any question in which the company is interested (*n*):

(3) It shall be lawful for one of Her Majesty's principal secretaries of state to dispense in any case with the prohibition contained in the nineteenth section of the Public Health Act, 1848, by which no member of a local board, being a shareholder in any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature (*o*), is entitled to vote upon any question in which such company or concern is interested.

(*m*) By 11 & 12 Vict. c. 63, s. 19, *ante*, p. 59, no member could be concerned in any contract with the local board, but an exception was made in regard to the members of certain public companies. By the text the exception is extended to all companies established under the provisions of the Joint Stock Companies Acts. These Acts are 7 & 8 Vict. c. 110, 10 & 11 Vict. c. 78, 18 & 19 Vict. c. 133, repealed by 19 & 20 Vict. c. 47, which consolidated all their provisions.

The text does not apply to companies formed under local Acts not incorporated with those Acts.

(*n*) It is not quite clear that any penalty is imposed by the statutes upon the member who votes, but as he will violate a public statute if he vote wilfully, he will be guilty of a common law misdemeanor, and be subject to an indictment accordingly.

As to the vote itself apparently it will be void, and any motion which may depend upon it will fail, as the last proviso to 11 & 12 Vict. c. 63, s. 19, cannot apply unless a penalty attaches upon the act, which seems doubtful. If, however, the motion be acted upon so that a contract is entered into this will not be avoided. See *Forster* v. *The Oxford, &c. Railway Company*, 13 C. B. 200.

(*o*) Under this clause it would seem that dispensation may be available either before the vote is given, which will be the most expedient course, or after it has been given, so as to give effect to it or to prevent a prosecution.

Powers of local board to vest in town council when a district becomes a corporate borough.

XXVI. So much of the *thirty-third* (*a*) section of the Public Health Act, 1848, as requires that a day shall be specified in any charter of incorporation by which the district of a local board becomes a corporate borough, from and after which the powers, authorities, duties, property, and liabilities of the local board shall be vested in the mayor, aldermen, and burgesses of the borough by their council, *shall be repealed;*

And all transfers of powers, authorities, duties, property, and liabilities *which have been* (*b*) or shall hereafter be made by any local board of health to the mayor, aldermen, and burgesses of any corporate borough by their council,

(The district of such board and such corporate borough being identical,)

Shall be valid and effectual to all intents and purposes, though no day for such transfer shall have been named in the charter incorporating such borough.

Power to adjoining districts to unite, with sanction of secretary of state.

XXVII. Adjoining districts may unite together upon such terms and subject to such conditions as the respective local boards of such districts may, with the sanction of one of Her Majesty's principal secretaries of state (*c*), determine.

(*a*) See *ante*, p. 78.

(*b*) Note the retrospective operation of these words. Many practical difficulties will arise from this sudden transfer of powers, which were capable of avoidance when the day of transfer could be settled in the charter. It was then easy to keep on foot the local board until they had discharged their current liabilities, and enforced what was then due to them. There is a peculiarity in the language of the text to be noticed. The 11 & 12 Vict. c. 63, s. 33, *ante*, p. 78, determines the powers of the local board, and vests them in the borough, but the text treats of the transfer to be made by the local board, as though that board were to execute some act to transfer its powers and liabilities to the borough.

(*c*) This sanction may be expressed by a letter under the

Power to local board to execute works in adjoining places.

XXVIII. 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 (*d*), 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 (*e*), 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 (*f*);

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

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hand of the secretary of state, and perhaps of his secretary. See *Arnold* v. *Mayor of Gravesend*, 25 L.J., Ch. 776. This clause is expressed with so much brevity that it will be very difficult to carry it into execution. What is the body which is to act for the district? The ratepayers and owners or the local boards? The latter are to determine the terms and conditions, but are they to form the union without the intervention of their constituents? The secretary of state, indeed, is to give his sanction, and therefore will be open to appeal or remonstrance on the part of objectors.

(*d*) This will be a parish, township, chapelry, or what was formerly termed an extra-parochial place.

(*e*) See, in the Appendix, 18 & 19 Vict. c. 121, s. 3, as to who constitute "the local authority."

(*f*) See 18 & 19 Vict. c. 121, s. 7, in the Appendix, which shows that the borough rate, improvement rate, highway rate, lighting and watching, or ultimately the poor rate, will be the fund to be charged.

consent of a place to the adoption of this Act is hereinbefore required to be signified (*a*);

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 owners or occupiers, such expenses shall be recoverable by the local board or local authority (*b*) of the district or place respectively from such owners or occupiers.

AS TO POWERS OF LOCAL BOARDS (*c*).

POWERS OF LOCAL BOARD AS TO SEWERAGE.

Power to make deduction from rate in respect of premises sufficiently drained.

XXIX (*d*). If it appear to a local board that any premises were sufficiently drained before the construction of any new sewer they may lay down, it shall be lawful (*e*) to deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the local board may under all the circumstances of the case deem to be just.

Powers for disposing of sewage.

XXX. Local boards may—

(1.) Exercise the powers given by the 46th sec-

(*a*) See sect. 13, *ante*. The inhabitants of this place are not to settle the terms. They are to be settled by the local authority, but it will be right that the probable result of the proposals should be laid before the meeting.

(*b*) It does not appear that any machinery is created by this Act to enable the local authority to recover such expenses, and 18 & 19 Vict. c. 121, Part II., is confined to proceedings under that Act.

(*c*) These are supplemental to those given by 11 & 12 Vict. c. 63.

(*d*) This clause is re-enacted from 11 & 12 Vict. c. 63, s. 86, *ante*, p. 141, which is repealed by sect. 54, *post*.

(*e*) These words are evidently discretionary, but the nature of the case seems to require that they should be construed as imperative, though it is clear that the local board have to exercise their judgment as to the amount and the period of the deduction.

tion (*f*) of the Public Health Act, 1848, also without their district, if necessary for the purpose of outfall and distribution of sewage, *upon* making (*g*) due compensation, to be settled in the manner provided in the 144th section (*h*) of the Public Health Act, 1848;

(2.) Contract with any company or person for the sale of sewage, or for the distribution of it over any land;

(3.) Contract for, purchase (*i*), or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage:

Provided always, that these things shall be done so as not to create a nuisance (*k*).

XXXI. In case any watercourse or open ditch Provision for obtaining

(*f*) See *ante*, p. 93. The 11 & 12 Vict. c. 63, s. 46, does not apparently limit the local board to their own district, but it is to be implied from the above clause that such was the true interpretation of the former statute, and the case of *Reg.* v. *Warner and Tatham*, 22 Jur. 606, supports such implication. It must be noted, however, that in this case due compensation must be made, and there are no such words in the 46th section of the former Act.

(*g*) The making or tendering of the compensation is not a condition precedent to the doing of the works. *Lister* v. *Lobley*, 7 A. & E. 124; *Peters* v. *Clarson*, 7 M. & G. 548.

(*h*) That is, by arbitration. See *ante*, p. 202. There compensation is to be made to persons *sustaining damage*.

(*i*) See, as to the purchasing of lands and premises by the local board, 11 & 12 Vict. c. 63, s. 84, *ante*, p. 137.

(*k*) These words also occur in 11 & 12 Vict. c. 63, s. 46, *ante*, p. 93. Whether the nuisance intended was a public nuisance is not clear, but as the word is used generally, any person may obtain an injunction to stay the proceedings of the local board if they would create a nuisance to him. It is difficult to conceive any mode by which a reservoir of sewage can be constructed which shall not be a nuisance to some one, unless it is wholly surrounded to a large extent by the land of the local board.

order for cleansing foul and offensive watercourses or open ditches lying near to or forming the boundaries of districts.

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 (*y*), summon the local authority for the purposes of the Nuisances Removal Act, 1855 (*z*), 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 (*a*) with reference to the execution of the works, and the persons by whom the same shall be executed, *and by whom* and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such justices shall seem reasonable;

And any sums ordered to be paid by any justices in pursuance of this section shall be a charge upon

(*y*) With reference to the making of this application, see 11 & 12 Vict. c. 63, s. 149, *ante*, p. 208, as to the authority of the local board, and 18 & 19 Vict. c. 121, ss. 30, 32, in the Appendix. The application must be made by an officer duly empowered.

(*z*) See 18 & 19 Vict. c. 121, s. 3, in the Appendix.

(*a*) This order shall not be vacated, or quashed, or set aside for want of form, nor be removable by *certiorari* or other process into the superior courts of law. See 11 & 12 Vict. c. 63, s. 137, *ante*, p. 192. But it seems to be open to appeal to the quarter sessions, under sect. 135, *ante*, p. 189.

and be payable 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 (*b*).

POWERS AS TO SCAVENGING AND CLEANSING.

Power to local boards to cleanse or contract for cleansing.

XXXII. The *fifty-fifth* (*c*) and *fifty-sixth* sections of the Public Health Act, 1848, shall be *repealed*, excepting so much of the *fifty-sixth* section as relates to the providing conveniences for the temporary deposit of dust, ashes, and rubbish, and also fit buildings and places for the deposit of sewerage and other matters collected by the local board;

And in lieu thereof be it enacted,

(1.) That local boards may themselves undertake or contract with any person (*d*) for

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(*b*) There is an omission here, inasmuch as it is not stated by whom the distress is to be levied, nor under what authority. The order of the justices is preliminary, and provides for the works to be done and the expenses to be incurred. The only way of carrying out the provision in the text is by an application to the justices, alleging the order, its execution, and the default of payment by the overseers. The justices should summon the overseers, hear the case, and having made their adjudication, issue the warrant of distress. This was, doubtless, the course intended.

It will be observed that the justices are to determine, among other things, *by whom* the costs are to be paid, consequently they may order some other fund than the poor rate to be so charged, and in such case it is presumed that this last provision will be held to be inapplicable.

(*c*) See *ante*, p. 105.

(*d*) This word includes a corporation. With reference to the power hereby conferred upon the local board, see 10 & 11 Vict. c. 34, ss. 87—98, which clauses, however, are not incorporated in this Act by sect. 45. There are no duties cast upon the local board in the text so as to render them liable to any action for neglect in scavenging or cleansing.

The proper cleansing and watering of streets;
The removal of *house refuse* from premises;
The cleansing of privies, ashpits, and cesspools;
Either for the whole or any part of their district;

And all matters thus collected by the local board or contractor may be sold or otherwise disposed of, and any profits thus made by the local board shall be carried to the district fund account:

(2.) If any person, not being the occupier *of a house* (*b*) within the district, removes, or obstructs the local board or contractor in removing, any matters hereby authorized to be removed (*c*) by the local board, he shall for each offence incur a penalty not exceeding *five* pounds (*d*);

And if any person, being the occupier of a house within the district, removes, or obstructs the local board or contractor in removing, any such matters (except in cases where such matters are produced on his own premises (*e*),

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(*b*) Here is, probably, an inadvertence on the part of the legislature. It was, doubtless, intended to provide for the occupiers of houses, who may deal with the rubbish collected in their own houses, but the language being indefinite the exception takes effect in respect of any occupier of a house in the district, so that such occupier, though unconnected with the subject matter in any way, can only be convicted in the minor penalty. As to the meaning of the word *house*, see 11 & 12 Vict. c. 63, s. 2, *ante*, p. 33.

(*c*) See 11 & 12 Vict. c. 63, s. 56, *ante*, p. 105, which provided for these matters when collected by the local board, but which clause is now repealed.

(*d*) As to the recovery of the penalty see 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184.

(*e*) It is not enough that the matters are produced upon the premises; they must be removed for sale, or for use for manure, and until removal they must be kept so as not to

and are removed for sale, or for his own use for manure, andare in the meantime kept so as not to be a nuisance), he shall for each offence incur a penalty not exceeding *forty* shillings (*f*):

(3.) In parts where the local board do not themselves undertake or contract with any person for—

The cleansing of footways and pavements adjoining any premises,—

The removal of refuse from any premises,—

The cleansing of privies, ashpits, and cesspools,—

They may make *byelaws* (*g*) imposing the duty of such cleansing or removal on the occupier of any such premises:

Power to local board to make byelaws as to nuisances.

(4.) The local board may make *byelaws* (*g*) for the prevention of nuisances arising from *snow*, filth, dust, ashes, and rubbish within their district (*h*), or of the *keeping of animals* so as to be injurious to the public health:

Provision for recovery of expenses of removal of offensive accumulations under

(5.) Whenever the local board have removed any noxious or offensive accumulation under the *fifty-ninth* (*i*) section of the Public Health Act, 1848, the expenses of removal, so far as

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create a nuisance; so that if the matters create a nuisance, which word must here, it is presumed, signify a public nuisance, they may be removed by the local board or the contractor without obstruction. As to what are not *refuse* claimable by the local board, see *Filbey* v. *Combe*, 2 M. & W. 677; *Law* v. *Dodd*, 1 Exc. 845; and *Lyndon* v. *Stanbridge*, 2 H. & N. 45.

(*f*) See note (*d*), *ante*, p. 262.

(*g*) See, as to such byelaws, 11 & 12 Vict. c. 63, s. 115, *ante*, p. 170, and the enforcing thereof, sect. 129, *ante*, p. 184, and the forms of byelaws now circulated by the secretary of state.

(*h*) See 11 & 12 Vict. c. 63, s. 55, *ante*, p. 105, which is hereby extended to *snow* and *animals*, and in the Appendix the provisions in 10 & 11 Vict. c. 89, s. 28, incorporated herewith, and those in the Nuisances Removal Act, 1855, which subject persons to proceedings who cause nuisances by these means.

(*i*) See *ante*, p. 108.

11 & 12 Vict. c. 63.

the same are not covered by the sale of the said accumulation, shall be recoverable in a summary manner (*a*) from the occupier, or, where there is no occupier, from the owner of the premises on which such accumulation existed, or from the person causing such accumulation,

Or may, by order of the board, be declared to be private improvement expenses (*b*).

Amendment of sect. 54 of 11 & 12 Vict. c. 63, for purposes herein named.

XXXIII. Whenever the *surveyor* (*c*), in the course of any examination made by him in pursuance of the *fifty-fourth section* (*d*) of the Public Health Act, 1848, finds any such drain, watercloset, privy, cesspool, or ashpit, as therein mentioned, to be in bad order and condition, or to require alteration, it shall not be necessary for him to cause the ground to be closed before the necessary works are set about for amending such drain, watercloset, privy, cesspool, or ashpit;

Provided that such necessary works are undertaken forthwith (*e*).

Sects. 53 and 72 of 11 & 12 Vict. c. 63, as to new streets and houses, repealed, and the pro-

XXXIV. The *fifty-third* (*f*) and *seventy-second* (*g*) sections of the Public Health Act, 1848, shall be repealed; and in lieu thereof be it enacted as follows:

(*a*) That is, under 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184.

(*b*) As to which see 11 & 12 Vict. c. 63, s. 90, *ante*, p. 148, and see sect. 103, *ante*, p. 159, for the recovery thereof.

(*c*) See 11 & 12 Vict. c. 63, s. 2, *ante*, p. 35.

(*d*) See *ante*, p. 103.

(*e*) This seems to signify that if the works be not executed forthwith, *i. e.*, with all convenient speed, the ground must be closed.

(*f*) *Ante*, p. 102.

(*g*) *Ante*, p. 124.

Every local board may make *byelaws* (*h*) with respect to the following matters; (that is to say,) visions herein named to be instead.

(1.) With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof (*i*);

(2.) With respect to the structure of walls of *new buildings* (*k*) for securing stability and the prevention of fires (*l*);

(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings (*m*);

(4.) With respect to the drainage of buildings (*n*), to waterclosets, privies, ashpits, and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation:

And they may further provide for the observance of *the same* by enacting therein such provisions as they think necessary,

As to the giving of notices,

As to the deposit of plans and sections by

(*h*) See, as to byelaws and their confirmation by the secretary of state, 11 & 12 Vict. c. 63, s. 115, *ante*, p. 170, and as to the enforcement thereof, sect. 129, *ante*, p. 184, and the forms lately circulated by the secretary of state.

(*i*) See, as to the making of new streets, 10 & 11 Vict. c. 34, ss. 57, 58, 63.

(*k*) See the conclusion of the clause for an explanation of what is to be deemed *a new building*.

(*l*) As to the provisions for the prevention of fire, see 10 & 11 Vict. c. 34, ss. 109, 124.

(*m*) As to the ventilation of buildings, see 10 & 11 Vict. c. 34, ss. 110—115.

(*n*) See the provisions in 10 & 11 Vict. c. 34, ss. 35—46.

persons intending to lay out streets or to construct buildings,

As to inspection by the local board,

And as to the power of the local board to remove, alter, or pull down any work begun or done in contravention of such byelaws:

Provided always, that no such byelaw shall affect any building erected before the date of the constitution of the district (*a*):

But for the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the frame-work shall be left down to the ground floor, or the conversion into a dwelling house of any building not originally constructed for human habitations, or the conversion into more than one dwelling house of a building originally constructed as one dwelling house only, shall be considered the erection of *a new building*.

POWERS FOR REGULATION OF BUILDINGS.

When houses taken down, local board may prescribe line in which same shall be rebuilt.

XXXV. When any *house* (*b*) or building has been taken down, in order to be rebuilt or altered, the local board may prescribe the line in which any house or building to be hereafter built shall be erected, and the same shall be erected in accordance therewith;

And the local board shall pay or tender compensation to the *owner* (*c*) or other person immediately

(*a*) See *ante*, sect. 20, p. 246.

(*b*) See in 11 & 12 Vict. c. 63, s. 2, *ante*, p. 33, the definition of a *house*, and as to this provision generally, see 10 & 11 Vict. c. 34, s. 68.

(*c*) See the definition of this word, 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29.

interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back, the amount of such compensation, in case of dispute, to be settled in the same manner (*c*) as compensation for land to be taken under the provisions of "The Lands Clauses Consolidation Act, 1845," is directed to be settled;

And all the provisions of the said last-mentioned Act relating to the purchase of lands shall apply to the payment made for such loss or damage as if it were a purchase under such Act.

Local board may purchase premises for purpose of making new streets.

XXXVI. The local board may, with the sanction of one of Her Majesty's principal secretaries of state (*d*), purchase any premises for the purpose of making new streets, and shall have with regard to premises so purchased all the powers given by the *seventy-third* section of the Public Health Act, 1848 (*e*).

HIGHWAY REPAIRS.

Cost of highways repair to be

XXXVII. "And whereas doubts have arisen as "to the rate out of which the repair of highways is

(*c*) The provision in 11 & 12 Vict. c. 63, s. 123, is thus superseded. See in the Appendix the provisions of the Lands Clauses Consolidation Act, 1845.

(*d*) This sanction may be given by a letter from the secretary of state or his assistant. See *Arnold* v. *Mayor of Gravesend*, 25 L. J. Ch. 776.

(*e*) The 11 & 12 Vict. c. 63, s. 73, *ante*, p. 125, only applied to the widening or improving an existing street; the present clause enables the local board to make new streets. That section, however, gave no special powers to the local board to make the purchase. It was unqualified, whereas in the text the sanction of the secretary of state is required. It is presumed that the sanction is required as a condition precedent to the payment of the purchase-money. Refer to 10 & 11 Vict. c. 34, s. 68, *post*, in the Appendix.

defrayed out of general district rate in certain cases.

"to be provided for in *districts* (*f*) under the Public "Health Act, 1848" (*g*): Be it enacted, that in such *districts*, or in districts where this Act is adopted, and where no other mode of providing for the repair of highways is directed by any *local Act*,

(1.) Where the *whole* of the district is rated to public works of paving, water supply, *and* (*h*) sewerage, or to works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate:

Power to levy highway rates in certain cases.

(2.) Where *parts* of a district are not rated for works of paving, water supply, *and* sewerage, or for such of these purposes as have been provided for by rate in the district, the cost of the repair of highways in the same parts shall be defrayed out of a highway rate (*i*) to be separately assessed and levied in the same parts by the local board as surveyor of highways (*k*), and the cost of such repair in the residue of the district shall be defrayed out of *the* general district rate (*l*):

(*f*) The 11 & 12 Vict. c. 63, s. 2, *ante*, p. 32, contains a definition of the word *district*.

(*g*) See note on 11 & 12 Vict. c. 63, s. 117, *ante*, p. 172. This enactment will have a retrospective as well as a prospective operation.

(*h*) Note the copulative. If the whole of the district be rated to (*i. e.* for) some but not *all* of those purposes, yet if some are provided for the whole district, the charge will be upon the general district rate; when there is a part which is not liable to any general rate for any of the purposes specified a highway rate is to be levied.

(*i*) This means a rate made and levied according to the provisions of 5 & 6 Will. 4, c. 50.

(*k*) According to 11 & 12 Vict. c. 63, s. 117, *ante*, p. 172. The case of *Richardson* v. *Tubbs*, 4 C. B. 304, has some bearing upon this provision, though the grievance there complained of appears to be remedied by the enactment in the text.

(*l*) See 11 & 12 Vict. c. 63, s. 89, *ante*, p. 147, which enables

(3.) Where no public works of paving, water supply, and sewerage are established (*m*) in the district, the repair of highways in the district shall be provided for by a highway rate, to be levied over the whole district by the local board as surveyors of highways:

(4.) Where part of any township or place, at the time of the application of this Act to any district, shall be liable to *contribute* and pay to the highway rates leviable or assessable within such district, although it shall not be included in the limits of such district, such part of the said township or place shall, for all purposes connected with the repairs of highways, and the payment of highway rates, but for no other purposes, be considered to be and be

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a local board to make separate assessments upon parts of the district. It is to be observed that this clause renders it discretionary with the local board to make separate rates, so that if they decline to do so there will be some difficulty in carrying out the provision of the above clause. It is clear that a general district rate must be levied for some purposes of a character affecting the whole of the district, such as the providing for the expenses of the election, the payment of the officers, and the general expenses of the board. That must come from the whole of the district, and is to bear the charge of certain highway repairs. How can parts of the district be prevented from bearing this charge in addition to their own? What is a general district rate which is in fact confined to a part of the district? It is to be feared that this provision of the clause will fail.

(*m*) It will not fail to be noticed that in this paragraph there is a departure from the two previous ones. They referred to the *assessments*, here reference is made to the *establishment* of the works. The works may have been completed, or may be in the course of being executed, and there may be no assessment. The actual meaning of the Legislature is not easily to be elicited, but most probably the paragraph means where there is no assessment for any such public works.

treated as if forming part of such district and comprised within the limits thereof (*a*):

Provided always, that no *such* district rate shall be leviable within such part (*b*):

Certain acts not required to be done in case of highway rate being made by local board.

(5.) Provided (*c*), that it shall not be necessary for any local board, in the case of any highway rate made by them, to do the following acts or any of them; that is to say,

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such local board;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates:

And all such accounts shall be audited in all respects in the same way as the other accounts

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(*a*) The Act does not make any distinction between the separate portions of the township; so that if any part be within the district, however small, the residue of the township must submit, as regards the highways, to the local board of the district. This provision also modifies that part of 11 & 12 Vict. c. 63, s. 117, *ante*, p. 173, which exempts the inhabitants of the district from contributing to the repairs of the highways out of it. But what is to be the practical effect of this clause? Are the local board to make the highway rate for the part of the township within the district? or are they to require contribution from the surveyor of the highways for the part without it? The latter, as the more convenient course, seems to be required by the words of the clause, though probably it is intended that the local board should lay their highway rate upon the part without the district.

(*b*) The meaning of this proviso is obscure. *Quære*, what district rate is referred to?

(*c*) The 11 & 12 Vict. c. 63, s. 117, in like manner dispensed with the allowance by the justices and the signature of the local board. The matters dispensed with in the text are required in respect of highway rates by the 5 & 6 Will. 4, c. 50, ss. 27, 29, 44.

of local boards (*d*), and all ministerial acts required by any Act of parliament to be done by the surveyor of highways may be done by the surveyor of the local board, or by such other person as they may appoint:

(6.) The surplus of any monies directed by the *one hundred and seventeenth* section of the Public Health Act, 1848 (*e*), to be paid by surveyors of highways to the treasurer of the local board, and to be carried to the district fund account, shall, for every district or part of a district where the roads are repaired out of highway rate, be carried by the same treasurer to a separate account to be kept by him, and called *the highway rate account* (*f*):

Application of surplus under sect. 117 of 11 & 12 Vict. c. 63.

The Act of the thirteenth Victoria, chapter thirty-five, "for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the secretary of state, and afterwards laid before parliament" (*g*), shall apply to the clerk to every such

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(*d*) See sect. 60, *post*.

(*e*) See *ante*, p. 173.

(*f*) The clause is here defective, as there is no direction as to what is to be done with the surplus. The treasurer will hold it and carry it to an account, as described; but there is no express authority given to the local board to apply or appropriate it. See note on 12 & 13 Vict. c. 63, s. 117, *ante*, p. 173.

(*g*) The 12 & 13 Vict. c. 35, s. 2, is as follows:—"The town clerk of every city, borough, port, cinque port, or town corporate subject to the provisions of the Act passed in the *seventh** year of King William the Fourth, 'to provide for the regulation of municipal corporations in England and Wales,' and the clerk to the trustees or commissioners appointed under any Act of parliament where the council of such city, borough, port, cinque port, or town corporate, or such trustees or commissioners, are authorized to pave, cleanse, or repair any highway, shall, within thirty days next after every annual or other periodical account of the receipts and expenditure of such council, trustees, or commissioners, in respect

*Sic in stat.

local board as aforesaid in like manner as to the clerk to any such trustee or commissioner as in such Act mentioned.

POWERS AS TO STREETS AND ROADS.

Power to local board to provide for sewering, &c., of parts of streets not being highways.

XXXVIII. The powers given to local boards of health by the *sixty-ninth* and *seventieth* sections

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of the highways under their management, has been made out, or where provision is made for the settlement or audit of such account then within thirty days after such settlement or audit, prepare from such account a statement in writing, showing *(as far as circumstances will permit)* the like particulars of such receipts and expenditure as are indicated under the heads of receipts and expenditure respectively in the form contained in the schedule to this Act, and shall, within the time aforesaid, transmit such statement to one of Her Majesty's principal secretaries of state; and if such town clerk or clerk to the trustees or commissioners shall neglect to transmit any such statement within such time as aforesaid, he shall for every such offence, on conviction, forfeit any sum not exceeding *ten* pounds nor less than *five* pounds, and such penalty shall be recovered and applied as penalties are by the *said* (*a*) Act made recoverable and applicable."

"GENERAL STATEMENT of the RECEIPTS and EXPENDITURE on account of the highways of the parish [township, hamlet, &c.] of in the county of for the year ending 25th March, 18 , *as appearing from the accounts of surveyor of highways for the said parish [township, hamlet, &c.], allowed by the justices at a special sessions for the highways holden at on the day of* .

"RECEIPTS.

	£	*s.*	*d.*
Balance in hand (if any) from last account -			
Rates or assessments received in money - -			
Value of team labour performed by ratepayers in lieu of rates - - - - - -			
Value of other work performed by ratepayers in lieu of rates - - - - - -			
Receipts from turnpike trusts (if any) - -			
Other receipts - - - - - - -			
Total income - - £			

(*a*) This means 5 & 6 Will. 4, c. 76.

of the Public Health Act, 1848, (*a*) to compel the sewering, levelling, paving, flagging, and channelling of *streets* that are *not highways* repairable at the public expense, and after the completion of such works to declare such streets highways repairable at the public expense, shall extend to providing the means of lighting, metalling, or making good such streets, and may be exercised in respect of the carriage-way, footway, or any part of such streets;

And the said powers shall also be deemed to have extended, and shall extend and be exercised in respect of any street or road of which a part was at the time of the application of the Public Health

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"EXPENDITURE.

	£	*s.*	*d.*
Balance overpaid (if any) on last account - -			
Paid for manual labour - - - - -			
„ for team labour (in money) - - -			
„ for materials - - - - - -			
„ for tradesmen's bills - - - - -			
„ for salaries - - - - - -			
Value of team labour performed by ratepayers in lieu of rates - - - - - -			
Value of other work performed by ratepayers in lieu of rates - - - - - -			
Payments to turnpike trusts (if any) - - -			
Other payments - - - - - -			
Total expenditure £			
Leaving on the 25th March, 18 , a balance of £ in hand, or overspent, as the case may be.			

(*Signed*) _____

Clerk to the justices for the division.

Dated _____ 18 ."

Note, this return will be altered by the omission of the reference to the justices' allowance.

(*a*) *Ante*, pp. 120, 122.

Act, 1848, or is or may be, a public footpath (*a*), or repairable at the public expense, as fully as if the whole of such street or road had been or was a highway not repairable at the public expense (*b*).

No incumbent or minister of any church, chapel, &c. liable to expenses under sect. 69 of 11 & 12 Vict. c. 63, or this section.

No incumbent or minister (*c*) of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor (*d*), shall be liable to any expenses under the *sixty-ninth section of the Public Health Act*, 1858, *or this section*, as the owner or occupier of such church, chapel, or place, or of any churchyard, or burial ground (*e*) attached thereto;

Nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground,

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(*a*) See note (*k*) on 11 & 12 Vict. c. 63, s. 69, p. 120. The language of this clause is retrospective as well as prospective. The clause extends the power of the local board to lighting the streets referred to, though apparently the 12 & 13 Vict. c. 94, s. 8, *ante*, p. 125, would have applied to the case.

(*b*) See note (*f*) on 11 & 12 Vict. c. 63, s. 68, *ante*, p. 119.

(*c*) It is difficult to see how the incumbent or minister of any church or chapel other than a proprietary chapel could have been assessed, under the section referred to, as the *owners*. Such person could not have been brought within the meaning of 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29, and no occupier was liable to the rate under the sect. referred to.

(*d*) See the statute 3 & 4 Will. 4, c. 30. So far as the text goes, it only exempts the incumbent or minister, therefore the trustees, other than the incumbent or minister, would be liable, but the clause provides that the expenses shall not be a charge on the church or churchyard. Hence, doubtless, the courts would hold that the trustees were not liable to be assessed, inasmuch as they could not be personally responsible.

(*e*) A burial ground purchased under the late Burial Acts is not to be assessed to any local rate at a higher rate than that at which the land was assessed at the time of the acquisition: 18 & 19 Vict. c. 128, s. 15: but is not wholly exempt.

or to subject the same to distress, execution, or other legal process;

And (*f*) the local board may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

Power to local boards to agree as to making of new public roads.

XXXIX. It shall be lawful for any local board to agree (*g*) with any persons *for the making* (*h*) of roads for the public use through the lands and at the expense of such persons, and to agree that such roads shall become and the same shall *accordingly* (*i*) become, on completion, public highways maintainable and repairable at the public expense;

And it shall be lawful for such board, with the consent of two-thirds of their number (*j*), to agree

(*f*) The 11 & 12 Vict. c. 63, s. 69, *ante*, p. 120, requires the local board to give notice to the owner and occupier of the premises to make the street, and in their default are empowered to do the works themselves. This proviso, therefore, deals with the case when the minister being exempt, there may be no *owner* liable to do the works, and consequently no default.

(*g*) As to the mode of making the agreement, *quære?*

(*h*) It is not quite clear from this language who is the proper party to make the roads, whether the local board or the owner of the lands; but as the local board are empowered to pay any portion of the expenses, the better opinion would seem to be that the proprietors are to do the requisite works, and afterwards the roads are to be repairable at the public expense, *i.e.*, out of the district rate.

(*i*) This word appears to signify after the agreement has been made.

(*j*) This is an unusual requisition. It would seem that a mere majority may agree for the making of the road, but that there must be the consent of two-thirds of the members to the payment of any part of the cost. But probably the correct meaning is, that the whole is to be treated as one agreement, and that it cannot be entered into at all without the consent of two-thirds of the board. It must be noticed that it is not two-thirds of any meeting, but two-thirds of the whole board.

with such persons to pay, and accordingly to pay, any portion of the expenses of making such roads out of *the funds at the disposal of such board for public improvements.*

Power to local boards, by consent, to construct public bridges, &c., or adopt as public, and improve existing bridges, &c. over or under canals, railways, or tramroads.

XL. It shall be lawful for any local board to agree (*a*) with the proprietors of any canals, railways, or tramroads, and with any landowners or other persons willing to bear the first expense thereof, for the construction or alteration of, and accordingly *to cause* (*b*) *or permit* (*c*) to be constructed or altered, any bridges, viaducts, or arches over or under any such canals, railways, or tramroads, at the expense of such persons, and *at the like expense* (*d*), by agreement, to purchase so much of any slopes, embankments, or other parts of such canals, railways, or tramroads, or of any adjoining lands, as may be required for the foundation and support of such bridges, viaducts, or arches, and the approaches thereto, and to agree that such bridges, viaducts, and arches respectively, with their approaches and accessaries, shall become, and the same shall *accordingly* become, on completion, parts of public streets or roads maintainable and repairable at the public expense;

(*a*) As to the mode of making the agreement, *quære?*

(*b*) In this clause it appears that the local board may do the works themselves.

(*c*) This must be interpreted with a proper saving of private interests and rights. It is presumed that the local board can only dispose of the rights of the public, and therefore the steps referred to cannot be taken against the consent of persons who are interested in the subjects referred to in their existing condition.

(*d*) It seems that though the local board may do the works, or purchase the same, they may agree with the proprietors or landowners that the latter shall pay the cost in the first instance, though ultimately the public are to keep and maintain them.

And it shall be lawful for such board, with the consent of two-thirds of their number, to agree to pay, and accordingly to pay (*e*), any portion of the expenses of such construction, alteration, and purchase out of the funds at the disposal of such board for public improvements;

And it shall be lawful for such board, with the consent of such proprietors and *other persons interested*, and on such terms as may be mutually agreed upon, to adopt any existing bridges, viaducts, or arches over or under any such canals, railways, or tramroads, and the approaches thereto, as public bridges, viaducts, or arches, and parts of public streets or roads maintainable and repairable at the public expense.

Powers to local boards to enter into agreements with turnpike trustees as to repair, &c. of roads.

XLI. It shall be lawful (*f*) for any local board, by agreement with the trustees of any turnpike road, or with any corporation or person liable to repair any street or road, or any part thereof, or with surveyors (*g*) of any bridge repaired by any county, riding, or division, to take upon themselves the maintenance, repair, cleansing, or watering of any such street or road, or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said roads within their district, and to remove any turnpike

(*e*) This provision clearly applies to the proposal to pay or contribute to the expenses after the agreement for the alteration has been made. There is some ambiguity as to the funds referred to here, and in the previous section.

(*f*) This clause is intended to provide for such cases as would fall within the decision of the case of *Clayton* v. *Fenwick*: see note on 11 & 12 Vict. c. 63, s. 10, *ante*, p. 45.

(*g*) It would seem that the agreement ought more properly to have been made with the justices of the county, represented by the clerk of the peace. The surveyor of the county bridges must be treated as the agent of the justices.

gates, toll gates, or bars which may be situate *within two miles* (*d*) from the centre of any town or place within their district, and to erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the local board and the trustees, or corporation, or person or surveyor aforesaid may agree upon between themselves;

Provided that in case any mortgage debt is charged upon the tolls of any such turnpike road no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees;

And that when the terms arranged shall include any annual or other payments from the local board to the trustees, then such payments may be secured on the local rates, in the same manner as other charges on the rates are authorized by this Act (*e*);

Provided also, that all executors, administrators, guardians, trustees, and all committees of the estates of idiots and lunatics, who as such are for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof, and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

(*d*) This will be construed to mean miles in a straight line, according to the crow's flight. See note (*k*) on 11 & 12 Vict. c. 63, s. 16, *ante*, p. 56. But how is the centre of the town to be ascertained?

(*e*) See sect. 57, *post*, which appears to be referred to.

Objections under sect. 70 of 11 & 12 Vict. c. 63, to be made by the sole proprietor, or, if more than one, by a majority.

XLII. And "whereas by the *seventieth section* (*f*) of the Public Health Act, 1848, it is provided that no street shall become a highway, under the provisions of such section, if within one month after notice in writing shall have been first put up as therein mentioned, the proprietor of such street, or the person representing or entitled to represent such proprietor, shall, by notice in writing to the local board, object thereto; and doubts have arisen as to the effect of such provision:" Be it enacted, that no such objection shall be of force unless made either by the sole proprietor, or (if more than one) (*g*) by the majority in number of such proprietors, and in ascertaining such majority *joint proprietors* (*h*) shall be reckoned and considered one proprietor.

Certain roads herein named not to be in-

XLIII. Notwithstanding anything contained in the Public Health Act, 1848, or this Act (*i*), it shall

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(*f*) See *ante*, p. 122.

(*g*) By force of the 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29, it would have appeared that when there was more than one proprietor all must have objected. Now, it will be seen, a certain proportion only are required to object.

(*h*) If there be several proprietors it is difficult to see how they can be other than all joint proprietors. The Legislature probably intended to provide for classes of several proprietors, in which case one person might be a proprietor of one house, while several might be the joint proprietors of another house. In such a case there would be one vote in respect of each house. But if the question turn upon the proprietorship of one house, which belongs to several persons, they must all have separate votes.

(*i*) There will not be found any express provision in these Acts applicable to those localities, with regard to which the long special regulations that follow have been introduced into this public statute; but Mr. Taylor points out, that parts of the roads referred to lie within the jurisdiction of the cer-

terfered with, except upon conditions, &c. herein named.

not be lawful for any local board to open or in any way disturb any of the public roads or footpaths under the charge of the commissioners of the metropolis turnpike roads north of the Thames, or of the New Cross turnpike roads, or of the trustees acting in execution of the Surrey and Sussex Roads Act, 1850, except upon the conditions and subject to the regulations hereinafter contained; that is to say,

(1.) The local board shall leave at the office of the commissioners or trustees of such road seven days' previous notice, containing full particulars of any works intended to be executed by them, and affecting any of such roads:

(2.) If the general surveyor of the said commissioners or trustees directs the works to be on any particular part of such roads the local board shall be bound to obey such directions.

(3.) Except by the permission of the said commissioners or trustees, the traffic of any of the said roads shall not at one time be stopped or in any way hindered along more than half of its width, nor, if the half left open is of less than the clear width of *fourteen* feet, along more than *one hundred yards* in length; and no alteration shall be made in the inclination of any of the said roads of more than *one* foot in *sixty* feet:

(4.) All works shall be done under the superintendence of the general surveyor;

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tain local boards of health, who might claim power to exercise some of the powers granted by those Acts.

And all such precautions as he may direct for the protection and convenience of the public shall be taken by and at the expense of the party doing the works, and in default the said surveyor shall cause to be done in that behalf what he may think proper; and the party doing the works shall in all cases of damage occurring by reason of such works, and whether such precautions are or not taken, be answerable to the person suffering such damage, the said commissioners or trustees being hereby absolved from all liability in respect of the consequences of such works:

(5.) The party doing the works shall, as regards every road opened or disturbed, restore the same to its original state as to surface and materials, and, in order to meet the expenses consequent upon the subsidence of materials newly filled in, shall repay to the said commissioners or trustees, on demand, such sum as they have expended in restoration of the road, not exceeding *one shilling* for every superficial square yard, and, so far as the works affect the same, shall make good all drainage, paving of water channels, curbs of footpaths, and other matters and things connected with the maintenance of the said roads;

And on default the said surveyor may cause to be done in that behalf what he may think fit;

And the said surveyor may recover the expense so incurred by him in a summary manner.

Incorporated Powers.

Certain provisions of 10 & 11 Vict. c. 89, incorporated with this Act.

XLIV. The provisions of "The Towns Police Clauses Act, 1847," (*a*)

(1.) With respect (*b*) to obstructions and nuisances in the streets,

(2.) With respect to fires (*c*),

(3.) With respect to places of public resort,

(4.) With respect to hackney carriages,

(5.) With respect to bathing,

shall be incorporated with this Act.

Certain provisions of 10 & 11 Vict. c. 34, incorporated with this Act.

XLV. The provisions of "The Towns Improvement Clauses Act, 1847," with respect to the following matters, that is to say (*d*),

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(*a*) See the provisions of these Acts here referred to in the Appendix.

(*b*) By 10 & 11 Vict. c. 89, s. 5, it is provided that by the use of this language the clauses of that Act applicable to the particular subjects shall be incorporated, but the incorporated clauses require attention to be paid to other clauses in the Act, and consequently such as appear to be requisite are printed in addition to the clauses actually incorporated. It will be found that No. (1) includes ss. 21—29, No. (2) ss. 30—33, No. (3) ss. 34—36, No. (4) ss. 37—68, and No. (5) s. 69.

It will be remembered that by sect. 7, *ante*, p. 228, the local board are substituted for the commissioners and undertakers mentioned in these Acts, and it is provided that the penalties prescribed by the incorporated Acts will be recoverable, according to the provisions of 11 & 12 Vict. c. 63.

(*c*) See also, with reference to *fires*, 10 & 11 Vict. c. 34, ss. 109, 124, in the Appendix, which is incorporated by the next section, and section 34, *ante*, p. 265.

(*d*) No. (1) includes ss. 64, 65, No. (2) ss. 66—74, No. (3) ss. 75—78, No. (4) ss. 79—83, No. (5) ss. 121—124, No. (6) includes s. 108, No. (7) includes ss. 125—131, No. (8) includes s. 143. See the clauses printed in the Appendix.

In regard to some of these subjects special provisions will be found in 11 & 12 Vict. c. 63, or in this Act, and it will be important to ascertain whether the provisions in the present Acts in any respect conflict with those in the incorporated

(1.) With respect to naming the streets and numbering the houses,
(2.) With respect to improving the line of the streets and removing obstructions,
(3.) With respect to ruinous or dangerous buildings,
(4.) With respect to precautions during the construction and repair of the sewers, streets, and houses,
(5.) With respect to the supply of water, except the proviso thereto,
(6.) With respect to the prevention of smoke,
(7.) With respect to slaughter-houses (*e*),
(8.) With respect to clocks,

shall be incorporated with this Act, subject to this qualification, that the above-mentioned provisions with respect to the prevention of smoke shall not extend to compel the consumption of all smoke in the case of all or any of the processes following;

That is to say, to the coking of coal, the calcining of ironstone or limestone, the making or burning of bricks, earthenware, *quarries* (*f*), tiles, or pipes, the raising of any mines or minerals, the smelting of iron ores, the refining, puddling, shingling, and rolling of iron or other metals, or to the melting and casting of iron into castings, or to the manufacture of glass, in any district where the provisions *of the said* (*g*) *Act for the prevention of smoke* are not now in force, in which the local board

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Act. Where that may be the case the present statutes should be the rule to guide as containing the latest legislation on this particular subject.

(*e*) See further as to slaughter-houses, 11 & 12 Vict. c. 63, s. 62, *ante*, p. 111, and *post*, sect. 50.

(*f*) *Quære* whether this is the word intended? It is not customary to say that quarries are made or burnt.

(*g*) It seems that this refers to 10 & 11 Vict. c. 34, s. 108,

shall resolve that any one or more of such processes should be exempted from penalties (*g*) for not consuming all smoke for any time specified in such resolution, not exceeding *ten* years, which may be annually renewed for a similar or any shorter period, if the board shall think fit;

And any justice or justices before whom any person shall be summoned may remit the penalty in any case within such district in which he or they shall be of opinion that such person has adopted the best known means for preventing any nuisance from smoke, and has carefully attended to the same, so as to consume, as far as possible, the smoke arising from any process so exempted during such time as any such resolution shall extend to,

Unless an order (*h*) shall be issued by one of Her Majesty's principal secretaries of state directing that such exemption shall no longer be continued in such district to such processes or any of them after a time specified in such order (*i*).

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but that clause applies to cases where a special Act is to be passed, that is to say, where, in this instance, a district is hereafter to be formed. But the text applies to something existing at the date of the Act. Probably the local Acts which contain special provision on this point, and 16 & 17 Vict. c. 128, were intended to be referred to.

(*g*) Which penalties are prescribed by 10 & 11 Vict. c. 34, s. 108.

(*h*) As to this order see sect. 81, *post*.

(*i*) This clause, so far as it relates to the consumption of smoke, is singularly perplexing to the reader. The effect of it appears to be as follows. The 10 & 11 Vict. c. 34, s. 108, requires that the smoke of the furnaces of certain works shall be consumed, but an exception may be made in respect of certain trades in districts where there is at the date of this statute no Act prohibiting the continuance of smoke if the local board resolve that the penalty should be remitted. Again, a justice may remit the penalty incurred, if satisfied

Watching and Lighting Act (3 & 4 W. 4, c. 90.) to be superseded by this Act.

XLVI. In any district (*k*) where the Public Health Act, 1848, is in force, or where this Act is adopted, and in which the Act passed in the third and fourth years of the reign of King William the Fourth, intituled "An Act to repeal an Act of the Eleventh Year of His late Majesty King George the Fourth, for the lighting and watching of Parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said last-mentioned Act shall be superseded by this Act (*l*), and all lamps, lamp posts, gas pipes, fire

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that the best means have been resorted to for the consumption of the smoke during the time mentioned in the resolution. But all these exemptions and remissions will be unavailing if the secretary of state by his order prohibit the continuance of the exemption.

It seems, therefore, that, notwithstanding the resolution of the local board, a party may be summoned before the justice, who will have power to remit the penalty, or to enforce it unless the secretary of state has interfered and prohibited its remission.

(*k*) This clause it is to be presumed will only take effect in districts co-extensive with the place where the 3 & 4 Will. 4, c. 90, has been adopted.

(*l*) The 3 & 4 Will. 4, c. 90, provides for the watching and lighting of parishes. The Public Health Act, 1848, amended by 12 & 13 Vict. c. 94, *ante*, p. 125, provides for the lighting of the district, but there is no provision for the watching. Nevertheless as the whole of the first Act is superseded, it would seem to follow that no provision for watching the districts which are not boroughs, or places governed by some local Act containing powers to watch, will be henceforth available, so that the county police must act in such places exclusively. Again, the former statute is not repealed but *superseded;* therefore, it will probably be held that outstanding arrears of rates are still recoverable, though it is questionable who can recover them. No provision is made for unsatisfied or continuing liabilities incurred by the inspectors, nor for balances in their hands at the time of the transfer. In regard to the highway rates there are express enactments in 12 & 13 Vict. c. 63, s. 117, *ante*, p. 172, and in sect. 37 of this Act, *ante*, p. 267, so that the

engines, hose, and other property vested in the inspectors for the time being under the said Act, shall, in all existing districts under the Public Health Act, 1848, and elsewhere upon the adoption of this Act, vest in the local board.

Where vestries adopt provisions of 10 & 11 Vict. c. 74, local board to be the commissioners under that Act.

XLVII. In any district where a vestry adopts the Act passed in the *tenth* year of the reign of Her present Majesty, chapter *seventy-four*, and intituled "An Act to encourage the Establishment of Public Baths and Wash-houses," the local board may, at the *option of the said vestry* (*c*), be the commissioners for the execution of the said Act, and shall thereupon have all the powers, duties, rights, and obligations of commissioners under the said Act;

And all expenses incurred by the local board in carrying into execution the powers given to them by the said Act shall be defrayed out of general

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omission here is the more embarrassing. The word *property*, according to the usual rule of construction, must be interpreted in conjunction with the previous words, which have no connexion with money or pecuniary balances. Nevertheless, the inspectors will act with most prudence if they pay them over to the local board. If the powers of watching conferred by 3 & 4 Will. 4, c. 90, are put an end to by the text, and are not transferred to the local board, it will be matter of great doubt how the lock-ups and properties belonging to the parish, and acquired under that statute, are to be disposed of.

With regard to the transfer of liabilities, see *Sinnott* v. *Whitechapel Board of Works*, 22 Jur. 263.

(*c*) These words are peculiar, but it is meant that if the vestry think fit, the power shall be referred to the local board, provided the latter be willing to accept the charge. The same observations which have been made upon the last clause upon the effect of the transfer occur here also.

district rates, and all receipts by them by reason of the exercise of such powers shall be carried to the district fund account (*d*).

Sections of 11 & 12 Vic c. 63, as to slaughter-houses, repealed.

XLVIII. The *sixty-first* (*e*) and so much of the *sixty-second* (*f*) sections of the Public Health Act, 1848, as empowers the local board to make *byelaws* with respect to all slaughter-houses, shall be repealed.

Local board to be burial board of district, though the burial ground be provided for parts of the district only.

XLIX. In any district where a vestry of any one or more parish or place comprised therein having a known or defined boundary (*g*) adopts the Act passed in the *twentieth* and *twenty-first* years of the reign of Her present Majesty, chapter *eighty-one*, and intituled "An Act to amend the Burial Acts," the local board may, *at the option of such vestry* (*h*), be the burial board for the execution of the said Act within such parish or parishes, place

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(*d*) The Acts referred to are 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61, and are printed in the Appendix. The 10 & 11 Vict. c. 34, ss. 136—141, contained provisions for the establishment of public baths and wash-houses, open bathing places, and drying grounds.

(*e*) See *ante*, p. 110.

(*f*) See *ante*, p. 111. The slaughter-houses will be regulated by the provisions of 10 & 11 Vict. c. 34, incorporated herewith by sect. 45, and printed in the Appendix, sect. 128 whereof will enable the local board to make byelaws for the purpose, and hence the provision in the former statute has been repealed.

(*g*) Reference is here made to sect. 12, above, p. 233. See the provisions relating to burials contained in 11 & 12 Vict. c. 63, ss. 81, 82, 83, *ante*, p. 187, and 21 & 22 Vict. c. 81, ss. 4, 5, 27, in the Appendix.

(*h*) See note (*c*), *ante*, p. 286.

or places, so adopting the Act as aforesaid, and shall thereupon have all the powers, duties, rights, and obligations of a burial board under the said Act (*a*);

And all expenses incurred by the local board in carrying into execution the powers given to them by the said Act shall be defrayed out of rates to be levied on such parish or parishes, place or places, so adopting the Act as aforesaid, in the same manner as general district rates are to be levied under the provisions of this Act (*b*);

And all receipts by them, by reason of the exercise of such powers, shall be carried to the credit of such parish or parishes, place or places so adopting the Act as aforesaid:

Provided (*c*) nevertheless, that in case the parish

(*a*) Some burial boards have the fee simple of the burial ground vested in them, but there are no words to transfer this property to the local board of health; and if the burial board be not kept up, there will be some difficulty in dealing with the legal rights of property therein. In such cases it seems advisable that no change should be made.

(*b*) See sect. 55, *post*. It is to be observed, that these expenses are not to be paid out of the general district rates, but are to be defrayed out of a rate to be levied for this purpose. This rate will, therefore, be a burial rate; but such a provision will prove inconvenient. There is no reservation of the charges which may have been heretofore made upon the poor rate for money borrowed by the burial board; as, however, the clause refers only to expenses incurred by the local board, the charges made, prior to the transfer, upon the poor rate, will, doubtless, remain in force.

(*c*) It will be found that in many districts there are several separate parishes—some of these may have their distinct burial boards. It would be inconvenient that the burial board should be transferred to the local board of health, but that inconvenience can seldom be avoided. This proviso contemplates the case of a parish forming a ward in the district, and then enacts that the members of the local board elected by such ward shall form the burial board for such parish. It is by no

or parishes, place or places comprised in such district so adopting the Act as aforesaid shall have been declared a ward or wards for the election of members of the local board, and members shall have been elected by and for such ward or wards, the last-mentioned members shall form the burial board for such parish or parishes, place or places so formed into a ward or wards as aforesaid, instead of the members of the said local board, and shall have all the like powers, duties, rights, and obligations of the burial board under said Act of the *twentieth* and *twenty-first* years of the reign of Her present Majesty, *chapter eighty-one*.

Power of local board to establish markets, with consent of owners and ratepayers.

L. The local board shall in non-corporate districts, with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect to resolutions for the adoption of this Act (*d*), and in corporate districts, shall, with the consent of two-thirds of the local board, have the power to do (*e*) the following things or any of them within their district:

(1.) To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets;

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means clear whether the option of the vestry must intervene; but it rather seems as though it must. The language here used is indeed unqualified, and this constitution of the burial board and that of the local board of health have the same element, viz., election by the ratepayers of the parish; yet this is but a proviso to a general proposition, in which the *option of the vestry* must intervene.

(*d*) See sect. 16, *ante*, p. 239.

(*e*) It will be seen that there is no compulsion upon the local board to act, notwithstanding the resolution of their constituents, and there must be the consent of two-thirds of all the members of the board, not of a meeting.

To provide houses and places for weighing carts;

To make convenient approaches to such market;

To provide all such matters and things as may be necessary for the convenient use of such market;

To purchase (*e*) or take on lease land, and public or private rights in markets, and tolls, for any of the foregoing purposes;

To take stallages, rents, and tolls in respect of the use by any person of such market house;

But no market *or slaughter-house* (*f*) shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person, *chartered joint stock* (*g*) or incorporated company, without his or their consent:

(*e*) The 11 & 12 Vict. c. 63, s. 84, *ante*, p. 137, enables the local board to purchase or take on lease land and premises by agreement; and sect. 75, *post*, incorporates the Lands Clauses Consolidation Act, 1847, which contains special provisions in regard to the taking of lands otherwise than by agreement. Nothing is here said in regard to the charges incurred for these purchases and works; therefore they must be charged to the general district rates.

(*f*) It will be seen that this clause does not apply to slaughter-houses in terms, and it seems to be a forced interpretation to bring such establishments within the general language which is used in it. But the 11 & 12 Vict. c. 63, s. 62, *ante*, p. 111, enables the local board to provide premises to be used as slaughter-houses; and though there is a saving of certain rights, they are limited to rights conferred by local Acts of parliament.

In sect. 45 there is an incorporation of the clauses relating to slaughter-houses contained in 10 & 11 Vict. c. 34. But no reference is here made to the clauses relating to them contained in 10 & 11 Vict. c. 14, great part of which is incorporated herewith by the following paragraph.

(*g*) See note (*m*) on sect. 25, *ante*, p. 255.

Provisions of 11 & 11 Vict. c. 14, as to markets, &c. incorporated.

(2.) For the purpose of enabling any local board to establish markets in manner aforesaid, or to regulate markets already established in any corporate borough before the constitution of a local board therein, there shall be incorporated with this Act the provisions of "The Markets and Fairs Clauses Act, 1847," (*h*) in so far as the same relate to markets:

With respect to the holding of the market or fair, and the protection thereof (*i*); and

With respect to the weighing goods and carts (*k*); and

With respect to the stallages, rents, and tolls (*l*); and

With respect to byelaws (*m*);

Subject to this proviso, that all tolls leviable by the local board in pursuance of this section shall be approved by one of Her Majesty's principal secretaries of state (*n*).

WATER SUPPLY.

Powers of sect. 76 of 11 & 12 Vict. c. 63, as to

LI. The powers given to local boards by the 76th section (*o*) of the Public Health Act, 1848, shall

(*h*) See these clauses in the Appendix.

(*i*) Sect. 12 to sect. 16.

(*k*) Sect. 21 to sect. 30.

(*l*) Sect. 31 to sect. 41.

(*m*) Sect. 42 to sect. 49. It will be seen that this Act requires the byelaws to be approved of by the secretary of state, as well as 11 & 12 Vict. c. 63, s. 115.

(*n*) The meaning of this proviso appears to be, that the tolls proposed to be levied by the local board of health shall be submitted to the secretary of state for his approval, and when his approval shall have been obtained, but not before, they shall be leviable.

(*o*) See *ante*, p. 128.

water supply, extended to this Act.

extend to any house within their district to which a supply of water can be provided at an expense not exceeding the water rate authorized by the said Act (*a*) or any local Act in force in the district, and notices under that section shall be served on owners of houses so supplied instead of occupiers, and expenses incurred under that section shall be recoverable from such owners.

Power of carrying water mains.

LII. Where the local board supply water to their district they shall have the same power for carrying water mains within the district as they have for carrying sewers by the law in force for the time being (*b*).

Power to directors of waterworks or market company to

LIII. It shall be lawful (*c*) for any local board of health absolutely to purchase, and for the directors for the time being of any waterworks company

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(*a*) The 76th clause, referred to, only enabled the board to supply water upon the report of the surveyor upon a particular house. The clause in the text dispenses with the necessity of such report, and enables the water to be supplied to any, and consequently to every house in the district, so that the rate of 2*d.* per week be not exceeded.

(*b*) See 11 & 12 Vict. c. 63, s. 45, *ante*, p. 91, and sect. 68, *post*.

(*c*) This clause is in furtherance of the powers given to the local board of establishing markets, and procuring an adequate supply of water for their district. This general enactment overrides the local Acts under which the companies referred to may have been formed. The 11 & 12 Vict. c. 63, s. 75, *ante*, p. 126, enables the local board to purchase waterworks, and the waterworks company to sell. The clause in the text gives powers to the directors of the company, with the authority of a specified proportion of the shareholders, to sell. It was doubtless considered that there must be the unanimous consent of the shareholders to support the sale and transfer under the former Act.

or market company, by and with the authority of *three-fifths* of the shareholders for the time being in such company who may be present, either personally or by proxy, at some general meeting of the company specially convened for the purpose, to sell, convey, and transfer unto any local board of health, upon such terms as shall be mutually agreed upon between the company and the local board, all the rights, powers, and privileges, and all or any of the lands and premises, works, matters, and things, which at the time of such purchase shall be the property of the company, but subject to all mortgages, contracts, or liabilities to which the same shall be then subject.

Sell works, &c. to local boards.

EXPENSES AND RATES.

LIV. (1.) The eighty-sixth section of the Public Health Act, 1848 (*d*), shall be repealed; and whenever *special district rate* is mentioned in the Public Health Act, 1848, that Act shall be read as if no such rate were mentioned therein:

Sect. 86 of 11 & 12 Vict. c. 63, as to the power of levying special district rate, repealed.

Provided always, that all debts incurred and contracts and engagements entered into by or to any local board previously to the passing of this Act shall be enforced, and all powers vested in any local board of raising money by rates, tolls, or other means for the purpose of satisfying all such of the said debts, contracts, and engagements as were incurred or entered into by such local board, shall be exercised, in

Debts incurred and contracts entered into before passing of this Act enforced

(*d*) See *ante*, p. 141.

the same manner as if this Act had not been passed (*b*):

(2.) No publication (*c*) shall be required of any private improvement rate:

(3.) The costs of the levy of arrears of any rate may be included in the warrant for such levy (*d*):

(4.) When any rate is appealed against, or the validity of any rate is disputed, the time during which the appeal remains undecided, or any legal proceedings concerning or relating to such rate shall be pending, shall be excluded in calculating the period of six months within which the rate may be made retrospectively (*e*):

(5.) Notice of demand of rates may be served in the same way as notice is hereinafter (*f*) directed to be served by a local board before putting in force the powers of local boards for

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(*b*) The repeal of the section is not total, because the local board must continue to make special district rates to satisfy outstanding debts, contracts, and engagements. It was doubtless considered that there should be no new special district rates made for new purposes, but it could not have been intended that when any charge has been created upon a special district rate, the creditor should lose his security by the abolition of the rate in future. The language of the clause might however have been more distinctly framed.

(*c*) See 11 & 12 Vict. c. 63, s. 103, *ante*, p. 159.

(*d*) See *ibid.*, where the warrant of distress is only authorized for the levy of the sum in arrear.

(*e*) See note (*e*) on 11 & 12 Vict. c. 63, s. 89, *ante*, p. 146, further elucidated by this clause, which cannot be explained if it refers to the making of the rate. It is impossible to declare that subsequent events can render an absolute act which was legally valid when done, such as the making of the rate, invalid at the time of its being made. But the delay caused by the appeal, and litigation arising out of it, may affect the legality of payments out of the rate.

(*f*) In sect. 75, *post*.

the taking of land otherwise than by agreement.

Mode of assessment of general district rate, and provision for compounding for rates in the case of small tenements.

LV. The eighty-eighth (*g*) and ninety-fifth (*h*) sections of "The Public Health Act, 1848," shall be repealed, and in lieu thereof be it enacted (*i*), that the general district rates shall be made and levied upon the occupier of all such kinds of property as by the laws in force for the time being are or may be assessable (*j*) to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property, ascertained *by the rate* (*k*) (if any) for the relief of the poor made next before the making of the assessments under this Act, subject, however, to the following exceptions, regulations, and conditions; namely,

The owner, instead of the occupier (*l*), may,

(*g*) See *ante*, p. 143.

(*h*) See *ante*, p. 153.

(*i*) In *South Wales Railway Company* v. *Swansea Local Board of Health*, 7 E. & B. 197, Erle, J., commenting upon 11 & 12 Vict. c. 63, s. 88, observes: "The general scheme of the enactment is that the occupiers of the classes of property most benefitted by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefitted at a lower rate, and the class of property most benefitted is that which is occupied immediately for the purpose of residence, and the kinds of property not so occupied are not to be rated so highly."

(*j*) As property which is not beneficially occupied, or of which there is no ascertainable occupier, is not assessable to the poor rate, the same is exempt from the general district rate. See *Hodgson* v. *Local Board of Carlisle*, 8 E. & B. 116, 22 Jur. 160, in which it was so held in regard to a County Court House, used solely for public purposes.

(*k*) It will be seen by sect. 56 that the local boards are not concluded by the poor rate actually made, if in their judgment it is unequal, unfair, or in other respects illegal.

(*l*) See the provisions of 59 Geo. 3, c. 12, s. 19, and 13 & 14 Vict. c. 99, in regard to the assessment of the owners to

at the option of the *local* board, be rated in cases—

Where the rateable value (*a*) of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

Where any premises liable to an assessment are let to weekly or monthly tenants; or

Where any premises so liable as aforesaid are let in separate apartments,

Or where the rents become payable or are collected at any shorter period than quarterly;

Subject to this proviso, that in cases where the owner is rated instead of the occupier he shall be assessed upon such reduced estimate as the local board deems reasonable of the net annual value, not being less than *two-thirds* nor more than *four-fifths* of such annual value (*b*):

And where such reduced estimate is in respect of tenements, whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers:

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the poor rate. Those Acts apply generally to all owners, whereas the text applies to individual cases, and enables the local board to deal separately with separate persons.

(*a*) This appears to mean the net rateable value as distinguished from the gross estimated rental. See afterwards in this clause.

(*b*) The allowance made by 13 & 14 Vict. c. 99, is only one-fourth, unless the owner compounds and agrees to pay for unoccupied as well as occupied property, in which case the reduction may be made to one-half, the overseers having the power of settling the reduction in the latter case.

Certain kinds of property assessable on one-fourth of their net annual value.

The owner of any tithes, or of any tithe commutation rentcharge (*c*),—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* (*d*) constructed under the powers of any Act of parliament for public conveyance,

Shall be assessed in respect of the same in the proportion of *one-fourth* part only of such *net* annual value thereof:

Provision as to exemptions from rating under local Acts.

Provided nevertheless, that if within any district or part of a district any kind of property be exempted from rating by any local Act in respect of all or any of the purposes for which general dis-

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(*c*) See the late cases of *Reg.* v. *Goodchild*, and *Q.* v. *Hawkins*, 27 L. J. R., M. C., p. 233, as to the proper mode of rating tithe rentcharge to the poor rate. The 14 & 15 Vict. c. 50, enacted that tithes, tithe rentcharges, moduses, compositions, real and other payments in lieu of tithe, should be assessed under 12 & 13 Vict. c. 63, as and in the same proportion of their annual value as land used as arable, meadow, or pasture ground only.

(*d*) As to what is meant by land used for a railway see *South Wales Railway Company* v. *Swansea Local Board of Health*, 4 E. & B. 189, 1 Jur. (N. S.), 326, where it was determined that the *railway* means the way on which carriages actually go, including the line itself, the turn-tables, and the sidings. Land used only for the purpose of supporting this way, as for embankments or slopes, is within this proviso; but the adjuncts, such as stations and warehouses, though necessary for the working of the railway, are not. So much of the platform as is of the same width as the side of the railway adjacent to it is within it. In *Reg.* v. *The Taff Vale Railway Company*, 22 J. P. 21, it was held that a railway company which received wharfage dues in respect of a piece of land between the line of rails and a navigable river was properly rated at the full annual value, and was not entitled to be assessed on one-fourth as for land used as a railway, since the fact showed that the land was used for another purpose.

trict rates may be made under this Act (*c*), *the same kind of property* shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general district rates under this Act, unless a provisional order obtained and confirmed by parliament

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(*c*) The language of this proviso is the same as that in the 88th section of 11 & 12 Vict. c. 63, and several cases have been decided upon the words *the same kind of property*, by which it has been settled that they do not apply to the locality or the situation of the property, but to the nature of it. Although by the local Act the site of the property rendered it exempt, yet if the local board of health extends over the site, the district rate is properly laid upon the property so previously exempted. See *Chelmsford Union* v. *Chelmsford Local Board of Health*, 2 E. & B. 500; 18 Jur. 376, n: *Tait* v. *Carlisle Local Board of Health*, *ib.* 492; 18 Jur. 374: *Reg.* v. *Luscombe, Shortlands, and Pontney*, 31 L. T. 314; 27 L. J. M. C. 299, in which last case there was a difference of opinion among the judges whether the exemption which arose under the local Act could be properly considered as depending upon locality and situation, or upon the nature of the property. Under the local Act there referred to the rate was to be assessed, among other matters, upon all gardens, tenements, and hereditaments adjoining to or upon any of the streets, lanes, roads, messuages, or other public places made or built within the populous or town parts of the borough (of Plymouth), or at no greater distance than 100 feet from some *street* within the populous or town part of the borough. Erle, J., considered that this described a kind of property, namely, town property, upon which the rate was to be laid, and that the other, namely, country property, was exempt. The other judges, however, considered this to be only a description of the locality which was to be exempt, and therefore that the country property in the district was not exempt from the district rate.

The exemption, which is to be continued, must be one of right, and not one of fact only. Thus by a local Act, 41 Geo. 3, c. xxx., the occupiers of houses in Sculcoates under 8*l.* yearly value were exempt from rates. The 4 Will. 4, c. v., rendered the owners of all houses under 10*l.* yearly value liable to rates instead of the occupiers. By 17 & 18 Vict. c. ci., (1854,) the owners of all houses under such value were rendered liable to an improvement rate. But sect. 124, reciting that the occupiers of the houses under the yearly value of 8*l.* were

in manner hereinafter provided (*d*) shall otherwise direct (*e*).

Poor-rate books to be accessible for rating under Public Health Acts.

LVI. For the purpose of assessing the general district rate, any person appointed by the local board may inspect, take copies of or make extracts from, any rate for the relief of the poor within the district, or any books relating to the same;

And if any officer having the custody of such last-mentioned rate or book refuses to permit any such inspection, or the taking of any such copies or extract, he shall for each offence incur a penalty not exceeding *five pounds* (*f*):

Power of valuation as prescribed by 6 & 7 Will. 4, c. 96, in case there should

If there is no such assessment as aforesaid for the relief of the poor by reference to which such net annual value can be estimated (*g*), or if such assessment is, in the judgment of the local board,

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exempt from rate by the 41 Geo. 3, enacted, that whatever exemption from rates was enjoyed in respect of the premises referred to in the recital should be enjoyed in the same way and manner, and to the same extent, as was enjoyed before the passing of the Act. Sculcoates having been included in the district of a local board, the Court of Queen's Bench held that the owners of houses in Sculcoates under 8*l.* were properly included in the district rate. *Coates* v. *Kingston-upon-Hull Local Board of Health*, 2 Jur. (N. S.), 1086.

(*d*) See sect. 77, *post*. This proviso in effect means unless the local Act be repealed.

(*e*) Independently of this proviso, property which is exempt from the poor rate or local rates by express statutes will be exempt from the general district rate. See the statutes 3 & 4 Will. 4, c. 30, which exempts churches and chapels from the poor rate, 6 & 7 Vict. c. 36, exempting literary and scientific societies from local district rates, and some other partial exemptions in the Editor's Commentary on the Parochial Assessment Act.

(*f*) See 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184, as to the recovery of this penalty.

(*g*) This applies to any place which may be either extra-parochial, or only part of a parish.

be no assessment.

an unfit criterion for making a general district rate, a valuation shall be made by a person appointed by the local board for that purpose, in manner, as near as circumstances will permit, prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments" (*y*), or any other Act for the time being in force for regulating parochial assessments;

And the net annual value of the property shall be ascertained by reference to the said valuation and assessment (*z*).

Sections 107, 113, and 119 of 10 & 11 Vict. c. 63, repealed, and power given for raising money on credit of rates.

LVII. The *one hundred and seventh* (*a*), the *one hundred and thirteenth* (*b*), and the *one hundred and nineteenth* (*c*) sections of the Public Health Act, 1848, shall be repealed; and in lieu thereof be it enacted, that the local board, or any board of *improvement commissioners* exercising the borrowing powers of the Public Health Act, 1848, may, for the purpose of defraying any costs, charges, and expenses *incurred* (*d*) or to be incurred by them in

(*y*) The 6 & 7 Will. 4, c. 96, prescribes no particular *manner* for making the valuation. It only enables the poor law board, upon certain representations, to issue an order to the board of guardians of a parish or union, or to the overseers, to cause a valuation to be made of the rateable property in such parish, or in any parish of the union. What is perhaps meant is, that the valuation should be made according to the principle of assessment prescribed by the first clause of that Act.

(*z*) These words *and assessment* are superfluous, and appear to have no meaning.

(*a*) See *ante*, p. 163.

(*b*) See *ante*, p. 168.

(*c*) See *ante*, p. 174.

(*d*) It is to be observed that the mortgage may be made in respect of works done, as it may be to defray costs and expenses *incurred*. Here the legislature have lost sight of or have overruled the principle which opposes retrospective rating

the execution of this Act or of any Act incorporated herewith, or of any Act incorporating the powers of the Public Health Act, 1848, borrow and take up at interest, on the credit of *the charges* (*e*) and rates authorized to be made or collected under the said Acts respectively, any sums of money necessary for defraying any such costs, charges, and expenses;

And for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said local board may *mortgage* (*f*) to the persons by or on behalf of whom such sums are advanced *the said charges* and rates or any of them;

But the exercise of the above power shall be subject to the following regulations:

(1.) Such money shall not be borrowed except *for permanent works* (*g*), nor without the sanction

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(*e*) The word *charges* will refer to the rentcharges which may be created under sect. 58, *post*, as 11 & 12 Vict. c. 63, only authorizes the making of rates, and contains no provision for the creation of other charges; yet it may perhaps be found that a similar security has been created in some of the Acts referred to in the text. It will be observed that the local board may mortgage *any* of the rates levied by them to meet the charge of *any* works executed by them. The creditor will have the security of the general rate though the works are for private improvements only. The ratepayers, however, are to be protected by the concluding proviso.

(*f*) The mortgage of the charges will consist in the creation of the rents, which are in themselves mortgages.

(*g*) This word is introduced from the former statute, but neither statute defines what are *permanent works*. Probably it is not practicable to give a complete definition, but it is clear that new and substantial works would come within the meaning, while mere repairs would not. In any given case it must be determined whether it fall within the one or the other category, and the proposed lender of the money must be satisfied upon this point.

of one of Her Majesty's principal secretaries of state (*h*):

(2.) The money so borrowed shall not, except as hereinafter provided (*i*), at any time exceed in the whole the assessable value for one year of the premises assessable within the district in respect of which such money may be borrowed (*k*):

(3.) The money *may* be borrowed for such time, not exceeding *thirty years* (*l*), as the local board, with the sanction of one of Her Majesty's principal secretaries of state, determine in each case;

And, subject as aforesaid, the local board may either pay off the monies so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the monies so borrowed, or a part thereof, at such times as the local board may determine (*m*);

(*h*) The consent of the secretary of state is substituted for the consent of the general board of health, it being deemed necessary that a control should be exercised over the local board in this respect, where a charge is to be shifted from present ratepayers to their successors. It might have been more advantageous to impose a control upon outlay than upon the borrowing of the money to repay it.

(*i*) See sect. 78, *post*.

(*k*) These words are taken from the last Act, into which they were inserted, as Mr. Lawes states in his note on 11 & 12 Vict. c. 63, s. 107, by the House of Commons in the committee on the bill. The language has been criticised, but it may be fairly understood to signify the annual rateable value of the whole of the assessable property within the district taken for the year next preceding the loan.

(*l*) In sect. 78, *post*, there is a provision to allow this time to be extended under certain circumstances to fifty years.

(*m*) This is a very questionable option. If the local board

And in cases where the local board borrow any money for the purpose of defraying private expenses, or expenses in respect of which they have determined a part only of the district to be liable (*n*), it shall be the duty of the local board, as between the ratepayers of the district, to make good, *so far as they can* (*o*), the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid (*p*).

Rentcharge may be granted for advances made to meet first costs of private improvements.

LVIII. Where any person shall advance money for any expenses which by the said Public Health Act, 1848, are, or by the said local board shall be, declared to be private improvement expenses, the said local board (*q*), on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the Form B. in the schedule hereunto annexed to such person of a yearly rent-

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accumulate and form a sinking fund, there is nothing to resist the strong temptation which may arise of applying the accumulation to some other purpose. Such a proceeding might probably be prevented by the intervention of some ratepayer; but if all the ratepayers concur, or if no one interfere, as may probably be the case, the board may act with impuuity.

(*n*) It seems that reference is here made to 11 & 12 Vict. c. 63, s. 89, *ante*, p. 147. See note thereon.

(*o*) The legislature are aware of the great difficulty with which the local board will be involved in respect of private improvement expenses. The theory of these provisions is good, but the practice, with strict legal regularity, must prove very embarrassing.

(*p*) As no special district rate can be levied, (see sect. 54, *ante*, p. 293,) it is not easy to see what rate can be here referred to.

(*q*) This is a new provision by which a stranger is enabled to charge a rent upon the land of another, but it is analogous to the enactments by which rents have been charged upon lands in commutation of tithes, except that in that case an action is given for the recovery of the rent. No action is given by this section. See *Willoughby* v. *Willoughby*, 4 Q. B. 487; *Bedford* v. *Sutton Coldfield*, 3 Scott (N. S.), 449.

charge to be issuable out of the premises (*b*) in respect whereof such advance shall have been made, or out of such part thereof, to be specified in such grant, as the said local board shall think proper and sufficient, *such rentcharge to be personal estate* (*c*) and to begin to accrue from the day of completion of the works on which such money shall have been expended as aforesaid, and be payable by equal half-yearly payments for and during a term not exceeding *thirty years*, in such manner that the whole of the said sum so to be advanced as aforesaid, with the costs of preparing the said grant so to be issued as aforesaid, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum upon the sum from time to time remaining unpaid, shall be repaid at the end of the said term (*d*):

Provided always, that the grantee of such rentcharge shall for the recovery of the same have all the powers, authorities, rights, and remedies of the said local board with respect to private improvement rates (*e*), and the provisions of the ninety-

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(*b*) Hence if the premises charged be afterwards severed, the rent will continue a charge upon every portion. With reference to the difficulty arising out of such a state of circumstances, see *Bedford* v. *Sutton Coldfield*, 3 C. B. (N. S.), 449; *Rivis* v. *Watson*, 5 M. & W. 255.

(*c*) This provision will affect the devolution of the property in the case of intestacy. See the observations of the judges in *Bligh* v. *Brent*, 2 Y. & C. 268.

(*d*) A question of some difficulty will arise whether after the lapse of the thirty years any, and, if so, what amount of arrears will be recoverable.

(*e*) See 11 & 12 Vict. c. 63, s. 90, *ante*, p. 148, which enables private improvement rates to be made. Sect. 103, *ante*, p. 159, provides a summary remedy before justices for the recovery of the rate when in arrear. It appears therefore that there will be no independent right to distrain upon default, but there must be a distress warrant issued by the justices after a summons and

first (*f*) and ninety-second sections (*g*) of the Public Health Act, 1848, shall also be applicable to such rentcharge.

Rentcharges to be registered.

LIX. All rentcharges made in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the *one hundred and eleventh* (*h*) and *one hundred and twelfth* sections of the Public Health Act, 1848.

AUDIT OF ACCOUNTS.

Provisions as to audit of accounts.

LX. The *one hundred and twenty-second section* of the Public Health Act, 1848 (*i*), shall be repealed,

And in lieu thereof be it enacted as follows: Where the mayor, aldermen, and burgesses of a borough are the local board, the accounts of the receipts and expenditure of the local board shall be audited and examined *by the auditors of the borough* (*j*), and shall be published in like manner and *at the same time* as the municipal accounts,

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hearing. It will be seen from the form itself (*post*, Sched. B.) that it gives no right to distrain upon the premises for the arrears.

(*f*) See *ante*, p. 149. This section enables the lessee to deduct a part of the rate from the rent payable by him to his lessor.

(*g*) See *ante*, p. 150. This section enables the improvement rate to be redeemed by the owner.

(*h*) See *ante*, pp. 166, 167.

(*i*) See *ante*, p. 177.

(*j*) The auditors of boroughs are elected on the 1st March in every year, by 5 & 6 Will. 4, c. 76, s. 73, and by sect. 92, the auditors are to examine and audit the accounts of the treasurer of the borough half-yearly, to the 1st March and 1st September in every year, and after the accounts have been audited, the treasurer is to make out an abstract of the same, and cause it to be printed, to be open to inspection, and delivered to applicants. This statute contains no provision in regard to

and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts (*k*);

And each of such auditors shall in respect of each audit be paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as the local board from time to time appoints;

And any order of the local board for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section *forty-four* of the Act of the *first* year of Her Majesty, chapter *seventy-eight*, with respect to orders of the council of a borough for payments out of the borough fund (*l*):

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notice, neither does it confer any particular power or authority upon the auditors. The section requires the auditors, if the treasurer's accounts shall be found to be correct, to sign the same.

If the latter part of the section can be held to apply to this part, the audit in the corporate district will indeed be a protection to the ratepayer. If not it is a mere delusion.

(*k*) No provision is made as in 11 & 12 Vict. c. 63, s. 122, for the case of a district comprising two municipal boroughs, because there is no such district now existing, and it is not probable that any such will be created hereafter.

(*l*) The 1 Vict. c. 78, s. 44, is as follows:— "Whereas it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund:" Be it therefore enacted, that any order of the council of any borough for the payment of any sum of money from or out of the borough fund of any borough may be removed into the Court of King's Bench by writ of *certiorari*, to be moved for according to the usual practice of the said court with respect to writs of *certiorari;* and that such order shall be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said court.

With respect to districts not boroughs, as follows:

(1.) The accounts of the receipts and expenditure of the local board (*m*) shall be audited and examined *once* (*n*) in every year, as soon as can be (*o*) after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor, for the union in which the district or the greater part thereof is situate, unless such auditor is a member of the local board whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union (*p*) as may from time to time be appointed by the local board of health:

And any auditor acting *in pursuance of this section* (*q*) shall disallow every item of account

Power of allowance, disallow-

(*m*) These words do not in terms apply to the officers of the local board; nevertheless it appears that the auditor may require every person holding or accountable for all books and accounts to appear before him, and declare as to the correctness thereof.

(*n*) In corporate districts the accounts will be audited twice a year, but in non-corporate districts, only once in the year, and the dates up to which the accounts are to be made also differ in the two classes of districts.

(*o*) The auditor must appoint the time of the audit, because as he has other audits to attend to, the obligation of appointing the time of the audit of the board of health accounts must rest with him; accordingly it appears hereafter that he is to give notice of the time of the audit.

(*p*) It is not a ground of objection to the auditor that he is a ratepayer of the district, but it is only when he is a member of the local board that he is disqualified to act. As auditors are now appointed for districts of unions, and not for unions, the auditor of an adjoining district must be selected, that is to say, the auditor of a district adjoining that which contains the local board district.

(*q*) Does this apply to the auditors of corporate districts? It seems indeed that the language is here general, yet the

ance, and surcharge.

contrary to law, and surcharge the same upon the person making or authorizing the making of the illegal payment, and shall certify the same to be due from such person, and upon application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made;

Disallowances may be removed by *certiorari* into Court of Queen's Bench.

And any person aggrieved by disallowance (*s*) made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relie of the poor (*t*);

And the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has

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former part of the clause provides a different remedy in respect of illegal payments made by the local board of health in corporate districts from that provided in reference to non-corporate districts, and this part of the clause is covered by the introduction, which professes to deal with "districts not boroughs." If this be correct, the statute supplies no remedy to the officers or others in corporate districts when the auditor disallows or surcharges any payment.

(*s*) This part of the section does not apply to an allowance or surcharge, though the next passage refers to the court's power of dealing with allowances and surcharges.

(*t*) See in the Appendix extracts from the statutes which relate to the powers and proceedings of poor law auditors, and the powers of the poor law board, in reference to appeals arising out of the audit of the poor law accounts. They are the following: 7 & 8 Vict. c. 101, ss. 32, 33, 35; 11 & 12 Vict, c. 91, ss. 4, 5, 7, 8, 9, 10; 12 & 13 Vict. c. 103, ss. 8, 9, 11.

with respect to disallowances or allowances by the said auditors;

Or in lieu of such applications any person so aggrieved may appeal to one of Her Majesty's principal secretaries of state, who shall have the same powers in the case of the appeal as are possessed by the poor law board in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors (*u*): Appeal against disallowances.

(2.) Every sum certified to be due from any person by the auditor under this Act shall be paid by such person to the treasurer of the local board within *fourteen* days after the same shall have been so certified, unless there be an appeal (*x*) against the decision (*y*); As to recovery of disallowances.

And if such sum shall not be so paid, and there be no such appeal, the auditor shall recover the same from the person against whom the same shall have been certified to be due by the like process and with the like powers as in the case of sums certified upon the audit of the poor rate accounts, and shall be paid by the local board all such costs and expenses, including a reasonable compensation for his loss of time incurred by him in such pro-

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(*u*) The poor law board dispose of the appeals made to them by correspondence between the parties interested, the auditor, and themselves, but occasionally they refer matters of fact to their inspectors, who can examine witnesses and parties on oath.

(*x*) That is, to the Secretary of State, or the Court of Queen's Bench.

(*y*) See the statute 7 & 8 Vict. c. 101, s. 32, which requires payment in respect of poor law accounts to be made within *seven* days after the certificate.

ceedings, as shall not be recovered by him from such person (*c*);

Power to auditor to require production of books.

(3.) For the purpose of any audit of account under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, and all other documents and papers (*d*) which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same (*e*);

And if any such person (*f*) neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding *forty shillings* (*g*);

(*c*) See the clauses applicable to the proceedings by auditors, set out in the Appendix.

(*d*) Unfortunately there is no authority who can prescribe the mode in which the assessments of the local board are to be kept. Therefore the ledgers and other books of account will be kept entirely at the discretion of the officer who has to keep them, or of the local board who may direct the form and nature of the accounts to be kept by their several officers. Reference should however be made to the enactment applicable to officers in 11 & 12 Vict. c. 63, s. 39, *ante*.

(*e*) This is similar to 4 & 5 Will. 4, c. 76, s. 47, and 7 & 8 Vict. c. 101, s. 33. It seems that No. (1) of this paragraph will enable the auditor to disallow illegal payments in the accounts of such officers.

(*f*) The word *wilful* is not inserted, therefore any neglect will subject the person to a penalty. See *King* v. *Burcutt*, 12 A. & E. 460.

(*g*) See the provisions for the recovery of penalties, 11 & 12 Vict. c. 63, s. 129, *ante*, and refer to 7 & 8 Vict. c. 101, s. 33.

and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury;

And *such auditor* (*h*) shall in respect of each audit be paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than *two guineas* for every day in which he is employed in such audit, as the local board from time to time appoints, together with his expenses of travelling to and from the place of audit (*i*);

(4.) Before each audit of accounts under this Act, the local board shall, after receiving from the auditor the requisite appointment, give *twenty days* notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers circulated in the district; Notice of audit.

And *a copy* (*k*) of the accounts to be audited,

(*h*) This applies to the auditor in non-corporate districts.

(*i*) The place from which the auditor is to travel is not mentioned. But it would perhaps generally be fair to reckon it from his place of abode. This, however, in some cases, will not be reasonable, as the auditor of a distant district may reside in London. Some fair adjustment should be made upon this point, as the auditor will generally be able to take the district of the local board almost simultaneously with the union in which it is comprised.

(*k*) There is much vagueness in this provision. It is presumed that the accounts, not only of the local board, but of all their officers who receive, expend, or collect money, will be open to the audit; but it will be very inconvenient that any copy of their accounts should be open to inspection. Moreover, no adequate security is supplied by a copy of the accounts. The person interested, if he is to be allowed to inspect at all, should be enabled to see the original account. Accordingly the poor law commissioners, in their general order of accounts,

together with all rate books, account books, deeds, contracts, accounts, bills, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of the local board, and be open, during office hours thereat, to the inspection of all persons *interested* (*b*), for seven days before the audit;

And all such persons shall be at liberty to take copies of or extracts from the same without fee or reward;

And the production of the newspaper containing such notice shall be deemed to be sufficient proof of the notice of audit on any proceeding whatsoever (*c*);

Report of Auditor.

(5.) Within fourteen days after the completion of the audit, the auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk of the local board, who shall cause the same to be deposited in the office of the local board, and shall publish an abstract of such accounts (*d*) in some one or more of the newspapers circulated in the district.

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empower the ratepayer to inspect the ledgers of the guardians. Probably the board of health will allow the original accounts to be open to inspection.

(*b*) *Quære*, who must be considered as a person interested? A ratepayer is so, and perhaps an owner of property in the district, but it is open to doubt whether any other person can come within the terms of the clause, unless in some cases a mortgagee of the rates may appear to be so.

(*c*) See 11 & 12 Vict. c. 91, s. 7, which contains a somewhat similar enactment.

(*d*) Doubtless it is meant, by *the accounts*, such as shall have been audited. It is left to the clerk to make the abstract. This is an error; the abstract should have been either made by the auditor, or acknowledged and verified by him.

LEGAL PROCEEDINGS.

Notices by local boards to be signed by clerk.

LXI. Any summons, demand, or notice, or other such document under the Public Health Act, 1848, or any supplemental Act or this Act, may be in writing or print, or partly in writing and partly in print, and if the same require authentication by the local board, the signature thereof by the clerk to the local board shall be sufficient authentication (*e*).

Expenses due from owners to be a charge on premises.

LXII. Where the local board have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable, either by application of or agreement with the owner, or by the Public Health Act, 1848 (*f*), or any Act incorporated therewith, or this Act, the same may be recovered from the person who is owner of such premises when the works are completed for which such expenses have been incurred, in the manner provided by the Public Health Act, 1848 (*g*), and such expenses shall be a

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(*e*) See 11 & 12 Vict. c. 63, s. 149, *ante*. Sometimes the signature by a given number of the members of the board is required, and this clause does not dispense with such execution. It only provides for the numerous cases of notice by the local board, where there is no other precise direction.

(*f*) See 11 & 12 Vict. c. 63, ss. 49, 51, 54, 60, 69, 76, in which the expenses incurred by the local board are made charges upon the owners of the premises. These expenses were recoverable in a summary manner from the owner or by way of rates upon the occupier.

(*g*) It is intended to provide that the owner, at the time of the completion of the works, should be liable, although he may not have been the owner at their commencement. The mode of recovery referred to by the previous Act was a personal one against the owner or occupier, as the case might be; henceforth it is to be against the land itself.

charge (*c*) on the premises in respect of which they were incurred, and shall bear interest at the rate of *five* pounds per centum per annum till payment thereof:

In all summary proceedings by a local board for the recovery of expenses incurred by them in works of private improvement (*d*), the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand (*e*).

Apportionment of expenses payable by owners to be conclusive after three months from notice given to them of the amount.

LXIII. Notwithstanding anything in the Public Health Act contained, in all cases where by such Act the local board shall have incurred expenses, for the repayment whereof the *owners* of the premises for or in respect of which the same are incurred *is* made liable by the Public Health Act, 1848 (*f*), or any Act incorporated therewith, or by this Act, and such expenses have been settled and apportioned by the surveyors as payable by such owner, such apportionment shall be binding and

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(*c*) *Quære*, what is meant by this? Apparently nothing more than that successive owners shall be liable until the expenses are reimbursed with interest.

(*d*) The summary mode of recovery provided by 11 & 12 Vict. c. 63, is by order of two justices under sect. 129; and as the 11 & 12 Vict. c. 43, s. 11, imposes a limitation of time within which such order can be made, namely, six months, the text above provides for the commencement of that time. Where the expenses are recoverable by instalments, the time referred to in the text will apply to each instalment.

(*e*) It does not appear that any clause requires in terms any notice of demand to be served; but generally it must be given to support proceedings.

(*f*) See 11 & 12 Vict. c. 63, s. 69, *ante*, p. 120, sect. 89, *ante*, p. 148, and sect. 107, *ante*, p. 163, which provide for apportionments, but the last section, which appears to apply to the expenses to be charged to the owners, is repealed by this Act.

conclusive upon such owner, unless within the expiration of *three months* from the time of notice being given by the local board or their surveyor of the amount of the proportion so settled by the said surveyor to be due from such owner he shall by written notice dispute the same (*g*).

Arbitration to be confined to cases involving more than 20*l.*

LXIV. All questions referable to arbitration under the Public Health Act, 1848 (*h*), or this Act, or any Act incorporated therewith, *may* (*i*), when the amount in dispute is less than twenty pounds, be determined before two justices in a summary manner, but the justices may, *if they think fit*, require that the work in respect of which the claim of the local board is made, and the particulars of the claim, be reported on to them by any competent surveyor, not being the surveyor of the local board;

(*g*) It will be seen that 11 & 12 Vict. c. 63, s. 69, provides for the paving of private streets, and the settling and apportioning the expenses among the owners by the surveyor, and in case of dispute enables the matter to be settled by arbitration. The clause in the text limits the time for raising such dispute. As to the proceedings under sect. 107 of the former Act, the local board are to make the apportionment equitably, and this it would seem means according to their own judgment, so that no dispute can arise.

(*h*) See 11 & 12 Vict. c. 63, s. 123, *ante*, p. 179, and sect. 144, *ante*, p. 201.

(*i*) Unless this word is to be used as *must* the marginal note cannot be supported. The 11 & 12 Vict. c. 63, s. 123, which provides for the reference to arbitration, does not authorize a reference of the matter in dispute to the justices in place of the arbitrators. But sect. 144, which provides for compensation to persons sustaining damage under the Act, enables, when the claim of compensation does not exceed 20*l.*, two justices to ascertain and recover the same. The clause in the text enables the justices to decide all questions in dispute when the amount does not exceed 20*l.*; it does not in terms provide for the enforcing of this determination by the justices, but doubtless it will be enforceable under sect. 129. This is analogous to the provisions in 8 & 9 Vict. c. 18, s. 22, *post*, in the Appendix.

And the justices may *determine* (*d*) the amount of costs incurred on that behalf, and by whom such costs or any part of them shall be paid.

Memorials in respect of private improvement charges.

LXV. Memorials under the 120th (*e*) section of the Public Health Act, 1848, from and after the 1st day of September 1858, shall be addressed to one of Her Majesty's principal secretaries of state, who shall have the same powers in respect thereof as are vested in the general board of health by the said section.

Penalty on injury to works, &c. of local board.

LXVI. If any person wilfully injures any works or materials belonging to any local board, he shall in cases where no other penalty is provided by the Public Health Act, 1848, or any Act incorporated therewith, incur for every such offence a penalty not exceeding *five pounds*, to be recovered in a summary manner (*f*).

Penalties to be payable to district fund account.

LXVII. All penalties incurred in any corporate borough, and made payable to the local board of health by the Public Health Act, 1848, or any Act incorporated therewith, or this Act, or any Act of which the powers are to be executed by a local board, shall be payable to the district fund account, *any Act to the contrary notwithstanding* (*g*).

(*d*) This must be done by an order under their hands and seals. The 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184, enables justices to award the costs of the proceedings, but it is presumed that such costs are confined to the costs of enforcing their decision, whereas the text will embrace a far more extended range, and include the costs incurred by the parties in and about the arbitration.

(*e*) See *ante*, p. 175.

(*f*) According to 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184; and see sect. 148, *ante*, p. 206, which provides for certain mischievous destruction of the local board's property.

(*g*) Reference is here particularly made to 5 & 6 Will. 4, c. 76, the Municipal Corporation Act, which in sect. 126, provides that the penalties for offences committed within the

LXVIII. *The one hundred and forty-fifth section* (*h*) of the Public Health Act shall be repealed, and in lieu thereof be it enacted, that nothing in this Act shall be construed to authorize any local board of health,

(1.) To use, injure, or interfere with

Any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown,—or any sewers, or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or private Act of parliament, or for the purpose of irrigating land,

Section 145 of 11 & 12 Vict. c. 63, repealed, and provisions hereinnamed in lieu thereof.

(Or in any manner to disturb or interfere with any lands, hereditaments, estates, or property vested in Her Majesty's principal secretary of state for the war department for the time being)(*i*),

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boroughs payable to any other person than the informer, shall be paid to the borough fund, and extended to penalties under later statutes. *Seamen's Hospital Society* v. *Mayor of Liverpool*, 4 Exc. 180. This provision appeared therefore to appropriate the penalties paid upon prosecutions in corporate boroughs under the Public Health Act, at least in all cases to which sect. 133 did not apply. It is not clear that the courts would have held that this section was so far set aside as that the right of the corporation to the penalty was paramount. Where the corporation is co-extensive with the district local board, the precise decision of this question was immaterial, but where they were not so co-extensive it was one of some importance. The clause in the text must now prevent the operation of the Municipal Corporation Act upon this point. As to the claims of the metropolitan police, *quære:* see 8 & 9 Vict. c. 18, s. 148, incorporated herewith; and *Wray* v. *Ellis*, 32 L. T. 157.

(*h*) See *ante*, p. 202, and the notes thereon. It will be seen by sect. 69, that the effect of this clause is to prohibit the acts herein referred to from being done without due consent.

(*i*) This is new. The rest of No. 1 was contained in the

Without consent in writing first obtained from such commissioners or secretary of state, or persons acquiring rights under such local or private Acts respectively;

And nothing *herein* (*c*) contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under such local or private Acts;

Saving clause for proprietors of canals, &c.

(2.) To interfere (*d*) with *any* river (*e*), canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are by virtue of any Act of parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin any corporation, company,

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former statute. The effect of the clause is by implication to empower the local board of health to interfere with lands belonging to the ordnance, and the other parties referred to, if the consent specified be obtained.

(*c*) That is, in both statutes.

(*d*) The following parts of this clause do but amplify and express in fuller terms the saving contained in sect. 145 of the former Act. There is here an elaborate enumeration of parts, members, and persons, but it is very doubtful whether any advantage will be gained thereby.

(*e*) There is no exception of public navigable rivers or the sea shore. The local board cannot disturb any private interests therein, but if they avoid all such disturbance will they be liable to any restraint in availing themselves of the river or the sea shore? Probably it will be held that express authority should have been given to them to do so, and that in the absence of such authority they will be liable for any public nuisance therein.

undertakers, commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of parliament to the receipt of any tolls or other dues;

(3.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any corporation company, undertakers, commissioners, conservators, trustees, or individuals (being authorized by virtue of any Act of parliament to navigate on or use such river, canal, dock, harbour, reservoir, or basin, or to demand any tolls or dues in respect of the navigation on or use of such river, canal, dock, harbour, reservoir, or basin,) would, if this Act had not passed, have been entitled by law (*e*) to prevent or be relieved against such interference;

(4.) To interfere with any bridges crossing any river, canal, dock, harbour, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are authorized by virtue of any Act of parliament to navigate or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation or use of such river, canal, dock, harbour, or basin;

(5.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by

(*f*) These words reserve to the local board power to challenge the right claimed by the parties referred to, and dispute that right independently of any justification supplied by these Acts.

virtue of any Act of parliament, or for the use of which they are entitled by virtue of any Act of parliament to demand any tolls or dues,

Without the consent (*a*) in every case of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are herein-before in that behalf respectively mentioned, such consent to be expressed in writing, in the case of a corporation under their common seal, and in the case of a company, undertakers, commissioners, conservators, trustees, or individuals, under the hand of their clerk (*b*), or other duly authorized officer or agent:

Provided always, that nothing in this Act contained shall be construed to alter or affect the maintenance of any rights of local boards existing at the time of the passing of this Act.

Works not within preceding section, and which interfere with improvement of rivers, canals, &c.,

LXIX. In cases where any matters or things proposed to be done by any local board, and which are *not* within the prohibition aforesaid (*c*), interfere with the improvement (*d*) of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path which any corporation, company, undertakers, commis-

(*a*) The 11 & 12 Vict. c. 63, s. 145, required consent, but did not specify any particular manner in which it was to be given. The present clause does so with much precision.

(*b*) The consent of the directors, or other board of management, is doubtless referred to, as it would be quite impracticable to refer to the shareholders or general proprietors for their consent, unless by the constitution of the company some means be given for summoning and collecting the body into one meeting.

(*c*) It is not easy to ascertain what they can be. It will be seen that the clause refers to companies or persons authorized to act by some Act of parliament not necessarily a private or local statute.

(*d*) Probably this refers to the popular phrase, "improvement of a navigable river," and the following terms are governed by the word *interfere*, otherwise it is difficult to comprehend how the proposal of the local board can interfere with the

sioners, conservators, trustees, or individuals are entitled by virtue of any Act of parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal, dock, harbour, or basin, or with any land necessary for the enjoyment or improvement thereof, to be referred to arbitration.

The local board shall give to such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as last aforesaid a *notice* (*e*) specifying the particulars of the matters and things so intended to be done;

And if the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration (*f*), and the following questions shall be decided by such arbitration; (that is to say,)

(1.) Whether the matters or things so proposed to be done by the local board will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land as are herein-before mentioned in this section, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin as aforesaid:

(2.) Whether any injury that may be caused by such matters or things or any of them is or not of a nature to admit of being *fully* (*g*) compensated by money.

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improvement of any canal or dock. The proposal must be an immediate act, which can be examined and investigated, but that cannot be stated with reference to some future improvement, which may possibly be prevented by the acts of the board.

(*e*) As to the service of this notice, see 11 & 12 Vict. c. 63, s. 150, *ante*, p. 209, and as to its authentication, sect. 61, *ante*, p. 313.

(*f*) According to 11 & 12 Vict. c. 63, s. 123, *ante*, p. 179.

(*g*) Note the object of this subject of inquiry, namely,

Arbitration.

LXX. The result of any such arbitration shall be final, and the local board *shall do* as follows (*b*); (that is to say,)

If the arbitrators (*c*) are of opinion that no injury will be caused, the local board *may* forthwith proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they *shall* proceed to assess such compensation (*d*);

And upon payment of the amount so assessed, but not before, the local board *may* proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to ad-

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full compensation. Perhaps some meaning is gained popularly by this word, but otherwise it is of no use. A compensation must be *full* or it is defective in itself.

It is to be noticed that the clause does not contemplate that these arbitrators shall ascertain the amount of compensation for the injury, if any be experienced.

(*b*) These two clauses are expressed with not much regard to accuracy. First, it is stated in sect. 69 that two questions are to be submitted to the arbitrators, and afterwards in sect. 70 it is shown that another question may be submitted to and decided by them. Then sect. 70 states that the local board shall *do as follows*, and, having required in a certain event the arbitrators to do a particular act, *empowers* the local board to proceed, and afterwards, upon a decision of the arbitrators, in a manner described, prohibits the local board from acting.

(*c*) Although no mention is made of an umpire here, it is presumed that the 11 & 12 Vict. c. 63, s. 2, applies. It will be necessary also to refer to 11 & 12 Vict. c. 63, ss. 123—128, *ante*, as to the proceedings in this arbitration.

(*d*) Although it seems that it would have been better to provide for compensation after the works shall have been completed, and the amount of damage actually ascertained, inasmuch as the estimate of the arbitrators may prove too high or too low, (see note (*g*) on sect. 30, *ante*, p. 259,) yet it is clear that the payment is here made a condition precedent to the execution of the works.

mit of being fully compensated by money, the local board shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, &c.

LXXI. No transfer of powers and privileges under this Act shall deprive any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of parliament to navigate on any river or canal, or to demand for their own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of parliament in relation to such river or canal.

Power for corporation to alter sewers.

LXXII. Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal or the use of such dock, harbour, or basin, may (*e*), at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, *and* certified as such by the surveyor (*f*) to the local board, take up,

(*e*) This modifies the prohibition contained in 11 & 12 Vict. c. 63, s. 47, *ante*, p. 94.

(*f*) Though the certificate of the surveyor is required, it does not appear that it will conclude the local board, if they can show that the new sewers or pipes are not equally effectual as their own, and sect. 74, *post*, accordingly provides for the reference of such question to arbitration.

According to the language of the clause, no consent is required from the local board previous to the commencement of the works. The certificate of the surveyor is to be given after the works shall have been done. Nevertheless if it should appear that the parties referred to are working in such a manner as obviously to be unprotected by this Act, an injunction would be granted by the Court of Chancery to stay their proceedings.

divert, or alter the level of any sewers, drains, culverts, or pipes *constructed* (*z*) by any local board, and passing under or interfering with such rivers, canals, docks, harbours, or basins, or the towing-paths of such rivers, canals, docks, harbours, or basins, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Preserving water rights of companies or individuals.

LXXIII. Nothing in this Act or any Act incorporated therewith shall be construed to authorize any local board to injuriously affect any reservoir, river, or stream, or the feeders of any reservoir, river, or stream, or the supply, quality, or fall of water contained in any reservoir, river, stream, or feeders of any reservoir, river, or stream, in cases where any company or individuals would, if this Act had not passed, have been entitled by law (*a*) to prevent or be relieved against the injuriously affecting such reservoir, river, stream, feeders, supply, quality, or fall of water,

Unless such board shall have first obtained the consent in writing of such company (*b*) or individuals so entitled as aforesaid.

(*z*) It is to be presumed that these works of the local board must have been executed with the consent of the parties referred to. Consequently it will be prudent when such consent is given, to reserve power to make alterations as above contemplated.

(*a*) See note (*b*) on sect. 68, *ante*, p. 319.

(*b*) In sect. 68 there is a distinct provision as to the mode in which this consent is to be given. It may be well incorporated here. It is not easy to understand how any public company can properly give their consent to the local board of health injuring their reservoirs or streams of water. They may, indeed, sell the interest of the company in the same for adequate compensation, but the clause appears to go further. But when properly considered it will be seen that it only

Arbitration questions under preceding sections.

LXXIV. Any difference of opinion that may arise between a local board and any such corporation, company, commissioners, conservators, trustees, or individuals as aforesaid, whether any sewers, drains, culverts, or pipes substituted under the powers of this Act for sewers, drains, culverts, or pipes, constructed or laid down by any local board are equally effectual with those for which they are substituted, or whether the supply, quality, or fall of water in any such reservoir, river, or stream as last aforesaid is injuriously affected by the exercise of powers under *this Act* (*c*), may, at the option of the party complaining, be determined by arbitration in the manner herein-before provided (*d*);

And in the latter case the arbitrators shall decide the same questions as to the alleged injury; and the local board shall proceed in the same way as is herein-before provided (*e*) with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours, and basins.

PURCHASE OF LAND.

Regulation as to the purchase of land.

LXXV. So much of the *eighty-fourth section* (*f*) of the Public Health Act, 1848, as relates to the incorporation of the Lands Clauses Consolidation Act, 1845, shall be repealed, and the following regulations shall be observed with respect to the pur-

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operates to protect the local board, and leaves the board of directors or managers to settle with their own constituents as to whether they shall or shall not give their consent to the proceedings proposed.

(*c*) It is presumed that this word applies to 11 & 12 Vict. c. 63.

(*d*) See 11 & 12 Vict. c. 63, s. 123, *ante*, p. 179, and s. 144, *ante*, p. 201.

(*e*) See ss. 69, 70, *ante*, pp. 321, 322.

(*f*) *Ante*, p. 137.

chase of land by local boards for the purposes of this Act; (that is to say,)

(1.) The Lands Clauses Consolidation Act, 1845(*c*), shall be incorporated with this Act, except the provisions relating to access to the special Act:

(2.) The local board, before putting in force any of the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of land *otherwise than by agreement*, shall

Publication of notices.

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

Service of notices.

Serve a notice in manner herein-after mentioned on every owner *or reputed owner* (*e*), lessee

(*c*) 8 & 9 Vict. c. 18. That statute contains two sets of clauses;—one applicable to agreements which enable persons under disability to sell and convey; the other applies to cases where there can be or is no agreement. The local board may adopt the former set by the operation of this clause, but they cannot adopt the latter set without the consent of the secretary of state. See this statute in the Appendix.

(*d*) *Sic* in statute. *Quære*, what is omitted, or whether the words *is situate* should not be struck out?

(*e*) For the meaning of the word *owner*, see 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29. But, *quære*, who is meant by *a reputed owner*, or *reputed lessee?* and will a notice upon such reputed

or *reputed lessee* and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

By delivery of the same personally on the party required to be served, or, if such party is absent *abroad* (*f*), to his agent; or

By leaving the same at the usual or last known place of abode (*g*) of such party as aforesaid; or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such party:

(3.) Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the local board may, if they shall think fit, present a petition under their seal (*h*)

Power to local board to petition secretary of state upon matters herein stated.

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owner or lessee be available where there is a real owner or real lessee who is not served? It seems that the notice must be served upon the owner, lessee, and occupier. But if the local board can select any person as the reputed owner or reputed lessee, there may oftentimes be a failure of due notice to the proper parties. The statute 8 & 9 Vict. c. 18, s. 18, *post*, does not refer to reputed owners. The notices and other proceedings correspond with those which are required previous to the introduction of a private bill into parliament.

(*f*) This word *abroad* is not a legal term, but is probably intended to signify *beyond seas*, or in foreign parts. In the 8 & 9 Vict. c. 18, s. 19, the words used are "absent from the United Kingdom." Difficulty will be felt by the local board in determining who is the agent of the absent party. In that statute the notice in such a case is to be served upon the occupier of the land, or is to be affixed upon some conspicuous part of the land.

(*g*) In explanation of these words, it will be useful to refer to the decisions upon the late County Court Acts and the bastardy clause of 7 & 8 Vict. c. 101, s. 3.

(*h*) Nevertheless, it will be advisable that the petition

to one of Her Majesty's principal secretaries of state:

The petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking such land, or who have returned no answer to the notice:

It shall pray that the local board may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of land *otherwise than by agreement*, and such prayer shall be supported by such evidence (*z*) as the secretary of state requires:

Secretary of state may direct inquiry;

(4.) Upon the receipt of such petition, and upon due proof (*a*) of the proper advertisements having been published and notices served, the secretary of state shall take such petition into consideration, and may either dismiss the same, or direct an inquiry in the district in which the land is situate, or *otherwise inquire* (*b*) as to

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should be signed by some of the members, and countersigned by the clerk.

(*z*) Where the Secretary of State has laid down any general regulations as to the evidence to accompany these petitions, they should be attended to as a matter of course, but otherwise the evidence must be supplied afterwards, and according to the specific requisition. The consent of the owners, lessees, and occupiers should, if possible, accompany the petition.

(*a*) Care must be taken to supply all reasonable evidence of these facts, but it is to be presumed that it will not be absolutely necessary that strict legal proof should be supplied.

(*b*) Hence there need not be a local inquiry as a matter of absolute necessity, although the following words require an inquiry in the district before the provisional order be made affecting any land without the consent of the owner.

the propriety of assenting to the prayer of such petition;

But until such inquiry has been made *in the district*, after such notice as may be directed by the secretary of state, *no provisional order*(*b*) shall be made affecting any land, without the consent of the owners, lessees, and occupiers thereof:

and may make provisional order:

(5.) After the completion of the inquiry as last aforesaid, the secretary of state may, by provisional order, empower the local board to put in force with reference to the land referred to in such order the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of land *otherwise than by agreement*, or any of them, and either absolutely or with such conditions and modifications as he may think fit,

And it shall be the duty of the local board (*c*) to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are hereinbefore required to be served (*d*):

No provisional order valid until confirmed by parliament.

(6.) No provisional order so made shall be of any validity unless the same has been confirmed by Act of parliament, and it shall be lawful for the secretary of state as soon as conveniently may be to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of parliament (*e*):

(*b*) See the next paragraph.

(*c*) This duty will probably be enforced by parliament, as the bill will doubtless not be allowed to pass if the copy of this order shall not have been served.

(*d*) See *ante*, No. (2).

(*e*) The following appears to be the result of this enactment.

Costs how to be defrayed.

(7.) All costs, charges, and expenses incurred by the said secretary of state in relation to any such provisional order as last aforesaid shall, to such amount as the commissioners of Her Majesty's treasury think proper to direct, become a charge upon the general district rates levied in the district to which such order relates, and be repaid to the said commissioners of Her Majesty's treasury by annual instalments not exceeding five (*f*), together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

LOCAL BOARD TO REPORT.

Local board to report.

LXXVI. Every local board shall make an annual report, in such form and at such time as the secretary of state may from time to time direct (*g*), of

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If the local board desire to purchase a piece of land which the owner will not sell, they must petition the secretary of state to be allowed to put in force the provisions in the Lands Clauses Consolidation Act applicable to such a case. The secretary of state is to make inquiry as to the propriety of the proposal, and if satisfied therewith, he is empowered to make a provisional order enabling this to be done, but such order will of itself be of no avail until a public Act of parliament be obtained by the secretary of state to confirm it. This is an elaborate machinery, for what will often be a very trifling matter.

The proviso in No. (6) of sect. 77, *post*, will, doubtless, apply to the bill herein referred to, so that it may be petitioned against by any party interested, and be referred to a select committee.

(*f*) See notes on sect. 23, *ante*, p. 248.

(*g*) The local board cannot carry out this beneficial direction until they receive the directions of the secretary of state. But it must not be overlooked, that sect. 60, No. (5), *ante*,

all works executed by them during the preceding year, and of all sums received and disbursements made, under and for the purposes of this Act, and publish the same in some newspaper circulating in the district, and shall send a copy to the secretary of state.

PROVISIONAL ORDERS AND POWERS OF SECRETARY OF STATE.

Petition for incorporation with or separation from district, or for repeal, &c. of local Acts.

LXXVII. *The one hundred and forty-first section* (*h*) of the Public Health Act, 1848, shall be repealed, and in lieu thereof be it enacted as follows:

Whenever it appears desirable to the local board of any district,

Or to the majority of the owners *and* (*i*) ratepayers in any parish, township, hamlet, or place maintaining its own roads or its own poor, adjoining any district,

Or to the majority of owners *and* ratepayers in any part of a district,

Such majorities to be ascertained in the way herein provided for voting with respect to the adoption of this Act (*k*),

That any portion of such parish, township, hamlet, or place shall be incorporated with the district, or that such part of the district should be separated therefrom,

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p. 312, requires the clerk of the board to publish an abstract of the accounts of the local board after the audit in the newspaper. That will be a half-yearly publication, but the text requires a yearly one in addition.

(*h*) See *ante*, p. 199.

(*i*) The owners and ratepayers are joined here in this requisition; an important question will arise, whether the majority is to be made out of the aggregate of the two bodies, or there must be a majority of each body. The owners and ratepayers must be such as can vote at the election of the members, but they are to be counted according to the scale of voting for the adoption of the Act.

(*k*) See sect. 13, *ante*, p. 234.

Or whenever it appears to the local board of any district desirable,

That provision should be made for the future execution of any local Acts in force within such district, *having relation to the purposes of this Act* (*a*), and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit;

Or that any such Acts, or any exemptions from rating derived therefrom (*b*), or any provisional order or orders in council applying the Public Health Act, 1848, or Act confirming such provisional orders, should be wholly or partially repealed or altered,

(1.) They may present a petition to one of Her Majesty's principal secretaries of state, praying for such incorporation, separation, provision, repeal, and alteration as aforesaid, or for any of such things, and such petition shall be supported by such evidence as the said secretary (*c*) requires:

Power of secretary of state on receipt of petition;

(2.) Upon the receipt of any such petition inquiry *may be* (*d*) directed in the district in respect of the several matters mentioned in the petition, after (*e*) giving *fourteen days' notice* of the time, place, and subject of the inquiry:

to issue order, and obtain consent of district.

(3.) It shall be lawful for any of Her Majesty's principal secretaries of state to issue a pro-

(*a*) These are very wide and general words, and embrace almost all matters in any respect relating to the local management of towns. They are explained, however, by the language of 11 & 12 Vict. c. 63, s. 10., *ante*, p. 43.

(*b*) See sect. 54, *ante*, p. 293.

(*c*) See sect. 75, *ante*, p. 328, and the notes.

(*d*) It is not compulsory upon the secretary to direct a local inquiry.

(*e*) It is not stated who is to give the notice, but the person holding the inquiry should do so.

visional order in relation to the several things mentioned in the petition, and either in accordance with the prayer thereof, or with such modifications as may be requisite (*f*);

And when the order provides for the incorporation of a portion of any such parish, township, hamlet, or place with the district, or the separation of any part from the district, an inspector shall proceed to the district for the purpose of obtaining the consent to such order of the place of which it is proposed that a portion should be incorporated, or of the part to be separated, and also, if such order provide for any such incorporation, the consent of the petitioning district:

Consents how testified.

(4.) The consent of the petitioning district to such order shall be testified by a resolution of the local board of such district, and the consent of any place or part by a resolution passed by a majority of *the ratepayers* (*g*) resident in any such place or part assembled at a meeting convened for the purpose;

And the inspector shall, for the purpose of obtaining such consents, have power to convene meetings of the local board of any district, or meetings of *the ratepayers* (*g*) of any place or part, with *fourteen days'* notice of the time, place, and subject of such meetings, and to do all such matters and things as may be expedient for that purpose:

(*f*) Or as it is presumed to refuse the prayer of the petition.

(*g*) Note, that the owners are here omitted, and it is only those ratepayers who are *resident* in the place who are to give their consent. As to who are ratepayers, see note (*o*), on sect. 12, *ante*, p. 233.

Provision as to meetings of part or place.

(5.) In the case of a meeting of *the ratepayers* (*a*) of any place or part, the *ratepayers* present shall elect a chairman;

And a declaration by the chairman that the opinion of the meeting is in favour or against any resolution, as the case may be, shall, in the absence of proof to the contrary, be sufficient evidence that the resolution is passed (*b*):

The inspector shall have power to attend any such meeting (*c*):

Secretary of state to obtain confirmation of order.

(6.) Whenever such consents as aforesaid have been given in the cases in which they are hereinbefore required, the said secretary of state shall, as soon as conveniently may be, take all necessary steps for (*d*) the confirmation of such order by Act of Parliament;

But previously to such confirmation it shall not be of any validity whatever, and every Act of parliament confirming such order shall be deemed a public general Act.

In case any petition shall be presented to either house of parliament against any provisional order framed in pursuance of this Act, in the progress through parliament of the bill

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(*a*) Note, that the owners are here omitted, and it is only those ratepayers who are *resident* (see No. 4) in the place who are to give their consent.

(*b*) Or negatived. See sect. 13, No. (4), *ante*, p. 237, where the language is more accurate.

(*c*) There is no prohibition upon the inspector's taking part in the discussion, but unless he be a ratepayer, which will not probably be the case, he will not be allowed to vote on the question.

(*d*) For obtaining the confirmation: All that seems to be necessary is the causing the bill to be drawn and presented to the House of Commons. As it will be a public bill no particular course would be required, unless a petition be presented against it, in which case it would be referred to a select committee.

confirming the same, the bill, so far as it relates to the order so petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills (*e*).

Extension of borrowing powers in certain cases.

LXXVIII. Where a local board, or any *board of improvement commissioners* (*f*) exercising the borrowing powers of the Public Health Act, 1848, or this Act, or of any local Act, has contributed to, purchased, or executed works of sewerage and water supply, or proposes to contribute to, purchase, or execute such works, and where the cost of such works exceeds or is estimated to exceed one year's *assessable value* (*g*) of the premises assessable within the district in respect of which such money may be borrowed, it shall be lawful for such board to present a petition to one of Her Majesty's principal secretaries of state praying for powers to borrow or reborrow for such works, on mortgage of the rates leviable by them under the Public Health Act, 1848, and this Act, and (*h*) any local Act, an amount not exceeding two years' assessable value (*i*) of the premises assessable within the district in respect of which such money may be borrowed or reborrowed,

(*e*) *Quære*, whether the local board can appear in support of the bill, or whether the government must support it before the committee.

(*f*) Reference appears to be made to sect. 15, *ante*, p. 238.

(*g*) This is an extension of the powers conferred by sect. 57, *ante*, p. 300. See note (*k*) thereon. In regard to re-borrowing see 11 & 12 Vict. c. 63, s. 110, p. 165.

(*h*) This word should be *or*.

(*i*) There is some ambiguity here. Does the clause mean twice the amount of the assessable value for the year, or the addition of the assessable value as computed for each of the two years preceding the loan? Oftentimes the result will be the same upon either hypothesis, but sometimes there may be a considerable difference in the result.

such amount to be repaid within such period *not exceeding fifty years* as such board, with the sanction of one of Her Majesty's principal secretaries of state, shall in each case determine;

And it shall be lawful for any of Her Majesty's principal secretaries of state to direct inquiry on such petition, and to issue a provisional order thereupon, and to take steps for the confirmation of any such provisional order by Act of parliament in the manner sanctioned in the preceding section (*h*).

Secretary of state to provide for execution of Act.

LXXIX. It shall be lawful for the Secretary of State to report annually to parliament on the execution of this Act, to make or direct such inquiries as are directed by this Act and appoint from time to time such officers, clerks, and servants as he may require for the purposes of this Act, and at his pleasure to remove any such officers, clerks, or servants;

And the commissioners of Her Majesty's treasury shall fix the salaries and allowances of such officers, clerks, and servants.

Powers for inquiry directed by secretary of state.

LXXX. Any officer directed by one of Her Majesty's principal secretaries of state to inquire into any matter into which such secretary is empowered to direct inquiry under this Act shall, for the purposes of such inquiry, have all the powers vested in superintending inspectors by the *one hundred and twenty-first section* (*i*) of the Public Health Act, 1848.

(*h*) The power of petitioning and appearing and opposing is not expressly given herein, but the general words contained in the last clause extend that provision to this clause.

(*i*) See *ante*, p. 176. It is to be observed that the secretary of state is to send an *officer*, but perhaps the conduct of this inquiry will constitute an *office*.

Orders of secretary of state to be binding.

LXXXI. All orders made by one of Her Majesty's principal secretaries of state in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer;

And any such secretary may make orders as to the costs *of any appeal* (*k*) to him under this Act, and the parties by whom such costs are to be borne; and every such order may be made a rule of one of the superior courts of law, on the application of any party named therein (*l*).

OXFORD AND CAMBRIDGE.

Exception of Oxford and Cambridge.

LXXXII. Notwithstanding anything contained in this Act, the Oxford and Cambridge commissioners, described in the *thirty-first section* of the Public Health Act, 1848 (*m*), shall be the bodies authorized to adopt this Act for the districts respectively within their jurisdiction;

And in the event of the adoption of this Act by the said Cambridge commissioners, the said commissioners shall be the local board for the district of Cambridge;

And in the event of such adoption by the said Oxford commissioners, the local board of the Oxford

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(*k*) It is open to question what will be an appeal to the secretary of state. In several places in this Act it will be seen that petitions and memorials may be presented to him, but they are not generally included under the term *appeals*. The orders which are made by him, other than for costs, will generally be enforceable by writ of *mandamus*.

(*l*) The statute 1 & 2 Vict. c. 110, contains the provisions for enforcing payment of costs upon rules of court; but in regard to costs awarded against the local board, the remedy will be by *mandamus*.

(*m*) *Ante*, p. 76.

district shall consist of the vice-chancellor of the University of Oxford and the mayor of Oxford for the time being, and of forty-five other commissioners, *fifteen* to be elected by the University of Oxford, *sixteen* by the town council of Oxford, and *fourteen* by the ratepayers of the parishes situate within the jurisdiction of the Oxford commissioners;

And the election of such commissioners by the town council and by the ratepayers of the parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which members constituting the body of Oxford commissioners are now respectively chosen by such town council and parishes;

And the fifteen commissioners to be elected by the University shall be elected as follows;

Namely, *four* commissioners shall be elected by the University in convocation, and *eleven* commissioners shall be elected by the heads and senior bursars of the several colleges, and by the heads of the several halls;

And the elections shall be conducted by the said University, and by the colleges and halls respectively, at the same time and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now chosen by them respectively (*d*), save that in the election of commissioners the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote:

And differences between either of the Universities of Oxford and Cambridge and the local boards of

(*d*) See the local Act, 17 & 18 Vict. c. ccxix.

Oxford and Cambridge respectively within the meaning of *the one hundred and fifth section* of the Public Health Act, 1848 (*f*), shall be settled by arbitration in the manner provided by that Act (*g*).

SCHEDULE.

Form (A.)

Voting Paper (*h*).

At a meeting held on the —— day of ——, at the —— of —— in the county of ——, it was agreed that the following resolution should be proposed to the owners and ratepayers:—

"That the Local Government Act, 1858, be adopted in the —— of ——."

	In favour of.	Against.	Number of votes.	
			As owner.	As ratepayers.
Do you vote in favour of or against the adoption of this resolution?	*J. S.*			

John Smith,
of 19, Fore Street.

N.B.—The ratepayer will put his initials under

(*f*) See *ante*, p. 162.
(*g*) See sect. 123, *ante*, p. 179. This arbitration is substituted for the decision of the general board of health referred to in 11 & 12 Vict. c. 63, s. 105.
(*h*) See sect. 13, *ante*, p. 236.

the heading "in favour" or "against," according as he votes for or against the resolution. He is also required to subscribe his name *and address* at full length (*z*). If a voter cannot write, he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark. If a proxy vote, he must add after his signature the words, "as proxy for," with the name of corporation or company for which he is proxy. This paper will be collected on the —— of ——, between the hours of —— and ——.

TAKE NOTICE.—"If any person wilfully commits any of the acts following, that is to say, fabricates in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable on conviction before two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour." (*Local Government Act*, 1858.)

(Signed by the summoning officer.)

(*z*) This is not quite according to the form of voting paper as given by 11 & 12 Vict. c. 63, sched. (A.) *ante*, p. 211.

FORM (B.) (*a*).

BY virtue of the Public Health Act, 1848, the local board of health for the district of —— do hereby declare and absolutely order that *the inheritance* (*b*) *of* the [dwelling house, shop, lands, and premises, *as the case may be*], situate in —— street, in the parish of —— within the said district, and now in the occupation of ——, shall be absolutely charged with the sum of —— pounds, paid by —— of —— for the improvement by drainage and water supply [*as the case may be*] of the same dwelling house, shop, lands, and premises [*as the case may be*], together with interest for the same from the date hereof at (*c*) —— pounds per centum per annum, until full payment thereof; and also all costs incurred by the said ——, his executors, administrators, or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest monies shall be paid and payable by the owner or occupier of the said premises to the said ——, his executors, administrators, and assigns, in manner following; (that is to say,) the interest on such principal sum of —— pounds, or on so much thereof as shall

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(*a*) See sect. 58, *ante*, p. 303.

(*b*) This is a popular but not a legal term. According to the usual language of conveyancing, lands may be charged for an indefinite term, or until the amount to be recovered shall be paid, but the charge on the inheritance appears to mean a charge upon the fee simple, which only represents the description of the interest in the property. Moreover, as the charge is to last for thirty years, it is incorrect to say that the inheritance is charged.

(*c*) The interest must not exceed 6*l.* per cent. See sect. 58.

from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the —— day of —— and the —— day of —— in every year, the first payment thereof to be made on the —— day of —— next, and such principal sum of —— pounds shall be paid and payable by —— (*d*) equal annual instalments on the —— day of —— in each of the next succeeding —— years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged (*e*).

(*d*) The 58th section requires the term not to exceed thirty years, and provides, indeed, that the sum should be repaid by equal *half*-yearly payments.

(*e*) This instrument should be dated and sealed. In a corporate district the common seal alone will suffice, but in the case of a non-corporate district five members at least should sign it, as it seems, according to 11 & 12 Vict. c. 63, s. 149. The charge will be exempt from stamp duty by force of sect. 151, *ante*, p. 210.

APPENDIX.

Statutes referred to, or incorporated in the Statutes printed above.

No.

1. Those relating to Vaccination.
2. To Public Baths and Wash-houses.
3. To Common Lodging Houses.
4. To the Prevention of Diseases.
5. To the Removal of Nuisances.
6. The Towns Improvement Clauses Act, 1847.
7. The Markets and Fairs Clauses Act, 1847.
8. The Town Police Clauses Act, 1847.
9. Poor Law Audit Clauses.
10. The Burial Act Clauses.
11. The Lands Clauses Consolidation Act, 1845.

APPENDIX.

VACCINATION.

3 & 4 VICT. CAP. XXIX.

An Act to extend the Practice of Vaccination.

[23rd July, 1840.]

Poor law guardians to contract with their medical officers, or other medical practitioners, for vaccination.

"WHEREAS it is expedient to extend the practice of vaccination:" Be it therefore enacted, that from and after the passing of this Act it shall be lawful for the guardians of every parish or union, and for the overseers of every parish in which relief to the poor shall not be administered by guardians, in England and Wales, and they are hereby directed, to contract with the medical officers of their several unions or parishes respectively, or with any legally qualified medical practitioner or practitioners (*a*), for the vaccination of all persons resident in such unions or parishes respectively:

Provided always, that it shall be a condition of every such contract that the amount of the remuneration to be received under the same shall depend on the number of persons who, not having been previously successfully vaccinated, shall be successfully vaccinated by such medical officers or practitioners respectively so contracting (*b*).

Guardians to conform to the regu-

II. And be it further enacted, that in making such arrangements as may be required for the execution of this Act,

(*a*) The 21 & 22 Vict. c. 90, s. 34, declares that any person registered under that Act shall be deemed a legally qualified medical practitioner.

(*b*) See 16 & 17 Vict. *c.* 100, s. 6, *post*.

lations of the poor law commissioners.

such guardians and overseers, and all other officers engaged in the administration of the laws for the relief of the poor, shall conform to the regulations which may from time to time be issued by the poor law commissioners in that behalf (*c*), which regulations the said commissioners are hereby authorized and required to make and issue.

Medical officers to report the number of persons vaccinated, &c.

III. And be it further enacted, that such medical officers or practitioners shall make a report to such guardians or overseers from time to time of the number of persons successfully vaccinated by them respectively, and shall make such further report, with respect to the persons so vaccinated, as such guardians and overseers, under the direction of the poor law commissioners, shall require.

Copies of contracts to be sent to commissioners.

IV. And be it enacted, that such guardians or overseers shall forthwith, after the conclusion of any such contract as before mentioned, transmit a copy thereof to the poor law commissioners.

Annulling of contracts.

V. And be it enacted, that if such commissioners shall not annul such contract within fourteen days from the receipt thereof such contract shall thenceforth not be liable to be annulled by such commissioners.

VI. & VII. relate to Ireland.

* * * * * * *

Persons inoculating or otherwise producing small pox to be subject to one month's imprisonment.

VIII. And be it further enacted, that any person who shall from and after the passing of this Act produce or attempt to produce in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully by any other means whatsoever produce the disease of small pox in any person in England, Wales, or Ireland, shall be liable to be proceeded against and convicted summarily before any two or more justices of the peace in petty sessions assembled, and for every such offence shall, upon conviction,

(*c*) See 21 & 22 Vict. c. 97, s. 2, *ante*, p. 220, which empowers the Privy Council to prescribe regulations.

be imprisoned in the common gaol or house of correction for any term not exceeding one month.

Interpretation of words.

IX. And be it further enacted, that every word in such part of this Act as refers to England and Wales shall be interpreted in like manner as such word is directed to be interpreted in an Act passed in the fourth and fifth year of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales." 4 & 5 Will. 4, c. 76.

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4 & 5 VICT. CAP. XXXII.

An Act to amend an Act to extend the Practice of Vaccination.

[21st June, 1841.]

"WHEREAS an Act was passed in the fourth year of the reign of Her present Majesty, intituled 'An Act to extend the Practice of Vaccination;' but no express provision was thereby made for defraying the expenses of carrying the same into execution;" be it therefore declared and enacted, that it shall be and be deemed to have been lawful for the guardians of every parish or union in England and Ireland, and the overseers of every parish in England, by whom the contracts for vaccination may respectively be or have been made under the provisions of the said Act, to defray the expenses incident to the execution of the said Act out of any rates or monies which may come or may have come into their hands respectively for the relief of the poor. 3 & 4 Vict. c. 29.

Expenses of vaccination to be defrayed out of the poor rates.

Vaccination declared not to be parochial relief.

II. And be it further declared and enacted, that the vaccination, or surgical or medical assistance incident to the vaccination, of any person resident in any union or parish, or of any of his family, under the said Act, shall not be considered to be parochial relief, alms, or charitable allowance to such person, and that no such person shall by reason of such vaccination or assistance be deprived of any right or privilege, or be subject to any disability or disqualification whatsoever.

16 & 17 VICT. CAP. C.

An Act further to extend and make compulsory the Practice of Vaccination. [20th August, 1853.]

"WHEREAS an Act was passed in the fourth year of the reign of Her present Majesty, intituled 'An Act to extend the Practice of Vaccination:' and whereas an Act was passed in the fifth year of the same reign, intituled 'An Act to amend an Act to extend the Practice of Vaccination:' and whereas it is expedient that the practice of vaccination should be still further extended:" Be it therefore enacted:

3 & 4 Vict. c. 29.

4 & 5 Vict. c. 32.

Parishes or unions to be divided into districts for the purpose of vaccination, and places appointed for the performance of vaccination.

I. Within six weeks after the passing of this Act the guardians of every parish or union, and the overseers of every parish in which relief to the poor shall not be administered by guardians, in England and Wales, shall, subject to the approval of the poor law board, divide such parish or union, if need be, into convenient districts for the purpose of affording increased facilities for the vaccination of the poor, and shall appoint a convenient place in each such district for the performance of such vaccination, and shall take the most effectual means for giving from time to time to all persons resident within such district due notice of the days and hours at which the medical officer or practitioner contracted with for such purpose will attend at such place to vaccinate all persons not already successfully vaccinated who may then appear there, and also of the days and hours at which such medical officer or practitioner will attend at such place to inspect the progress of such vaccination in the persons so vaccinated.

Parents and guardians of children born after 1st August, 1853, to have such children vaccinated within three or four months after birth.

II. The father or mother of every child born in England or Wales after the first day of August in the year of our Lord one thousand eight hundred and fifty-three shall within three calendar months after the birth of the said child, or in the event of the death, illness, absence, or inability of the father and mother, then the person who shall have the care, nurture, or custody of the said child shall within four calendar months after the birth of such child, take or cause to be taken the said child to the medical officer or practitioner appointed in

the union or parish in which the said child is resident according to the provisions of the first-recited Act for the purpose of being vaccinated, unless he shall have been previously vaccinated by some duly qualified medical practitioner, and the vaccination duly certified, and the said medical officer or practitioner so appointed shall and he is hereby required thereupon, or as soon after as it may conveniently and properly be done, to vaccinate the said child.

Children to be taken for inspection by medical officer on eighth day after the operation.

III. Upon the eighth day following the day on which any child has been vaccinated as aforesaid the father or mother, or other person having the care, nurture, or custody of the said child, shall again take or cause to be taken the said child to the medical officer or practitioner by whom the operation was performed, in order that such medical officer or practitioner may ascertain by inspection the result of such operation.

Certificate of successful vaccination to be delivered.

IV. Upon and immediately after the successful vaccination of any child the medical officer or practitioner who shall have performed the operation shall deliver to the father or mother of the said child, or to the person who shall have the care, nurture, or custody of the said child, a certificate under his hand, according to the form of schedule herein-after inserted, marked (A.), that the said child has been successfully vaccinated, and shall also transmit a duplicate of the said certificate to the registrar of births and deaths of the sub-district in which the operation was performed;

And such certificate shall, without further proof, be admissible as evidence of the successful vaccination of such child in any information or complaint which shall be brought against the father or mother of the said child, or against the person who shall have had the care, nurture, or custody of such child as aforesaid, for non-compliance with the provisions of this Act.

If the child be not in a fit state for vaccination, the medical officer to deliver a

V. If any medical officer or practitioner shall be of opinion that any child is not in a fit and proper state to be successfully vaccinated, he shall thereupon and immediately deliver, without fee or reward, to the father or mother of such child, or the person having the care, nurture, or custody of the said

certificate to that effect, to be in force for two months.

child, a certificate under his hand according to the form of schedule herein-after inserted, marked (B.), that the child is in an unfit state for successful vaccination, and such certificate shall remain in force for two calendar months from its delivery as aforesaid;

And the father or mother of the said child, or the person having the care, nurture, or custody of the said child, shall, unless they shall within each succeeding period of two months have obtained from a medical officer or practitioner a renewal of such certificate, within two months next after the delivery of the said certificate as aforesaid, and if the said child be not vaccinated at or by the termination of such period of two months then during each succeeding period of two calendar months until such child has been successfully vaccinated, take or cause to be taken to the said medical officer or practitioner such child to be vaccinated by him; and if the said medical officer or practitioner deem the said child to be then in a fit and proper state for successful vaccination, he shall forthwith vaccinate it accordingly, and shall deliver to the father or mother of such child, or person having the care, nurture, or custody of such child, a certificate under his hand according to the form of schedule herein-after inserted, marked (A.), that such child has been successfully vaccinated;

But if the said medical officer or practitioner be of opinion that the child is still in an unfit state for successful vaccination, then he shall again deliver to the father or mother of such child, or person having the care, nurture, or custody of the said child, a certificate under his hand according to the said form of schedule (B.), that the child is still in an unfit state for successful vaccination;

And the said medical officer or practitioner, so long as such child remains in an unfit state for vaccination, and unvaccinated, shall at the expiration of every succeeding period of two calendar months deliver, if required, to the said father or mother of such child, or person having the care, nurture, or custody of such child, a fresh certificate under his hand according to the said form of schedule;

And the production of such certificate shall be a sufficient defence against any complaint which shall be brought against the said father or mother, or person having the care, nurture,

or custody of such child, for non-compliance with the provisions of this Act.

Rates of payment for vaccination in contracts by guardians or overseers.

VI. In all contracts (*a*) to be hereafter made under the provisions of the first-recited Act by any guardians or overseers of the poor with any medical officers or practitioners for the vaccination of the persons resident in their respective unions or parishes the sums contracted to be paid shall not be less than the following rates; that is to say, for every person successfully vaccinated at the residence of such medical officer or practitioner, or within two miles therefrom by the nearest public road, a sum not less than one shilling and sixpence, and for every person successfully vaccinated at any place more than two miles distant from such residence any sum not less than two shillings and sixpence.

Child's incapacity to receive the vaccine disease to be certified.

VII. In the event of any medical practitioner acting under the provisions of this Act being of opinion that any child that has been vaccinated by him is insusceptible of the vaccine disease, he shall deliver to the father or mother, or person having the care, nurture, or custody of such child, a certificate under his hand according to the form of schedule herein-after inserted, marked (D.);

And the production of such certificate shall be a sufficient defence against any complaint which may be brought against the said father, mother, or person having the care, nurture, or custody of such child for non-compliance with the provisions of this Act.

Registrars of births and deaths to keep a register of cases of successful vaccination, of which searches and extracts may be made.

VIII. The registrar of births and deaths in every sub-district in which the operation has been performed shall keep a register of the persons of whose successful vaccination a certificate shall have been transmitted to him as above provided by the said medical officer or practitioner, and shall at all reasonable times allow searches to be made of any such register book in his keeping, and shall give a copy, certified

(*a*) See the general order of the poor law board, dated Nov. 30, 1853, which prescribes the form of contract to be entered into by guardians with the vaccinators.

under his hand, of any entry or entries in the same, on payment of the fee of one shilling for each search, and sixpence for each certificate.

Notice to be given of the requirement of vaccination, and on failure of parent or guardian to comply therewith, penalty.

IX. The registrar of births and deaths in every sub-district shall, on or within seven days after the registration of the birth of any child not already vaccinated within the said sub-district, give notice in writing in manner hereinafter directed, and according to the form of schedule hereinafter inserted, marked (C.), to the father or mother of such child, or in the event of the death, illness, absence, or inability from sickness or otherwise of the father or mother, then to the person upon whom the care, nurture, or custody of such child shall have devolved, that it is the duty of such father or mother, or person having the care, nurture, or custody of such child as aforesaid, to take care that the said child shall be vaccinated in the manner directed by this Act, and shall together therewith deliver to such person a notice of the days, hours, and places within the district of such registrar at which the medical officer or practitioner as hereinbefore provided will attend for the purpose of vaccination;

And if after such notice the father or mother of the said child, or the person so having as aforesaid the care, nurture, or custody of the said child, shall not cause such child to be vaccinated, or shall not on the eighth day after the vaccination has been performed take or cause to be taken such child for inspection according to the provisions in this Act respectively contained, then such father or mother, or person having the care, nurture, or custody of such child as aforesaid, so offending, shall forfeit a sum not exceeding twenty shillings.

Fee to registrar.

X. A fee of *threepence* shall be paid to such registrar for each child vaccinated, in respect of which he shall have performed the duties required in this Act;

And he shall keep a book, to be provided as herein-after directed, containing a minute of his having duly given such notice as hereinbefore directed; and the said fee shall be payable in the same manner as the fee now payable to such registrar for registering the birth of such child as aforesaid is paid.

Registrar-general to provide

XI. The registrar-general for England and Wales shall, and he is empowered and directed, within two months after

the passing of this Act, to frame and provide such books, forms, and regulations as he may deem requisite for carrying into full effect the provisions of this Act, and shall transmit the same (*a*) *to the superintendent registrars of each district in England and Wales*, who shall deliver to the medical officers so appointed as aforesaid, and other duly qualified medical practitioners in the said district, such of the said books, forms, and regulations as they may require for the performance of the duties imposed upon them by this Act; books and forms for carrying out the provisions of this Act.

And the expenses to be incurred by the registrar-general under the provisions of this Act shall be defrayed in the same manner as the expenses under the Act of the *sixth* and *seventh* years of King William the Fourth, chapter *eighty-five*.

XII. All penalties (*b*) by this Act imposed shall be recoverable before any two justices of the peace for the county, city, borough, or place where the offence may have been committed; and the provisions of the Act of the *twelfth* year of Her present Majesty, chapter forty-three, shall be applicable to the recovery of such penalties. Recovery of penalties.

XIII. All penalties recovered under this Act shall be applied in aid of the funds applicable to the relief of the poor in the parish or place maintaining its own poor wherein the offence may have been committed. Application of penalties.

SCHEDULES

REFERRED TO BY THIS ACT.

SCHEDULE (A.)

I, the undersigned, hereby certify, that ——, the child of

(*a*) See the provision in 21 & 22 Vict. c. 25, s. 7, which repeals this clause, except so much as requires the registrar-general to frame and provide the books, forms, and regulations, and enacts that the registrar-general shall transmit such books, forms, and regulations to the registrar of births and deaths in every sub-district as may be requisite for the use of the said officers appointed, as is in the Act mentioned, and other duly qualified medical practitioners in the sub-district, and every such registrar shall deliver them accordingly without requiring payment for the same.

(*b*) See, as to the prosecutor, and the costs of prosecution, 21 & 22 Vict. c. 97, s. 8, *ante*, p. 223.

——, aged ——, of the parish of —— in the county of ——, has been successfully vaccinated by me.

Dated this —— day of —— 18 .

(Signed) *A. B.*
Surgeon of the Union *or* Parish (*or other medical practitioner, as the case may be*).

SCHEDULE (B.)

I, the undersigned, hereby certify, that I am of opinion that ——, the child of ——, of the parish of ——, in the county of ——, aged ——, is not now in a fit and proper state to be successfully vaccinated, and I do hereby postpone the vaccination until the —— day of ——

Dated this —— day of —— 18 .

(Signed) *A. B.*
Surgeon of the Union *or* Parish (*or other medical practitioner, as the case may be*).

SCHEDULE (C.)

I, the undersigned, hereby give you notice, and require you to have *C. D.* vaccinated within three (or four, *as the case may be, according to the second section of this Act,*) months after the birth, pursuant to the provisions and directions of the Act of the 16 Victoria, cap. . As witness my hand this —— day of —— 18 .

(Signed) *J. B.*
Registrar of births and deaths for the —— sub-district (*as the case may be*).

SCHEDULE (D.)

I, the undersigned, hereby certify, that I am of opinion that ——, the child of ——, of the parish of —— in the county of ——, is insusceptible of the vaccine disease.

Dated this —— day of —— 18 .

(Signed) *A. B.*
Surgeon of the Union *or* Parish of —— (*or other medical practitioner, as the case may be*).

PUBLIC BATHS AND WASH-HOUSES.

9 & 10 VICT. CAP. 74.

An Act to encourage the Establishment of Public Baths and Wash-houses.

[26th August, 1846.]

"WHEREAS it is desirable for the health, comfort, and welfare "of the inhabitants of towns and populous districts to en- "courage the establishment therein of public baths and wash- "houses: and open bathing-places:" Be it enacted, that this Act may be adopted for any incorporated borough in England which is regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of one of Her Majesty's principal secretaries of state, or any parish in England not within any such incorporated borough.

Act may be adopted in certain boroughs and parishes.

II. And be it enacted, that in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

Interpretation of Act.

"Parish" shall mean every place having separate overseers of the poor, and separately maintaining its own poor:

"Borough" shall mean city, borough, port, cinque port, or town corporate:

"Ratepayers" shall mean such of the persons for the time being assessed to and paying rates for the relief of the poor of the parish as for the time being shall be duly qualified to vote for the election of overseers for the parish (*a*):

(*a*) There is an error here, as ratepayers do not elect the *overseers* of parishes. See the amendment made by 10 & 11 Vict. c. 61, *post*.

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under an Act passed in the fifty-ninth year of the reign of King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor," or elected under an Act passed in the second year of the reign of His late Majesty, intituled "An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," or elected under the provisions of any local Act of parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry:

59 Geo. 3, c. 12.

1 & 2 Will. 4, c 60.

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners:

"Clerk" shall mean, as regards an incorporated borough, the town clerk of such borough; and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners:

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, or place, where the matter requiring the cognizance of the justices shall arise:

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

Council of any borough may adopt the pro-

III. And be it enacted, that the council of any such borough as aforesaid may, if they think fit, determine that this Act shall be adopted for such borough, and then and in such

case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and this Act shall be carried into execution in such borough in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough.

visions contained in Act if they think fit.

IV. And be it enacted, that the expenses of carrying this Act into execution in any such borough in which the council shall have resolved to adopt this Act for their borough shall be chargeable upon and paid out of the borough fund, and for that purpose the council may levy with and as part of the borough rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly, as if the expense of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the said Act of the sixth year of the reign of His late Majesty;

Expenses of carrying this Act into execution shall be charged upon the borough fund, and income arising carried to same.

And the income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of this Act, to be called "The Public Baths and Wash-houses Account."

V. And be it enacted, that upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after such public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry;

On the requisition of ten ratepayers, churchwardens, &c. to convene vestry meeting to determine whether this Act shall be adopted.

And if thereupon it shall be resolved by the vestry that

If vestry

resolve to adopt the Act, a copy of resolution to be sent to secretary of state, &c.

this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal secretaries of state for his approval, and as soon as such approval shall have been signified in writing under the hand of any such secretary of state, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish:

No resolution deemed to be carried unless two-thirds vote for it.

Provided always, that no such resolution of the vestry shall be deemed to be carried unless at least two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

VI. And be it enacted, that in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined amongst themselves), shall go out of office yearly, but shall be eligible for immediate reappointment.

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Meetings of the commissioners.

IX. And be it enacted, that the commissioners shall meet at least once in every calendar month at their office, or at some other convenient place previously publicly notified.

Special meetings of commissioners.

X. And be it enacted, that the commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

Quorum of meetings of commissioners.

XI. And be it enacted, that at all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners,

shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Commissioners may appoint and remove officers, &c.

XII. And be it enacted, that the commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners to be entered in a book.

XIII. And be it enacted, that all orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commissioners to keep accounts, which shall be open to inspection.

XIV. And be it enacted, that the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred;

And such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same;

Penalty for refusing to allow inspection.

And in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer

to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Auditors to be appointed yearly, who shall examine the accounts and report to vestries.

XV. And be it enacted, that the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry (*a*).

Expenses of executing Act in any parish to be paid out of the poor's rate.

XVI. And be it enacted, that the expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the monies to be raised or applicable for the relief of the poor of the parish (*b*).

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Monies raised, and the income arising from baths, &c. in the parish to be applied towards defraying expenses.

XVIII. And be it enacted, that the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or toward defraying the expenses of carrying this Act into execution in the parish;

And whenever, after repayment of all monies borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time

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(*a*) It will be a question whether these auditors will not be superseded in local board districts by 21 & 22 Vict. c. 98, s. 60, *ante*, p. 305.

(*b*) Out of the general districts rate, where the local board become the commissioners. See 21 & 22 Vict. c. 98, s. 47, *ante*, p. 286.

of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish (*c*).

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of secretary of state.

XIX. And be it enacted, that the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree;

And for that purpose it may, with the approval of such secretary of state, be agreed on between such vestries that any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly;

And, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes;

And the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

XX. And for the more easy execution of the purposes of this Act, be it enacted, that the commissioners of every such

(*c*) To the district fund account in the case mentioned in the last note.

parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for public Baths and Wash-houses in the parish of (——) in the county of (——,)" and by that name may sue and be sued in all courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Councils, &c. may borrow money for the purposes of the Act, with the approval of the treasury.

XXI. And be it enacted, that for carrying this Act into execution in any borough or parish respectively, the council, with the approval of the commissioners of Her Majesty's treasury, and the commissioners with the sanction of the vestry, and also with the approval of the commissioners of Her Majesty's treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the monies so borrowed accordingly.

The public works loan commissioners may advance money for the purposes of this Act.

XXII. And be it enacted, that the commissioner for carrying into execution an Act passed in the second session of the fifth year of the reign of Her Majesty, intituled "An Act to authorize the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorizing the Issue of Exchequer Bills for the like Purposes," may from time to time make to the council of any such borough, or commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of the borough fund, or the rates for the relief of the poor of the parish, as the case may be.

8 & 9 Vict. c. 16, incorporated with

XXIII. And be it enacted, that the provisions of the Companies Clauses Consolidation Act, 1845 (*a*), with respect to the

(*a*) See 8 & 9 Vict. c. 16, s. 38, and following sections.

borrowing of money by any company on mortgage, and in the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of byelaws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; this Act for certain purposes.

And the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners;

And all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the commissioners;

And so much of such provisions as are applicable to the "secretary of the company" shall apply to the clerk;

And in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privileges of shareholders.

XXIV. And be it enacted, that in any such borough the council, with the approval of the commissioners of Her Majesty's treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses; Council may appropriate, with consent of the treasury, lands vested in the mayor, &c.

And in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law commissioners for England and Wales, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; Commissioners may, with approval of vestry, &c., appropriate lands belonging to parish;

And in any such parish the commissioners, with the approval or contract

for purchase of the same.

of the vestry, and in any such borough the council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Councils and commissioners may erect, &c. public baths and wash-houses and open bathing places.

XXV. And be it enacted, that the council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths and wash-houses, and as to such wash-houses either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may enter into contracts for the purposes of this Act.

XXVI. And be it enacted, that the council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act;

Which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose:

No contract above 100*l.* to be entered into without notice.

Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be

given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

Council or commissioners may purchase existing baths, &c.

XXVII. And be it enacted, that the council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Power to water and gas companies to supply water

XXVIII. And be it enacted (*a*), that any commissioners of waterworks, trustees of waterworks, water companies, canal companies, gas companies, and other corporations, bodies, and

(*a*) See 11 & 12 Vict. c. 63, s. 75, *ante*, p. 127.

and gas to baths, &c.

persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gasworks respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open bathing places either without charge or on such other favourable terms as they shall think fit.

Councillors and commissioners not to be personally liable.

XXIX. And be it enacted, that nothing in this Act contained shall render any member of the council of any borough, or any commissioner, personally, or any of their lands, goods, chattels, or monies (other than such lands, goods, chattels, or monies as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

XXX. And be it enacted, that every person who shall feel aggrieved by any byelaw, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845 (*b*), incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, &c. empowered to make sale and exchange of lands, with consent.

XXXI. And be it enacted, that the council, with the approval of the commissioners of Her Majesty's treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the commissioners of Her Majesty's treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively, for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

(*b*) 8 & 9 Vict. c. 16.

When baths, &c. are considered too expensive they may, with approval of treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

XXXII. And be it enacted, that whenever any public baths or wash-houses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the commissioners of Her Majesty's treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish (*c*).

Management to be vested in councils and parish commissioners.

XXXIII. And be it enacted, that the general management, regulation, and control of the public baths and wash-houses and open bathing places established under this Act, shall, subject to the provisions of this Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners.

Council, &c. may make byelaws for regulating the use of baths and wash-houses, &c., and charges thereat.

XXXIV. And be it enacted, that the byelaws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce shall include such byelaws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding *five pounds* for any and every breach, whether by their officers or servants, or by other persons, of any byelaw made by them respectively; and such byelaws shall make sufficient provision for the several purposes respectfully * expressed in the schedule (A.) to this Act:

* *Sic* in stat.

Byelaws to be approved

Provided always, that no byelaw made under the authority

(*c*) To the district fund account in the case where the authority has been transferred to the local board under 21 & 22 Vict. c. 98, s. 47, *ante*, p. 286.

by the secretary of state.

of this Act shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal secretaries of state.

Copies or abstracts of byelaws to be hung up in every bath room, &c.

XXXV. And be it enacted, that a printed copy or sufficient abstract of the byelaws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the byelaws relating to the use of the wash-houses shall be kept up in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every wash-house.

Proportion of baths for the labouring classes.

XXXVI. And be it enacted, that the number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings.

Charges to be fixed by councils and commissioners not exceeding those in schedule (B.)

XXXVII. And be it enacted, that the council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places respectively provided under this Act as they shall think fit, but not exceeding such charges as are mentioned in the schedule (B.) annexed to this Act, unless for the use of any washing tub or trough for more than two hours in any one day, for which any charges may be made which the council or commissioners respectively shall deem reasonable.

As to recovery of charges at wash-houses.

XXXVIII. And be it enacted, that for the recovery of the charges at such wash-houses the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within *seven* days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

Penalty for council, commissioners, or officers taking fees beyond salaries, or being interested in contracts.

XXXIX. And be it enacted, that if any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of *fifty pounds*.

Application of penalties.

XL. And be it enacted, that such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and, as regards a parish, of the rate for the relief of the poor thereof.

Act may be amended, &c.

XLI. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of parliament.

SCHEDULES

REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

Byelaws to be made in all Cases.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

SCHEDULE (B.)—(*Repealed by* 10 & 11 *Vict. c.* 61.)

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10 & 11 VICT. CAP. 61.

An Act to amend the Act for the Establishment of Public Baths and Wash-houses. [2nd July, 1847.]

9 & 10 Vict. c. 74.

"WHEREAS an Act was passed in the last session of parliament, intituled 'An Act to encourage the Establishment of public Baths and Wash-houses:' and whereas it is expedient to afford additional facilities for the establishment of public baths and wash-houses and open bathing places:" Be it enacted, that the recited Act, as amended by this Act, and this Act, shall be construed and carried into execution as one Act.

Recited Act and this Act to be construed as one.

Interpretation of expressions in recited Act and this Act.

II. And be it enacted and declared, that the following words and expressions in the recited Act shall have in the said Act, and this Act, the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

"Parish" shall mean not only every place having separate overseers of the poor, and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry:

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatever name distinguished, acting by virtue of any Act of parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

Acts of commissioners of public baths, &c. to be valid, notwithstanding informalities.

III. And be it enacted, that when any person shall have been appointed to the office of commissioners of public baths and wash-houses for any parish before the passing of this Act, the recited Act shall be deemed to have been duly adopted for such parish, notwithstanding that there may have been any defect or irregularity in or in any way concerning such adoption;

And all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified, or there had not been any such defect or irregularity.

Incorporation of 8 & 9 Vict. c. 18.

IV. And be it enacted, that the Lands Clauses Consolidation Act, 1845 (*d*), shall be incorporated with the recited Act and this Act: Provided always, that the council and commissioners respectively shall not purchase or take any lands *otherwise than by agreement.*

Council, &c. not to take lands, &c.

Proportion of washing accommodation for labouring classes.

V. And be it enacted, that the number of washing tubs or troughs for the labouring classes, in any building or buildings under the management of the same council or commissioners, shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes if more than one, in the same building or buildings.

So much of recited Act as regulates charges for use of baths, &c. repealed.

VI. And be it enacted, that so much of the recited Act as enacts that the council and commissioners respectively may make such reasonable charges for the use of the baths and wash-houses and open bathing places as they think fit, not exceeding such charges as are mentioned in the schedule (B.) to that Act, shall be repealed.

(*d*) See 8 & 9 Vict. c. 18, *post.*

Power to make charges for use of baths, &c. not exceeding those in the schedule.

VII. And be it enacted, that the council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the schedule annexed to this Act.

Act may be amended, &c.

VIII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

SCHEDULE

TO WHICH THIS ACT REFERS.

Charges for the Baths and Wash-houses and open Bathing Places.

1. BATHS FOR THE LABOURING CLASSES.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old:

Cold bath, or cold shower bath, any sum not exceeding - - - - - - One penny.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding - - - Twopence.

For several children, not above eight years old, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding - - - - - - Twopence.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding - - - Fourpence.

2. BATHS OF ANY HIGHER CLASS.

Such charge as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. Wash-houses for the Labouring Classes.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub, or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying:

For one hour only in any one day, any sum not exceeding - - - - - One penny.

For two hours together, in any one day, any sum not exceeding - - - Threepence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. Wash-houses of any higher Class.

Such charges as the council and the commissioners respectively think fit.

5. Open Bathing Places, where several persons bathe in the same water, for one person, one halfpenny.

COMMON LODGING HOUSES.

14 & 15 VICT. CAP. 28.

An Act for the well-ordering of Common Lodging Houses.

[24th July 1851.]

"WHEREAS it would tend greatly to the comfort and welfare of many of Her Majesty's poorer subjects if provision were made for the well-ordering of common lodging houses:" Be it therefore enacted as follows; to wit,

Short title.

I. In citing this Act for any purpose it shall be sufficient to use the expression "The Common Lodging Houses Act, 1851."

Interpretation of terms in this Act.

II. The following words and expressions in this Act have, for the purposes and execution of this Act, the following meanings; to wit,

The word "place" includes county, riding, hundred, and other division or part of a county, city, borough, parish, district, and other place whatsoever:

The word "borough," and the expressions "mayor, aldermen, and burgesses," and "borough fund," have respectively the same meaning as in the Act for the regulation of municipal corporations (*e*):

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 expression "common lodging house" includes, in any case in which only a part of a house is used as a common lodging house, the part so used of such house.

By whom the Act is to be executed.

III. This Act shall be executed as follows; to wit,

* * * * *

(*e*) See 5 & 6 Will. 4, c. 76

2. Within and for all and any part of any place not being within the metropolitan police district, but being now or hereafter the district of a local board of health, by the local board of health for the district:

* * * * * *

4. Within and for all and any part of any other place not being within the metropolitan police district, and not being the district of a local board of health, and not being such an incorporated borough, but being now or hereafter the place within the limits of an improvement Act, by the commissioners, trustees, or other body, by whatever name known, for executing the improvement Act:

* * * * * *

As to expenses of executing this Act.

IV. The expenses of and incident to the executing of this Act shall be borne and paid as follows; to wit,

* * * * * *

2. With respect to the district of a local board of health, as part of the expenses of executing the Acts for the time being in force relating to the local board of health, and as charged upon and payable out of the monies carried, under the Public Health Act, 1848, to the district fund account of the local board of health (*f*):

3. With respect to an incorporated borough, as part of the expenses of carrying into execution within the borough the provisions of the Act for the regulation of municipal corporations (*g*), and as charged upon and payable out of the borough fund of the borough:

* * * * * *

And the monies from time to time required for the payment of the expenses of and incident to the execution of this Act shall be assessed, levied, raised, recovered, and paid accordingly.

Meaning of the term "the local authority."

V. The expression in this Act "the local authority" means, with respect to the purposes and execution of this Act with respect to any place, the body or person by this Act authorized to execute with respect to the place the several provisions of this Act.

(*f*) See 11 & 12 Vict. c. 63, s. 87, *ante*, p. 142.
(*g*) 5 & 6 Will. 4, c. 76, s. 92.

Notice of this Act to be given to the keepers of common lodging houses.

VI. Within three months after the passing of this Act the local authority shall, and from time to time thereafter the local authority may, give to the keeper of every common lodging house already or hereafter within the jurisdiction under this Act of the local authority, notice in writing of this Act, and shall give such notice by leaving the same for such keeper at the house, and shall by such notice require the keeper to register the house as by this Act provided, and such notice may be in the form in the schedule to this Act annexed, or to the like effect.

Registers of common lodging houses to be kept.

VII. The local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging houses within the jurisdiction of the local authority, and the situation of every such house, and the number of lodgers authorized according to this Act to be received therein.

Lodgers not to be received in common lodging houses until registered under this Act.

VIII. After one month after the giving of such notice to register as by this Act provided, the keeper of any common lodging house or any other person shall not receive any lodger in such house until the same has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and has been registered as by this Act provided.

Power to local authority to make regulations respecting common lodging houses.

IX. The local authority may from time to time make regulations respecting common lodging houses within its jurisdiction for all or any of the purposes respecting the same for which the local board of health are by the Public Health Act, 1848 (*a*), authorized to make byelaws, and for the well-ordering of such houses, and for the separation of the sexes therein:

Provided always, that the regulations made under this Act by the local authority shall not be in force until they have been confirmed by one of Her Majesty's principal secretaries of state.

Power to local autho-

X. The local authority shall have the same power of impos-

(*a*) See 11 and 12 Vict. c. 63, s. 66, *ante*, p. 114.

ing penalties on offenders against the said regulations, subject to the same restrictions, as the local board with respect to offenders against such byelaws, and such penalties shall be recoverable in the same way as is provided in the said Act with respect to the penalties imposed on offenders against such byelaws (*b*);

Authority to impose penalties for offences committed against regulations.

And a copy of the said regulations, purporting to be signed by the secretary of state, and also to be signed by the local authority, (or to be sealed with the seal of the same, in case it have a seal,) shall be receivable in evidence of such regulations, and of the duly making and confirming thereof.

XI. The keeper of a common lodging house shall, when a person in such house is ill of fever, or any infectious or contagious disease, give immediate notice thereof to the local authority, or some officer of the local authority, and also to the poor law medical officer and the poor law relieving officer of the union or parish in which the common lodging house stands.

Keepers of common lodging houses to give notice of fever, &c. therein.

XII. The keeper of a common lodging house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof (*c*).

As to inspection of common lodging houses.

XIII. The keeper of a common lodging house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools, and drains thereof, to the satisfaction of and so often as shall be required by or in accordance with any regulation or byelaw of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year.

As to cleansing of common lodging houses.

XIV. If the keeper of a common lodging house, or any other person having or acting in the care or management thereof, offend against any of the provisions of this Act, or any of the byelaws or regulations made in pursuance of this Act, or if any person in any common lodging house be con-

Penalty for offences against this Act.

(*b*) See 11 & 12 Vict. c. 63, s. 129, *ante*, p. 184.
(*c*) Note the provisions in 11 & 12 Vict. c. 63, s. 66, *ante*, p. 115.

fined to his bed for forty-eight hours by fever, or any infectious or contagious disease, without the keeper of such house giving notice thereof, as required by this Act, every person so offending shall, for every such offence, be liable to a penalty not exceeding *five pounds*, and to a further penalty, not exceeding *forty shillings*, for every day during which the offence continues (*z*):

Provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Recovery of penalties.

XV. The clauses and provisions of the Railways Clauses Consolidation Act, 1845 (*a*), "with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices," are for the purposes and execution of this Act incorporated with this Act.

General powers of local authority, &c.

XVI. The local authority, and all justices, constables, and others, shall respectively have full jurisdiction, powers, authorities, and indemnities for executing the several provisions of this Act;

And the restrictions of the Public Health Act, 1848 (*b*), as to the hours within which common lodging houses may be entered by persons authorized by a local board of health, shall not apply to this Act.

Act not to extend to the city of London;

XVII. That this Act shall not extend to the city of London, or the liberties thereof.

nor to Scotland.

XVIII. That nothing in this Act shall extend to Scotland.

SCHEDULE.

Form of Notice.

Take notice, that on the [——] day of [——] an Act called "The Common Lodging Houses Act, 1851," was passed, and that before the [——] day of [——] you,

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(*z*) See 16 & 17 Vict. c. 41, s. 11, *post*.
(*a*) See 8 & 9 Vict. c. 20, ss. 140-160.
(*b*) See 11 & 12 Vict. c. 63, s. 66, *ante*, p. 115.

being the keeper of a common lodging house within [*here state the place over which the jurisdiction of the local authority giving the notice extends*], must have your common lodging house registered, and that the register is to be kept at [*here state where the register is to be kept*], and that if you do not have your common lodging house so registered, you will be liable to a penalty, not exceeding five pounds, for every lodger whom you receive in your common lodging house while it is not so registered; and that on your applying to [*here give the name and address of the person to keep the register*] he will register your common lodging house free of all charge to you. Dated [*&c.* ——].

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16 & 17 VICT. CAP. 41.

An Act for making further Provisions with respect to Common Lodging Houses. [4th August, 1853.]

"WHEREAS it is expedient to extend the provisions of the Common Lodging Houses Act, 1851:" Be it therefore enacted, as follows:

Short title.

I. This Act may be cited for any purpose as "The Common Lodging Houses Act, 1853."

Recited Act and this Act to be as one.

II. The Common Lodging Houses Act, 1851, and this Act shall be construed and executed as if they were one Act.

All common lodging houses to be registered before being used, and to be kept only by registered keepers.

III. After three months after the passing of this Act a person shall not keep a common lodging house, or receive a lodger therein, until the house have been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and have been registered, as by the recited Act provided;

And a person shall not keep a common lodging house unless his name as the keeper thereof be entered in the register kept under the recited Act:

Provided always, that when the person so registered dies, his widow, or any member of his family, may keep the house as a common lodging house for not more than four weeks after his death, without being registered as the keeper thereof.

Local authority may refuse to register houses, if keepers do not produce certificate of character.

IV. The local authority may refuse to register as the keeper of a common lodging house a person who does not produce to the local authority a certificate of character, in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging house is situate, for property of the yearly rateable value of six pounds or upwards.

Evidence of register.

V. A copy of the entry made in a register kept under the recited Act, certified by the person having the charge of the register to be a true copy, shall be received in all courts, and before all justices, and on all occasions whatsoever, as evidence, and be sufficient proof of all things therein registered, without production of the register, or of any document, Act, or thing on which the entry is founded;

And every person applying at a reasonable time shall be furnished gratis by the person having such charge with a certified copy of any such entry.

Power to local authority to require an additional supply of water to common lodging houses.

VI. Where it appears to the local authority that a common lodging house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may, by notice in writing, require the owner or keeper of the common lodging house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose (*a*);

And if the notice be not complied with accordingly, the local authority may remove the common lodging house from the register until it be complied with.

As to removal of sick persons from common lodging houses to hospitals, &c.

VII. When a person in a common lodging house is ill of fever, or any infectious or contagious disease, the local authority may cause such person to be removed to an hospital or infirmary, with the consent of the authorities thereof, and on the certificate of the medical officer of the parish, place, or district that the disease is infectious or contagious, and that the patient may be safely removed, and may, so far as the local authority think requisite for preventing the spread of

(*a*) See, as to the water supply in lodging houses within the district of a local board of health, 11 & 12 Vict. c. 63, s. 75, *ante*, p. 126.

disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may, if the local authority think fit, award to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof,

And such compensation shall be paid to such owners by the proper officer of the parish or union in which the common lodging house is situate, out of the rates applicable to the relief of the poor of such parish, the amount of such compensation being first certified in writing upon a list of such articles.

Power to order reports from keepers of common lodging houses kept for beggars and vagrants.

VIII. The keeper of a common lodging house in which beggars or vagrants are received to lodge, or other person having the care or management thereof, shall from time to time, if required by any order of the local authority served on such keeper or person, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

* * * * * * * *

As to offences against this Act.

XI. The *fourteenth section of the recited Act* extends to offences against any of the provisions of this Act, so as to render the offenders liable to the penalties therein expressed, and any person convicted of any offence against the recited Act and this Act, or either of them, may, in default of payment of the penalty imposed, be imprisoned for any term not exceeding three months, in the manner provided by law in that behalf.

Conviction for third offence to disqualify persons from keeping common lodging house.

XII. Where a keeper of a common lodging house, or a person having or acting in the care or management of a common lodging house, is convicted of a third offence against the recited Act and this Act, or either of them, the justices before whom the conviction for such third offence takes place may, if they think fit, adjudge that he shall not at any time

within five years after the conviction, or within such shorter period after the conviction as the justices think fit, keep, or have, or act in the care or management of a common lodging house, without the previous licence in writing of the local authority, which licence the local authority may withhold, or may grant, on such terms and conditions as they think fit.

Acts may be executed by justices at petty sessions.

XIII. In a case in which there are not petty sessions for a place fifthly mentioned in section three of the recited Act, that Act and this Act may be executed within and for all and any part of such place by the justices of the peace acting in petty sessions in the petty sessional division within which such place is comprised.

* * * * * * * *

For the regulation and inspection of lodging houses.

CXVI. It shall not be lawful to keep or use as a public lodging house within the limits of the special Act any house, not being a licensed victualling house, which shall be rated to the relief of the poor on a less sum than ten pounds, nor in any case unless such house shall have been registered as a lodging house in a book to be kept by the commissioners for that purpose; and every house shall be deemed a public lodging house within the meaning of this Act in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week.

NOTE, that in 10 & 11 Vict. c. 34, s. 116, there is the following interpretation of the word PUBLIC LODGING HOUSE:

"Every house shall be deemed a public lodging house within the meaning of this Act in which persons are harboured or lodged for hire for a single night or for less than a week at one time, or any part of which is let for any term less than a week."

PREVENTION OF DISEASES.

18 & 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 effec- "tual in that behalf:" Be it therefore enacted:

Short title.

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

Local authority for execution of Act.

II. The local authority for executing this Act shall be the local authority acting in execution of any general Act in force for the time being for the removal of nuisances (*a*).

Expenses of Act.

III. The expenses incurred in execution of this Act shall be borne out of the rates or funds administered by such local authority, under the provisions and for the purposes of any such general Act as is referred to in the preceding section (*b*).

Power of entry.

IV. The local authority and their officers shall have 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.

Power to privy council to issue

V. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or

(*a*) See 18 & 19 Vict. c. 121, s. 3, *post*. (*b*) *Ibid*, s. 7.

orders that provisions herein contained for prevention of diseases may be put in force.

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.

Power to general board of health to issue regulations to carry out such provisions.

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* (*a*) 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 of 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:

Local extent and duration of regulations of general board.

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 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

(*a*) The privy council are now substituted for the general board of health. See 21 & 22 Vict. c. 97, *ante*, p. 219.

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, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require.

and may direct 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 session 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*] (*a*) may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and

(*a*) Now the privy council.

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

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

XII. Whenever, in compliance with any regulation of [*the general board of health*] (*a*), 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 (*b*) 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.

Authentication of directions and regulations of general

XIII. The directions and regulations of (*c*) [*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 pur-

(*a*) Now the privy council.
(*b*) See 17 & 18 Vict. c. 104, ss. 188, 523.
(*c*) See 21 & 22 Vict. c. 97, s. 7, *ante*, p. 222, as to the authentication of the order of the privy council.

porting 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. board of health.

XIV. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by [*the general board of health*] (*d*) 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. Penalty for obstructing execution of Act.

XV. The provisions of any general Act (*e*) 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. Certain provisions of Nuisances Removal Act to apply to this Act.

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18 & 19 VICT. CAP. 121.

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, as follows: 11 & 12 Vict. c. 123. 12 & 13 Vict. c. 111.

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

(*d*) Of the privy council. (*e*) See next statute.

by virtue of the said Acts shall continue and be as effectual as if the said Acts had not been repealed.

Interpretation of certain terms used in this Act.

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 "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 (*a*), 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

(*a*) 5 & 6 Will. 4, c. 76.

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.

PART I. *Constitution of local authority, expenses, description of nuisances, and powers of entry.*

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:

The local authority to execute this Act in places as herein stated.

III. The following bodies shall respectively be the local authority to execute this 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:

PART I. *Constitution of local authority, expenses, description of nuisances, and powers of entry.*

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners:

In any place within which there is no such local board of health nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, that board:

In any place where there is no such local board of health, council, body of trustees, or commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum:

In any place wherein there is no such local board of health, council, body of trustees, or commissioners, highway board, or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting and watching under the Act 3 & 4 W. 4, c. 90, that board with the surveyor of highways:

In any place in which there is no such local board of health, council, body of trustees, or commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place.

As to filling up vacancies.

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.

Power to local authority to appoint committees.

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 or take proceedings on their behalf.

As to the execution of this Act in extra-parochial places.

VI. In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a nuisances removal committee, elected annually by the householders within the extra-parochial place:

The first election of such committee shall take place at a meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place; and

Subsequent elections shall be held annually on some day in Easter week at meetings summoned by the chairman of the local authority for the year preceding:

Extra-parochial places not so comprised as aforesaid, and having a population of less than two hundred persons, shall for the purposes of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections.

As to defraying expenses of executing this Act.

VII. All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

PART I. *Constitution of local authority, expenses, description of nuisances, and powers of entry.*

Out of general district rates, where the local authority is a local board of health (*a*):

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen, and burgesses by the council, or if there be an improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such improvement Act; or in the city of London and the liberties thereof, any rates or funds administered by the commissioners of sewers for the said city and liberties:

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 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:

Out of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisances removal committee:

Out of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching:

And if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred, but if such parish or place be now or hereafter shall be partly comprised within and partly without the limits of a place where a local authority, other than a highway board, nuisance removal committee, inspectors of watching and lighting, and surveyors or guardians and surveyors, exists or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits shall be defrayed out of any highway

(*a*) See 11 & 12 Vict. c. 63, s. 88, *ante*, p. 143, and 21 & 22 Vict. c. 98, s. 55, *ante*, p. 295.

rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded; and if there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. Cap. 65, be raised and assessed upon such excluded part:

And when the local authority has not control of such rates or funds, the officer or person having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall include the costs of such distress and sale:

In extra-parochial places (*b*) having a population of not less than two hundred persons, out of a rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein:

In extra-parochial places (*b*) having a population of less than two hundred persons, out of a similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place:

And the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed in the same manner, and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assess-

(*b*) Extra-parochial places are now provided for by 20 Vict. c. 19, being made by sect. 1 parishes for the removal of nuisances.

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ment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways.

What are deemed nuisances under this Act.

VIII. 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.

Power to local authority to appoint a sanitary inspector, and allow him a proper salary.

IX. The local authority shall, for the purposes of this Act, appoint or employ, or join with other local authorities in appointing or employing, a sanitary inspector or inspectors, and may appoint a convenient place for his or their office, and may allow to every such person on account of his employment a proper salary or allowance;

And where local authorities join in such appointment or employment they may apportion among themselves the payment of such salary or allowance:

Provided always, that where the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it shall not be necessary to appoint any other inspector under this Act, but the inspector acting in execution of the improvement Act shall have all the powers, authorities, and privileges granted to any inspector appointed under this Act.

Notice of

X. Notice of nuisance may be given to the local authority

by any person aggrieved thereby, or by any of the following persons:

Nuisances to be given to local authority, &c. to ground proceedings.

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 herein-after 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 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.

PART I. *Constitution of local authority, expenses, description of nuisances, and powers of entry.*

2. To (*a*) 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, 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.

PART II.

PART II. *With regard to removal of nuisances.*

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

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

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

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(*a*) See also 11 & 12 Vict. c. 63, s. 143, *ante*, p. 200.

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;

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

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 and prohibition of the nuisance as herein-after 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.

Justices order for abatement.

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 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;

Prohibitive order against

And if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for

PART II. *With regard to removal of nuisances.*

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.

future nuisance.

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

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;

Local authority may enter and remove or abate nuisance.

And the local authority may (*a*), 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 on whom the order is made as hereinafter provided.

Appeal against order of prohibition.

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

Appeal against order of abatement when structural works are required.

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 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

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(*a*) These words are discretionary only. *Ex. parte Bassett*, 21 Jur. 136, S.C. *In re The Local Board of Health of Ham*, 26 L.J.R., M.C. 64.

(*b*) No appeal is granted against an order of abatement or removal of nuisance. *Ex parte Corporation of Liverpool*, 27 L. J. R., M.C. 89; 22 Jur. 333.

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 (*c*).

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*

(*c*) See 11 & 12 Vict. c. 63, s. 56, *ante*, p. 105, and 21 & 22 Vict. c. 98, s. 32, *ante*, p. 261.

PART II. *With regard to removal of nuisances.*

chargeable with such costs and expenses (*b*), 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 rackrent 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 (*c*),—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.

Proceedings before justices to recover expenses.

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.

(*b*) See similar language in 21 & 22 Vict. c. 98, s. 62, *ante*, p. 313.

(*c*) It matters not what may be the amount, nor whether any question of filth arise. *Reg.* v. *Harden*, 17 Jur. 804; 22 L. J. R., Q.B. 299. *Governors of Hertford Union* v. *Kimpton*, 25 L. J. R., M. C. 41.

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

XXI. 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 (*d*).

Power to local authority 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* (*e*) 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 (*f*) every house, building, or premises then

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(*d*) See 11 & 12 Vict. c. 63, s. 58, *ante*, p. 106, and further provisions in 21 & 22 Vict. c. 98, s. 31, *ante*, p. 259.

(*e*) The 5 & 6 Will. 4, c. 50, s. 67, is almost the same as sect. 21 above. Sect. 68 is as follows:—

"If any owner or occupier, or other person, shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made or taken under the charge of such surveyor or district surveyor, and without his authority and consent, such owner, occupier, or other person shall be 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 shall also forfeit any sum not exceeding three times the amount of such charges and expenses."

(*f*) The local authority cannot lay their assessment upon any house out of their district. *Reg.* v. *Warner and Tatham*, 22 Jur. 609. As to the mode of laying the assessment itself, see *Reg.* v. *Warner*, 6 E. & B. 395.

PART II. *With regard to removal of nuisances.*

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 (*a*) 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.

Penalty for causing water to be corrupted by gas washings.

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 (*b*).

Penalty to

XXIV. Such penalty may be recovered, with full costs of

(*a*) Notice of appeal fourteen days after notice of the rate is in time. The proviso limits the amount of the annual assessment, not the aggregate. *Reg.* v. *Nuisance Removal Committee of Middleton*, 32 L. T. 124.

(*b*) See 11 & 12 Vict. c. 63, s. 80, *ante*, p. 131.

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; be sued for in superior courts within six months.

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.

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 (*c*). Daily penalty during the continuance of the offence.

XXVI. The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or in the course of or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in England; Penalty on sale of unwholesome meat, &c.

And in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be unfit for such food, the same may be seized; and if it appear to a justice that any such carcase, meat, poultry, game, flesh,

(*c*) See 11 & 12 Vict. c. 63, s. 80, *ante*, p. 131.

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fish, fruit, vegetables, corn, bread, or flour is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food;

And the person to whom such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every carcase, 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 (*b*).

As to nuisances arising in cases of noxious trades, businesses, processes, or manufactures.

XXVII. If (*c*) any candle house, melting house, melting place, or soap house, or any slaughter house, or any 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 to the local authority by any medical officer, or any *two legally* (*d*) *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, or causes any 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

(*b*) See 11 & 12 Vict. c. 63, s. 63, *ante* p. 112.
(*c*) See Ibid, s. 64, *ante*, p. 113.
(*d*) See note (*g*) on sect. 29, *post*.

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 order 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 appeal accordingly :

Provided always, that the provisions herein-before contained shall not extend or be applicable to any place without the limits of any city, town (*e*), or populous district.

Reference to superior court at the option of the party complained against.

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

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

XXIX. Whenever (*f*) the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners (*g*), 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

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(*e*) As to the meaning of this word, see *Elliott* v. *South Devon Railway Company*, 2 Ex. R. 725 ; *Reg.* v. *Cottle*, 16 Q. B. 413.

(*f*) See as to the proceedings of the local board of health to secure ventilation, 21 & 22 Vict. c. 98, s. 34, *ante*, p. 265.

(*g*) The 21 & 22 Vict. c. 90, s. 34, defines this term for the future to be a person registered under that Act.

PART II. *With regard to removal of nuisances.*

fit, and the person permitting such overcrowding shall forfeit a sum not exceeding forty shillings.

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

XXX. The local authority may, within the area of their jurisdiction (*a*), 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.

PART III.

PART III. *As to procedure under this Act.*

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

Service of notices, summonses, and orders.

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 reside 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 (*b*).

As to proceedings

XXXIII. Where proceedings under this Act are to be

(*a*) The cause and effect must be within the area. *Reg.* v. *Colton*, 32 L. T. 126.

(*b*) See 10 & 11 Vict c. 16, s. 55.

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.

taken against several persons for the same offence.

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 answerable 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.

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

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.

Designation of "owner" or "occupier."

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* (*b*) 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.

Penalty for obstructing execution of this Act.

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

Penalty on occupier obstructing owner.

(*b*) See *Frost* v. *Lloyd*, 11 Jur. 59.

PART III. *As to procedure under this Act.*

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.

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

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.

Proceedings not to be quashed for want of form.

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.

Appeals under this Act to be to quarter sessions.

XL. Appeals under this Act (*a*) 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 days of giving such notice enter into a recogni-

(*a*) See 11 & 12 Vict. c. 63, s. 135, *ante*, p. 189.

zance 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 (*b*).

Act not to impair jurisdiction of sewers com-

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, juris-

(*b*) See 11 & 12 Vict. c. 63, ss. 139, 140, *ante*, pp. 194, 197.

PART III. *As to procedure under this Act.*

missioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

diction, 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 (*a*),—nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act (*b*) 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 (*c*), the Act for the Regulation of Municipal Corporations (*d*), the Public Health Act (*e*), 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 Acts, 1851 and 1853 (*e*), shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to affect navigation of rivers or canals.

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 (*f*);

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,

(*a*) See *Earl of Lonsdale* v. *Nelson*, 2 B. & C. 312; *Jones* v. *Williams*, 11 Mu. & W. 176; *R.* v. *Pappineau*, 1 Stra. 686; *Reg.* v. *Wigg*, Salk. 640.

(*b*) 16 & 17 Vict. c. 128.

(*c*) 14 & 15 Vict. c. 28; 15 & 16 Vict. c. 41, *ante*, in the Appendix, p. 374.

(*d*) 5 & 6 Will. 4, c. 76.

(*e*) 11 & 12 Vict. c. 63.

(*f*) See 11 & 12 Vict. c. 63, s. 145, *ante*, p. 202; 21 & 22 Vict. c. 98, s. 68, *ante*, p. 317.

or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Saving as to rights of millowners, &c.

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 also of the owners thereof in cases where the owners and parties so entitled are not the same persons (*g*).

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 has made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1855, viz. [*describe nui-*

(*g*) See 11 & 12 Vict. c. 63, s. 145, *ante*, p. 203, and 21 & 22 Vict. c. 98, s. 68, *ante*, p. 317.

sance], 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 described inhabitant householders, sanitary inspector, *or other officer* (*describing him*)], do hereby give you notice, that there exists in or upon the [dwelling house, yard, *etc., 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 sect.* 10.]

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, 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.

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 ——, [*or* 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 [*or* one of the magistrates of the police courts of the metropolis, *or* the stipendiary magistrate 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 complaint this day made to me by —— [*or* by —— on behalf of] [*naming the local authority, as the case may be*], that in or upon the premises above mentioned [*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*], in their district, under the Nuisances Removal Act for England, 1855, the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A. B.* [*or in case the nuisance be discontinued, but likely to be repeated, say,* there existed recently, to wit, 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 —— day of ——, in the year of our Lord one thousand eight hundred and ——.

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 [*give name of local authority*], or to their servants or agents, and to all whom it may concern.

County of ——, [*or* borough, *&c.* of——, *or* district of——, *as the case may be*]. } WHEREAS on the —— day of —— complaint was made before ——, esquire, one of Her Majesty'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 then 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 have 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 a 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 for 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 ——.

FORM (F.)

Order of Justices for Removal of Nuisance by Local Authority.

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

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

And whereas it hath been now 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.*

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 justices of the peace in and for the county of [*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 Majesty'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 description 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 the 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, watercourse, privy, urinal, cesspool, *or* ashpit, which is a nuisance 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 permit the said *A. B.* [*describe the act or works to be done*] in the manner required by the said Act.

Given under my hand and seal this —— day of —— in the year of our Lord one thousand eight hundred and ——.

E. F. (L.S.)

FORM (H.)

Summons for Non-payment of Costs, Expenses, or Penalties.
Sect. 20.

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

County of ——, [*or* borough of ——, *or* district of ——,] to wit. } YOU are required to appear before two of Her Majesty's justices of the peace [*or* one of the magistrates 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 complaint 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 penalties 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 us
to wit. } [*or* me] for that [*recite 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.

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] adjudged the said —— [*set out from Form K. 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 seals, this —— day of ——, in the year of our Lord one thousand eight hundred and ——, at —— in the [county] aforesaid.

A. B. (L. S.)
C. D.

FORM (L.)

Return of Proceedings under Nuisances Removal Act, 1855, *by the* [name the local authority at length].
From 26th 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 inspector -	Foul drainage from house.	Owner put down good drain, on summons, without justices' order.	Several houses being in a like position, the highway surveyor 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 10*s*.
18 April -	Two neighbours.	Offensive cesspool.	Abated by local authority.	Renewed once; but penalty recovered, and no subsequent renewal attempted.

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

THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 34.

An Act for consolidating in one Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns. [21st June, 1847.]

* * * * * *

Interpretations in this and the special Act.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (*a*); (that is to say,)

"Street:" The word "street" shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special Act:

"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"Owner:" The word "owner," used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rackrent, would be entitled to receive the rackrent from the occupier thereof:

"Cattle." The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Officers.

VII. *Enables the commissioners to appoint a local surveyor of the paving, drainage, and other works authorized under the provisions of this and the special Act.*

IX. *Enables the commissioners to appoint an inspector of nuisances.*

XII. *Enables the commissioners to appoint a person of*

(*a*) *Number, gender, person, lands, month, superior courts, oath, justices, two justices, quarter sessions,* are defined as in 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29.

competent skill and experience, who shall be styled "the officer of health."

XIII.—XVIII. *Enable the commissioners to procure surveys and plans.* — *Surveys and plans.*

XXII.—XXXIV. *Relate to the making and maintaining the public sewers.* — *Sewers.*

XXXV.—XLVI. *Relate to the drainage of houses.* — *House drains.*

XLVII.—LVI. *Relate to paving and maintaining the streets.*

LVII.—LXIII. *Relate to the laying out new streets.* — *New streets.*

(*b*) And with respect to *naming the streets and numbering the houses*, be it enacted as follows: — *Naming Streets.*

Houses to be numbered and streets named.

LXIV. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street, the name by which such street is to be known;

And every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding *forty shillings* for every such offence.

Numbers of houses to be renewed by occupiers.

LXV. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced;

And every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding *forty shillings*, and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expenses thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

(*b*) These clauses are incorporated with 21 & 22 Vict., c. 98, by s. 45, *ante*, p. 282.

Improving streets.

And with respect to *improving the line of the streets, and removing obstructions*, be it enacted as follows:

Houses may be set forward for improving line of street.

LXVI. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated.

Commissioners may purchase houses or ground for effecting additional improvements.

LXVII. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall resell any parts of the land so purchased which shall not be wanted for the enlargement of the street.

Houses projecting beyond line of street, when taken down, to be set back.

LXVIII. When any house or building, any part of which projects beyond the regular line (*a*) of the streets, or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or toward the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street:

Provided always, that the commissioners shall make full compensation to the owner of such house or building for any damage he thereby sustains.

Future projections of houses, &c., to be removed on notice.

LXIX. The commissioners may give notice to the occupier of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate or fence, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street (*b*);

And such occupier shall, within *fourteen days* after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding *forty shillings*;

(*a*) See *Seer* v. *Freebody*, 22 J.P. 707.
(*b*) See *Miles* v. *Bouverie*, 1 B. & Ad. 38; *Q.* v. *Ingham*, 17 Q.B. 884.

And the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages:

Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building.

Commissioners may cause existing projections to be removed, and compensation to be made.

LXX. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit;

Provided that they give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such obstruction or projection shall be *thirty days* before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors in future to be made to open inwards.

LXXI. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed;

And if (except as aforesaid) any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier of such house, building, yard, or land shall, within *eight days* after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards;

And in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding *forty shillings*.

Doors opening outwards

LXXII. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any

may be altered.

street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupier.

LXXIII. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar;

Penalty for neglect.

And if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding *five pounds.*

Waterspouts to be affixed to houses or buildings.

LXXIV. The occupier of every house or building in, adjoining, or near to any street shall, within *seven* days next after service of an *order* of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house, or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath;

And in default of compliance with any such order within the period aforesaid such occupier shall be liable to a penalty not exceeding *forty shillings* for every day that he shall so make default.

Ruinous or dangerous buildings.

And with respect to *ruinous or dangerous buildings*, be it enacted as follows:

Ruinous or dangerous buildings to be taken down or

LXXV. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbour-

ing buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; secured by owners, &c.

And if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of *three days* after such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the *owner* (*a*), or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; If owner, &c., neglect to repair, commissioners may cause the same to be done, charging owner, &c. with the expenses.

And all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

LXXVI. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly. The expenses to be levied by distress on the owner.

(*a*) See in sect. 3, *ante*, p. 422, who is the *owner*.

If owner cannot be found, commissioners may take the house or ground, making compensation provided by 7 & 8 Vict. c. 18.

LXXVII. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving *twenty-eight days'* notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said *twenty-eight days*, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845 (*a*), in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

LXXVIII. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand;

Nevertheless, the commissioners, although they sell such materials for the purpose aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are herein-before given to them for compelling the payment of the whole of the said expenses.

Precautions during repairs.

And with respect to *precautions during the construction and repair of the sewers, streets, and houses*, be it enacted as follows:

Bars to be erected across streets while repairs or alterations are making,

LXXIX. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and

(*a*) See *post*, in this Appendix, p. 490.

protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and lights placed at night.

And the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents;

And every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding *five pounds*.

LXXX. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; Hoards to be set up during repairs.

And every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid, during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding *five pounds*, and a further penalty not exceeding *forty shillings* for every day while such default is continued.

Penalty for not lighting deposits of building materials or excavations.

LXXXI. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising, while such materials or hole remain;

And such person shall, at his own expense, cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding *five pounds*, and a further penalty not exceeding *forty shillings* for every day while such default is continued.

Penalty for continuing deposits of building materials or excavations an unreasonable time.

LXXXII. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding *five pounds* to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding *forty shillings* for every day during which such offence is continued after the conviction for such offence:

And in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Dangerous places to be repaired or inclosed.

LXXXIII. If any building or hole or any other place near any street be, for want of sufficient repair, protection, or inclosure, dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom;

And the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

LXXXIV.—LXXXVI. *Apply to objections to the works to be constructed.* *Objections to Works.*

LXXXVII.—XCVIII. *Relate to cleansing the streets.* *Cleansing streets.*

XCIX.—CVII. *Relate to the prevention of nuisances.* *Nuisances.*

And with respect to the *prevention of smoke*, be it enacted as follows: *Smoke.*

CVIII. (*a*) Every fireplace or furnace constructed after the passing of the special Act, in order to be used within the limits of such Act in the working of engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, gaswork, or in any manufactory whatsoever, (although a steam engine be not used or employed therein,) shall be so constructed as to consume the smoke arising from the combustibles used in such fireplace or furnace; *Fireplaces of factories, &c. to consume their own smoke.*

And every such fireplace or furnace existing within the said limits at the date of the passing of the special Act, used for the purposes aforesaid, not so constructed as to consume the smoke arising from such fireplace or furnace, shall within the prescribed period, or, if no period be prescribed, then within two years after the passing of the special Act, be so altered in its construction as to consume such smoke;

And if after such period any person use for any of the purposes aforesaid any fireplace or furnace not so constructed as aforesaid, or if at any time any person use any such fireplace or furnace constructed after the passing of the special Act, and not so constructed as aforesaid, or so negligently use any such fireplace or furnace as not to consume the smoke arising from the combustibles used therein, every person so offending shall be liable to a penalty of *forty shillings* for every day during any part of which such furnace or fireplace shall be so used and continued after one month's notice in writing shall have been given to the owner or occupier of such furnace or fireplace by the commissioners to remedy or discontinue the use of the same.

(*a*) Incorporated in 21 & 22 Vict. c. 98, by s. 45, *ante*, p. 282.

Fire. CIX. *Relates to the construction of houses for prevention of fire.*

Ventilation. CX.—CXV. *Relate to supplying buildings with fresh air.*

Lodging houses. CXVI.—CXVIII. *Relate to lodging houses.*

Lighting. CXIX., CXX. *Relate to lighting the town.*

Water. (*a*) And with respect to *the supply of water*, be it enacted as follows:

Power to commissioners to construct public cisterns and pumps for supply of water to baths and wash-houses.

CXXI. The commissioners shall cause all existing public cisterns, pumps, wells, conduits, and other waterworks used for the gratuitous supply of water to the inhabitants within the limits of the special Act, to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water, and such public cisterns and other works shall be vested in the commissioners, and be under their management and control;

And the commissioners may construct any number of new cisterns, pumps, conduits, and other waterworks, for the gratuitous use of any persons who choose to carry the same away, not for sale, but for their own private use, and may supply with water any public baths or wash-houses. [*The proviso is not incorporated, and is omitted.*]

Commissioners may contract for supply of water.

CXXII. The commissioners may contract for the prescribed period, or (where no period shall be prescribed) for any period not exceeding *three* years at one time, with the owners of any waterworks or any other person for such supply of water as the commissioners shall think necessary for the purposes of this or the special Act.

For ascertaining price to be paid for water in case of dispute.

CXXIII. If the commissioners, and the owners of any waterworks authorized by Act of parliament to supply water within the limits of the special Act, with whom the commissioners may be desirous of contracting, do not agree as to the

(*a*) These clauses are incorporated in 21 & 22 Vict. c. 98, by s. 45, *ante*, p. 282.

price to be paid for such supply, then such price (except where by the Act authorizing such waterworks some other mode of determining such price shall be provided) shall be settled by arbitration, and for that purpose the *clauses of the Lands Clauses Consolidation Act*, 1845, *with respect to the settlement of disputes by arbitration*, shall be incorporated with this and the special Act.

Commissioners to cause fireplugs, &c. to be provided and maintained.

CXXIV. The commissioners shall cause fireplugs, and all necessary works, machinery, and assistance for securing an efficient supply of water in cases of fire, to be provided and maintained, and for this purpose they may enter into any agreement with any water company or other party, and they shall paint or mark on the buildings and walls within the streets words or marks near to such fireplugs, to denote the situation thereof, and do such other things for the purposes aforesaid as they may from time to time deem expedient.

Slaughter-houses.

And (*b*) with respect to *slaughter-houses*, be it enacted as follows:

Commissioners may license slaughter-houses, &c.

CXXV. The commissioners may license such slaughter-houses and knackers' yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

No new slaughter-houses in future to be erected without a licence.

CXXVI. No place shall be used or occupied as a slaughter-house or knackers' yard within the said limits which was not in such use and occupation at the time of the passing of the special Act, and has so continued ever since, unless and until a licence for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners;

And every person who, without having first obtained such licence as aforesaid, uses as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not ex-

(*b*) See 11 & 12 Vict. c. 63, ss. 61, 62, *ante*, pp. 110, 11; 21 & 22 Vict. c. 98, ss. 45, 48, *ante*, pp. 282—87; and 11 & 12 Vict. c. 41, ss. 17—20.

ceeding *five pounds*, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, &c. to be registered.

CXXVII. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's yard shall, within *three months* after the passing of such Act, be registered by the owner or occupier thereof at the office of the commissioners, and on application to the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose;

And every person who after the expiration of the said *three months*, and after *one week's* notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding *five pounds* for such offence, and a penalty not exceeding *ten shillings* for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commissioners may make byelaws for regulation of slaughter-houses, &c.

CXXVIII. The commissioners shall from time to time, by byelaws to be made and confirmed *in the manner herein-after provided* make regulations for the licensing, registering, and inspection of the said slaughter-houses and knackers' yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such byelaws;

Provided that no such penalty exceed for any one offence the sum of *five pounds*, and in the case of a continuing nuisance the sum of *ten shillings* for every day during which such nuisance shall be continued after the conviction for the first offence.

Justices may suspend licence of slaughter-houses, &c., in addition

CXXIX. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the byelaws or regulations made by virtue of this or the special

Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding *two months* the licence granted to such person under this or the special Act, or in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding *two months* the slaughtering of cattle therein; to penalty imposed.

And such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the licence granted under this or the special Act revoked, or if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein;

And whenever the licence of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any licence whatever to the person whose licence has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Penalty for slaughtering cattle during suspension of licence, &c.

CXXX. Every person who during the period for which any such licence is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such licence relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding *five pounds* for such offence, and a further penalty of *five pounds* for every day on which any such offence is committed after the conviction for the first offence.

Officers may enter and inspect slaughter-houses, &c.

CXXXI. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place what-

soever within the said limits kept or used for the sale of butchers meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons;

And in case upon such inspection and examination, such cattle, carcase, or part of a carcase be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man;

And such justice may adjudge the person to whom such cattle, carcase or part of a carcase, belongs, or in whose custody the same is found, to pay a penalty not exceeding *ten pounds* for every such animal, or carcase or part of a carcase, so found;

And the owner or occupier of any building or place kept or used for the sale of butchers meat, or for slaughtering cattle, and every other person who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal, or carcase or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding *five pounds* for each offence.

Special order.

CXXXII.— CXLII. *Relate to things to be done by the commissioners by special order, and enable them to provide slaughter-houses, places for public recreation, public baths, wash-houses, and drying grounds.*

Clocks.

Power to commissioners to provide public clocks.

CXLIII (*a*). *With respect to clocks*, be it enacted, that the commissioners may from time to time provide such clocks as they consider necessary, and cause them to be fixed upon or against any public building, or, with the consent of the owner and occupier, upon or against any private building the situation of which may be convenient for that purpose, and may cause the

(*a*) This is incorporated with 21 & 22 Vict. c. 98, by s. 45, *ante*, p. 282.

dials thereof to be lighted at night, and from time to time alter and remove any such clocks to such other like situation as they shall consider expedient.

CXLIV.—CLV. *Relate to the execution of works by the commissioners and owners.* — *Execution of works by commissioners.*

CLVI.—CLXXXIV. *Relate to the rates directed by the Act to be made.* — *Rates.*

CLXXXV.—CXC. *Relate to appeals against any rate.* — *Appeal.*

CXCI.—CXCIX. *Relate to the recovery of rates.* — *Recovery of rates.*

CC.—CCIX. *Relate to byelaws.* — *Byelaws.*

CCX.—CCXIII. *Relate to the recovery of damages not specially provided for, and penalties.* — *Recovery of damages and penalties.*

SCHEDULES *supply form of rate and form of distress warrant.*

THE MARKETS AND FAIRS CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 14.

An Act for consolidating in One Act certain Provisions usually contained in Acts for constructing or regulating Markets and Fairs. [23rd April, 1847.]

"WHEREAS it is expedient to comprise in one Act sundry "provisions usually contained in Acts of parliament autho- "rizing the construction or regulation of markets and fairs, "and that as well for avoiding the necessity of repeating such "provisions in each of the several Acts relating to such under- "takings as for ensuring greater uniformity in the provisions "themselves:" Be it enacted, that this Act shall extend only to such markets or fairs as shall be authorized by any Act of parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

Interpretations in this Act:

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"special Act:"

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word

"prescribed."

"prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as

if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair, and the works connected therewith, by the special Act authorized to be construed or regulated; and the expression "the undertakers" shall mean the persons authorized by the special Act to construct or regulate the market or fair.

"the lands:"

"the undertaking:"

"undertakers:"

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number:

"Number:"

Words importing the masculine gender shall include females:

"Gender:"

The word "person" shall include a corporation whether aggregate or sole:

"Person:"

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure:

"Lands:"

The word "lease" shall include a missive of and an agreement for a lease:

"Lease:"

The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorized to be constructed or regulated:

"the market or fair:"

The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods:

"Cart:"

The word "driver" shall include the carter or other person having the care of any cart.

"Driver:"

The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine:

"Cattle:"

The expression "the collector" shall mean the person appointed by the undertakers to collect the stallage, rents, or tolls authorized by the special Act, shall include the assistants of the collector:

"Collector:"

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts," when the matter submitted to the cognizance of the court arises in England or Ireland, shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham; and when such matter arises in Scotland it shall mean the Court of Sessions.

"Oath:" The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace; and in Scotland, stewartry, and any ward or other division of a county or stewartry, having a separate sheriff; and it shall also include county of a city or county of a town:

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands situated not wholly in any one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorized or required to be done by two justices, the

"Two justices:" expression "two justices" shall be understood to mean two or more justices assembled and acting together.

"Sheriff:" The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof, for the county or place in which the market or fair is

situate, or for some division of such county having a separate commission of the peace.

Citing the Act.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

IV. In citing this Act in other Acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Construction of market or fair.

VI.—XI. *Relate to the construction of the market or fair, and the works connected therewith.*

Holding of Markets, &c.

And with respect (*a*) *to the holding of the market or fair, and the protection thereof*, be it enacted as follows:

Before the market or fair shall be opened, notice to be given by undertakers.

XII. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Sales elsewhere than in markets

XIII. After the market place is opened for public use every person other than a licensed hawker who shall *sell* or

(*a*) These clauses are incorporated with 21 & 22 Vict. c. 98, by sect. 50, *ante*, p. 289.

prohibited under a penalty not exceeding 40*s*.

expose for sale in any place within the prescribed limits (*b*), except in his own dwelling place or shop, any articles in respect of which tolls are by the special Act authorized to be taken in the market, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

Market days.

XIV. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act.

Penalty for selling or exposing for sale unwholesome meat, &c.

XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding *five pounds* for every such offence;

And any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions (*c*), and carry the same before a justice, and thereupon such proceedings shall be had as are herein-after directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice;

Penalty on obstructing inspector.

And every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding *five pounds* for every such offence.

Penalty for obstructing market or fair keeper.

XVI. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

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Slaughter-houses.

XVII.—XX.—*Relate to slaughter-houses.*

(*b*) A farmer residing at B., ten miles from T., a district under the Public Health Act, contracted at B. with a butcher living in T., to sell some pigs to him, which were to be killed at B. and delivered at T.: held that no offence was committed under this section. *Bourne* v. *Lowndes*, 22 J. P. 354.

(*c*) See 11 & 12 Vict. c. 63, s. 63, *ante*, p. 111.

Weighing of Goods and Carts.

And with respect to *weighing goods and carts*, be it enacted as follows: (*a*)

Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

XXI. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures, according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Articles to be weighed if requested by the buyer.

XXII. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers;

Penalty for refusal.

And any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding *forty shillings*.

Penalty on persons appointed refusing to weigh.

XXIII. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding *forty shillings*.

Undertakers to keep proper machines for weighing carts laden with goods.

XXIV. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts, with or without their loading, as may be required.

Carts to be weighed at one of the machines erected by the undertakers.

XXV. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed;

(*a*) Incorporated with 21 & 22 Vict. c. 98, by s. 50, *ante*, p. 289.

And if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile;

And such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Penalty on drivers for refusing to take carts to be weighed, &c.

XXVI. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as herein-before directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding *twenty shillings*.

Penalties on drivers of carts, &c., committing frauds in weighing.

XXVII. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding *five pounds* for each offence; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof:

If he alter any ticket denoting the weight of any such cart, or the loading of the same:

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof.

If he, after the weighing of any such cart, with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket:

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof:

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on buyers or sellers for committing frauds in weighing.

XXVIII. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding *five pounds*.

Penalties for frauds committed by the machine keeper.

XXIX. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed.

If he do not fairly weigh every such cart, with or without loading, as the case may be:

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account, specifying the true weight of such cart, with or without such loading, as may be required:

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof:

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively:

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or

make or connive at making any false representation of the weight of the same respectively.

Penalty on other parties committing frauds as to weighing.

XXX. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

Tolls.

And with respect to *the stallages, rents, and tolls* (*a*) to be taken by the undertakers, be it enacted as follows:

Tolls, &c., not to be demanded until market or fair completed.

XXXI. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

Certificate of two justices to be evidence that market or fair is completed.

XXXII. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed, and fit for public use.

Stallages, &c., when to be paid.

XXXIII. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorized by the undertakers to receive the same.

Tolls to be paid to persons authorized before the same are weighed, &c.

XXXIV. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorized by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured.

Tolls in respect of

XXXV. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect

(*a*) No tolls shall be leviable by the local board until approved of by a secretary of state. 21 & 22 Vict. c. 98, s. 50, *ante*, p. 289.

whereof they are demandable are brought into the market place, and before the cattle are put into any pen, or tied up in such market place; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed.

Cattle market when due.

XXXVI. The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorized by the special Act.

Stallages, tolls, &c., may be varied from time to time.

XXXVII. Every person who shall demand or receive a greater toll than that authorized to be taken under the provisions of this or the special Act shall for every such offence be liable to a penalty not exceeding *forty shillings*.

Penalty on taking a greater toll than authorized by this or the special Act.

XXXVIII. If any person liable to the payment of any stallage, rent, or toll authorized by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorized by the undertakers or their lessee to collect the same, may levy the same in England by distress of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any court having competent jurisdiction.

Recovery of tolls by distress, &c.

XXXIX. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in England by a justice, and such justice shall, on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand, of the money, which shall be so awarded, and of the costs, the same shall be forthwith levied by distress, and the justice shall issue his warrant accordingly.

Disputes respecting tolls, how to be settled.

XL. Every person who shall assault or obstruct any person authorized to collect any stallage, rent, or toll authorized by this or the special Act, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

Penalty for obstructing collector of rents, &c.

List of tolls, &c., to be set up and placed in conspicuous places.

XLI. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

Byelaws.

And with respect to the *byelaws* to be made by the undertakers, be it enacted as follows:

Byelaws may be made for all or any of the purposes herein named.

XLII. The undertakers may from time to time make such byelaws as they think fit for all or any of the following purposes; (that is to say,)

For regulating the use of the market place and fair, and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

For fixing the days, and the hours during each day, on which the market or fair shall be held:

For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein.

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act.

For regulating the use of the weighing machines provided by the undertakers, and for preventing the use of false or defective weights, scales, or measures:

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair:

And the undertakers may from time to time, as they shall think fit, repeal or alter any such byelaws; Byelaws may be repealed or altered from time to time.

Provided always, that such byelaws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, or of any Act incorporated therewith:

And such byelaws shall be reduced to writing under the common seal of the undertakers if they be a body corporate, or the hands and seals of two of the undertakers if they be not a body corporate, and if affecting other persons than the officers and servants of the undertakers, shall be printed and published as herein provided.

XLIII. The undertakers, by the byelaws so to be made by them, may impose such reasonable penalties as they shall think fit, not exceeding *five pounds* for each breach of such byelaws; provided that every such byelaw shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid. Byelaws may be enforced by imposition of penalties.

XLIV. No byelaws made under the authority of this or the special Act (except such as may relate solely to the officers or servants of the undertakers) shall come into operation until the same shall be allowed in the manner prescribed by the special Act (*a*), or if no manner be prescribed, until the same shall be allowed by the justices at quarter sessions, and in either case approved under the hand of one of Her Majesty's principal secretaries of state; No byelaws to come into operation until allowed in the manner prescribed and approved by secretary of state.

And it shall be incumbent on the justices at quarter sessions, on the request of the undertakers, to examine into the byelaws which may be tendered to them for that purpose, and to allow of or disallow the same, as to them may seem meet.

XLV. Provided always, that no such byelaw shall be allowed in manner herein mentioned unless notice of the intention to apply for an allowance of the same shall have been given in one or more newspapers of the county in which the market or Notice of allowance of byelaws to be given in one or more newspapers, &c.

(*a*) See 11 & 12 Vict. c. 63, s. 115, *ante*, p. 170.

fair shall be situated, or, if there be no newspaper in such county, in one or more newspapers of the adjoining county, one month at least before the hearing of such application;

And any party aggrieved by any such byelaw, on giving notice of the nature of his objection to the undertakers ten days before the hearing of the application for the allowance thereof may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one party to be heard upon the same matter of objection.

A copy of proposed byelaws to be open for inspection.

XLVI. For one month at least before any such application for allowance of any byelaw a copy of such proposed byelaws shall be kept at the principal office of the undertakers, and shall be put up in some conspicuous place in the market place or fair, and all persons at all reasonable times may inspect such copy without fee or reward, and the undertakers shall furnish every person who shall apply for the same with a copy thereof or of any part thereof, on payment of sixpence for every one hundred words so to be copied.

Publication of byelaws.

XLVII. The said byelaws shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk of the undertakers shall give a printed copy thereof to every person applying for the same without charge, and a copy thereof shall be painted or placed on boards, and put up in some conspicuous part of the principal office of the undertakers, and also in some conspicuous place in the market place or fair, and such boards, with the byelaws thereon, shall be renewed from time to time as occasion shall require, and shall be open to inspection without fee or reward;

And in case the said clerk shall not permit the same to be inspected at all reasonable times he shall for every such offence be liable to a penalty not exceeding five pounds.

Byelaws to be binding on all parties.

XLVIII. All byelaws made and confirmed according to the provisions of this and the special Act, when so published and put up, shall be binding upon and be observed by all parties, and shall be a sufficient warrant for all persons acting under the same.

Proof of publication of byelaws.

XLIX. The production of a written or printed copy of the byelaws requiring confirmation by the court of quarter session, authenticated by the signature of the judge or of the chairman of the court who shall have approved of the same, and requiring approval under the hand of one of Her Majesty's principal secretaries of state, and a written or printed copy of the byelaws not requing such confirmation or approval, authenticated by the common seal of the undertakers if they be a body corporate, or under the hands of the undertakers if not incorporated, or any two of them, shall be evidence of the existence and making of such byelaws in all cases of prosecution under the same, without proof of the signature of such judge, chairman, or sheriff, or such secretary of state, or the common seal or signature of the undertakers;

And with respect to the proof of the publication of any such byelaws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by this Act directed, and in case of its afterwards being displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be aduced by the party complained against that such painted board did not contain a copy of such byelaws, or was not duly put up or continued as directed by this Act.

Accounts.

L., LI. *Relate to the receipts and expenditure of the undertakers.*

Recovery of damages and penalties.

LII.—LVII. *Relate to the recovery of damages not specially provided for, and penalties.*

THE TOWN POLICE CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 89.

An Act for consolidating in One Act certain Provisions usually contained in Acts for regulating the Police of Towns. [22nd July 1847.]

* * * * * *

Interpretations in this and the special Act.

III. The following words (*a*) and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

"Lands:" The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure:

"Street:" The word "street" shall extend to and include any road, square, court, alley, and thoroughfare or public passage within the limits of the special Act:

"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"Cattle:" The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

And with respect *to citing this Act, or any part thereof*, be it enacted as follows:

Short title of the Act.

IV. In citing this Act in other Acts of parliament, and in legal instruments, it shall be enough to use the expression "The Town Police Clauses Act, 1847."

(*a*) The following words are defined in the same manner as in 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29, namely, *number, gender, person, month, superior courts, oath, justice, quarter sessions.*

VI.—XX. *Relate to the appointment, powers, duties, and privileges of constables.* *Constables.*

With respect *to obstructions and nuisances in the streets,* be it enacted as follows: *Obstructions and nuisances.*

Power to prevent obstructions in the streets during public processions, &c.

XXI. The commissioners may from time to time make *orders* for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed (*b*), and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding *forty shillings.*

Power to regulate the route of persons driving stage carriages, &c. during divine service.

XXII. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make *orders* for regulating the route by which persons shall drive any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public *fast* or *thanksgiving*, and any *orders* so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct, and every wilful breach of any such *order* shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding *forty shillings.*

Proprietors of stage carriages deviating

XXIII. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his

(*b*) See the qualification in sect. 28, *post*, and *Fox* v. *Palmer*, 22 J.P. 449, in regard to an obstruction by running horses in the access to a market.

from route by order free from penalty.

licence which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners.

Power to impound stray cattle.

XXIV. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding *forty shillings*, besides the reasonable expenses of impounding and keeping such cattle.

Power to sell stray cattle for penalty and expenses.

XXV. If the said penalty and expenses be not paid within *three days* after such impounding, the pound-keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle;

But previous to such sale *seven days* notice thereof shall be given to or left at the dwelling house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement to be inserted *seven days* before such sale in some newspaper published or circulated within the limits of the special Act;

And the money arising from such sale after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Persons guilty of pound-breach to be committed for three months.

XXVI. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding *three months*.

Power to provide a pound.

XXVII. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners.

Penalty on persons committing any of the offences herein named.

XXVIII. Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding *forty shillings* for each offence, or in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding *fourteen days*; [and any constable or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence;] (that is to say,)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for

the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare:

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same:

Every person who leads or rides any horse or other animal,

or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway:

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground:

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building, at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway:

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway:

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon:

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution:

Every person who wilfully and indecently exposes his person:

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language:

Every person who wantonly discharges any fire-arm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework:

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door bell, or knock-

ing at any door, and who wilfully or unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) :

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset, to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any

manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street (*a*):

Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases:

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

Penalty on drunken persons, &c. guilty of riotous or indecent behaviour.

XXIX. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days.

Fires.

And with respect to *fires*, be it enacted as follows:

Penalty for setting chimneys wilfully on fire.

XXX. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding five pounds:

Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for accidentally allowing chimneys to catch fire.

XXXI. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings:

Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant.

(*a*) This must be within the district of the local board. See *Flight* v. *Clarke*, 13 Mee. & W. 155.

Fire engines and firemen may be provided by the commissioners.

XXXII. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire, as they think fit.

Fire police permitted to go beyond the limits of the Act in certain cases.

XXXIII. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits;

And the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines, with their appurtenances, and for the attendance of such firemen;

And in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire, (if the propriety thereof be disputed,) shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

Places of public resort.

And with respect to *places of public resort*, be it enacted as follows:

Penalty on victuallers harbouring constables while on duty.

XXXIV. Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being

on duty, unless for the purpose of quelling any disturbance or restoring order, shall for every such offence be liable to a penalty not exceeding twenty shillings.

Penalty on coffee shop keepers harbouring disorderly persons.

XXXV. Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on persons keeping places for bear-baiting, cock-fighting, &c.

XXXVI. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animals, shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month;

And the commissioners may, by order in writing, authorize the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful exclusion, and every person so found shall be liable to a penalty not exceeding five shillings;

And a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned.

Hackney Carriages.

And with respect to *hackney carriages*, be it enacted as follows:

Hackney carriages to be licensed.

XXXVII. The commissioners may from time to time license to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the general post-office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

What to be hackney carriages.

XXXVIII. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intending to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act;

And in all proceedings at law or otherwise, the term "hackney carriage" shall be sufficient to describe any such carriage:

Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act.

Fee to be paid for licence.

XXXIX. For every such licence there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings.

Persons applying for licence to sign a requisition for same.

XL. Before any such licence is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such licence is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage;

And any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of

such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage,
shall be liable to a penalty not exceeding ten pounds.

What shall be specified in the licences.

XLI. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such licence, which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Licences to be registered.

XLII. Every licence shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

Licence to be in force for one year only.

XLIII. Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated shall be signed by *two or more of the commissioners*, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

Notice to be given by proprietors of hackney carriages of any change of abode.

XLIV. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within *seven days* next after such change, give notice thereof in writing signed by him to the commissioners, specifying in such notice his new place of abode;

And he shall at the same time produce such licence at the office of the commissioners, who shall, by their clerk or some

other officer, endorse thereon and sign a memorandum specifying the particulars of such change;

And any person named in any such licence as aforesaid as the proprietor or one of the proprietors of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as aforesaid may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

Penalty for plying for hire without a licence.

XLV. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance, without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as herein-after provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

Drivers not to act without first obtaining a licence.

XLVI. No person shall act as *driver* of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same;

And every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.

Penalty on drivers acting without licence.

XLVII. If any person acts as such driver as aforesaid without having obtained such licence or during the time that his licence is suspended, or if he lend or part with his licence except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as

the driver thereof who has not obtained such licence, or during the time that his licence is suspended as herein-after provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding twenty shillings.

Proprietor to retain licence of drivers when in his employ, and to produce the same when summoned.

XLVIII. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver while such driver remains in his employ;

And in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ;

Justices may endorse convictions upon licences.

And if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted;

Penalty on proprietors for neglect.

And if any such proprietor neglect to have delivered to him, and to retain in his possession, the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Proprietor to return licence to drivers when quitting his service if they behave well, if otherwise, proprietors to summon them.

XLIX. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him;

But if such driver have been guilty of any misconduct, the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint;

And such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint;

Compensation in case of licence being im-

And if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such licence, and award such

properly withheld.

sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

Licences to be suspended or revoked for misconduct.

L. The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver.

Number of persons to be carried in a hackney carriage to be painted thereon.

LI. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire, within the prescribed distance, unless the number of persons to be carried by such hackney carriage in words at length, and in form following, (that is to say,) "To carry persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth;

And the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

Penalty for neglect or for refusal to carry the prescribed number.

LII. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding *forty shillings*.

Penalty on driver for refusing to drive.

LIII. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any byelaw of the commissioners, not exceeding the prescribed distance to which he is directed to drive by the person hiring

or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

Penalty for demanding more than the sum agreed for, though less than the legal fare.

LIV. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any byelaw made thereunder, such proprietor or driver shall be liable to a penalty not exceeding *forty shillings* if he exact or demand for such job more than the fare so agreed upon.

Agreement to pay more than the legal fare not to be binding, and sum paid beyond the proper fare may be recovered back.

LV. No agreement whatever made with the driver or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw made under this or the special Act, shall be binding on the person making the same;

And any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid;

And if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of *forty shillings*;

And in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Driver to carry, under an agreement for a discretionary distance, the distance to which hirer

LVI. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such pro-

is entitled for the fare.

prietor or driver shall be liable to a penalty not exceeding *forty shillings* if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any byelaw made in pursuance thereof.

Deposit to be made for carriages waiting.

LVII. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the byelaws, then the sum of *one shilling and sixpence* for every half-hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer;

Penalty on the driver refusing to wait, or to account for the deposit.

And if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made, or if such driver, on the final discharge of such hackney carriage, refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding *forty shillings*.

Overcharge by hackney coachmen, &c., to be included in conviction, and returned to aggrieved party.

LVIII. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorized by any byelaw made under this or the special Act shall be liable to a penalty not exceeding *forty shillings*, and such penalty may be recovered before one justice;

And in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs;

And such overcharge shall be returned to the party aggrieved, whose evidence shall be admissible in proof of the said offence.

Penalty for permitting

LIX. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried

in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings.

persons to ride without consent of the hirer.

LX. No person authorized by the proprietor of any hackney carriage to act as driver of such carriage, shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof;

And no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor;

And any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding *forty shillings* for every such offence.

No person to act as driver of any carriage without the consent of the proprietor.

LXI. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding *five pounds*, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding *two months*.

Penalty on drivers misbehaving.

LXII. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage, and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody;

And such driver shall be liable to a penalty not exceeding *twenty shillings* for such offence;

And in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made;

And after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as

Penalty for leaving carriages unattended at places of public resort.

well of the proceedings before such justice as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Damage done by driver may be recovered from the proprietor.

LXIII. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding *five pounds* as appears to the justice a reasonable compensation for such hurt or damage;

And every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.

Improperly standing with carriage; refusing to give way to, or obstructing any other driver, or depriving him of his fare.

LXIV. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

LXV. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any byelaw made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said

justice touching or concerning such complaint or information as to the said justice seems reasonable;

And in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Penalty for refusing to pay the fare.

LXVI. If any person refuse to pay, on demand, to any proprietor or driver of any hackney carriage, the fare allowed by this or the special Act, or any byelaw made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.

Penalty for damaging carriage.

LXVII. Any person using any hackney carriage plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding *five pounds*, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same;

And such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

Commissioners may make byelaws for regulating hackney carriages.

LXVIII. The commissioners may from time to time (subject to the restrictions of this and the special Act) make byelaws for all or any of the purposes following; (that is to say,)

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of

check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

Bathing.

And with respect to *public bathing*, be it enacted as follows:

Bathing machines.

LXIX. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the commissioners may make byelaws for the following purposes; (that is to say,)

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe:

For preventing any indecent exposure of the person by the bathers:

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same;

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

POOR LAW AUDIT CLAUSES.

7 & 8 VICT. CAP. 101.

SECT. XXXII. After providing for the creation of audit districts, and the salaries of the auditors, enacts that :

Every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to monies assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels, found by him to be due from any person. The powers and duties of auditors.

* * * * * *

And if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over as herein-before directed, the said auditor or any auditor subsequently appointed, shall proceed, as soon as may be to enforce the payment or delivering over of the same; and all monies so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such monies, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same,

in the same manner (*a*) as penalties and forfeitures may be recovered under the provisions of 4 & 5 Will. 4, c. 76.

* * * * * *

And if any person from whom any such books, deeds, papers, goods or chattels may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things in their hands.

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Sect. XXXIII. Makes certain enactments applicable to the overseers only, and concludes thus:

And it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods or chattels, relating to the poor's-rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts;

And so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor,—or to produce to him such accounts or vouchers, or any of them,—or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit *forty shillings*, to be recovered as penalties and forfeitures under the said first-recited Act, (4 & 5 Will. 4, c. 76,) —or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of *perjury*.

Certiorari for auditors' allowances or

XXXV. And be it enacted, that if any person aggrieved by any allowance, disallowance, or surcharge, by any such auditor

(*a*) Note, the justices before whom the auditor proceeds to enforce his surcharge, cannot go into any question as to the correctness of his decision. They are compelled to enforce it. *Reg.* v. *Linford*, 7 E. & B. 950.

require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; disallowances.

And it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels, as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of such recognizance shall be, to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary;

And that on the removal of such allowance, disallowance, or surcharge, the said court shall decide the particular matter of complaint set forth in such statement, and no other;

And if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same;

And they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

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11 & 12 VICT. CAP. 91.

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Appeal against disallowances and surcharges may be determined by the poor law board on the merits, and such disallowances, &c., may be remitted in certain cases.

Sect. IV. And be it enacted, that where any appeal shall be made to the said [poor law] commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case;

And if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by an order under their seal, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

Mode of certifying as to balances to officers.

V. And "whereas doubts exist as to the powers and duties of auditors in certifying the sums due from the overseers and other officers, and it is desirable to remove such doubts:" Be it therefore enacted, that where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited;

But where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have

been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given;

And every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient (*a*):

Provided always, that where the sum, or the aggregate of the sums, disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

Notice of audit to be advertised.

VII. And be it enacted, that, in addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or in the case of a parish not comprised in a union, wherein such parish shall be situated, a reasonable time prior to the holding of his audit;

And the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit;

And, except where a party, not being an officer bound to

(*a*) The forms in the schedule were these:—

FORMS OF CERTIFICATES.

1.—*Against an Accounting Officer.*

I do hereby certify, that in the account of *A. B.*, the [*set out the name of the office*] of the parish of —— [*or* of the —— union], I have disallowed [*or* surcharged] the sum of ——

As witness my hand, this —— day of —— 18—.

M. N., Auditor of the —— district, which comprises the above-named parish or union.

2.—*Against a Person not an Accounting Officer.*

I do hereby certify that in the account of the —— union [*or* of the parish of ——], I have disallowed the sum of £—— as a payment illegally made out of the funds of such union [*or* parish], and I find that *C. D.* of —— authorized the making of such illegal payment, and I do hereby surcharge the said *C. D.* with the same.

As witness my hand, this —— day of —— 18—.

M. N., Auditor of the —— district, which comprises the above-named union or parish.

account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of any such adjourned audit was given.

As to proceedings necessary to be taken against persons now liable to be surcharged by auditor and to whom no notice is required to be given.

VIII. And be it enacted, that if an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case.

What shall be required to be proved by auditors in order to recover sums certified by them to be due.

IX. That in any proceedings to be taken by an auditor or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the poor law commissioners, or of the commissioners aforesaid (*i. e.* the poor law board), and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within *seven* days after the same had been so certified, nor within *three* clear days before the laying of the information, of which non-payment a certificate in writing *purporting* to be signed by the treasurer, shall be sufficient proof on the part of the auditor. And if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the

auditor twenty-four hours at least prior to the laying of the information.

Auditor may upon cause being shown appoint a deputy.

X. That the said commissioners may at any time upon sufficient cause being shown to them, authorize any person, selected by the auditor, to act temporarily as his deputy, and shall communicate to the several unions and places forming his district the name of the person so appointed to act as his deputy, and such person shall thereupon be empowered to act in all respects, and with the same authorities, and subject to the same duties and liabilities as the auditor himself is entitled to.

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12 & 13 VICT. CAP. 103.

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On vacancy in the office of auditor, poor law board to appoint a temporary auditor to audit accounts incomplete.

Sect. VIII. That when any auditor shall die, resign, or be removed, or become incompetent to act at any time when the audit of the accounts of the parishes or unions within his district shall not be completed, the poor law board may, by order under their seal, appoint *temporarily* some other person to audit the accounts of the several parishes or unions which may then be ready to be audited; and such temporary auditor shall have the same powers and authorities, and shall be subject to the same obligations and duties, as the ordinary auditor would have possessed or would have been subject to, and shall receive such remuneration as the said commissioners shall direct for the performance of his services herein.

Certain limitation in 11 & 12 Vict. c. 43, not to apply to proceedings by auditors.

IX. "Whereas in the Act of the last session of parliament, 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,' it is enacted, that in all cases where no time had then been or should thereafter be specially limited for making the complaints, or laying the informations therein referred to, every such complaint should be made and every such information laid within six calendar months from the time when the matter of such complaint or information respectively arose; and doubts have been enter-

tained whether the provision aforesaid applies to proceedings by auditors to recover sums certified by them to be due on the accounts of officers or other persons, and it is desirable to remove such doubts:" Be it therefore declared and enacted, that nothing in the provision of the said Act herein recited shall be deemed to apply to any such proceeding by any auditor, but that no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the poor law board, after the lapse of nine calendar months from the determination thereupon (*a*).

Auditors may recover costs of proceedings to enforce due attendance at the audit.

XI. Where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit, or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the poor law board consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due (*b*).

(*a*) See upon this clause *Q.* v. *Tyrwhitt*, 14 Jur. 1024; 19 L. J. R., M. C. 249, 4 N. S. C. 267.

(*b*) See 7 & 8 Vict. c. 101, s. 32, and 21 & 22 Vict. c. 98, s. 60, *ante*, p. 305.

BURIAL ACT CLAUSES.

20 & 21 VICT. CAP. 81.

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Local board of health may, by order in council, be constituted a burial board.

IV. In case it appear to Her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of her privy council, in case Her Majesty see fit so to do, to order that such *local board* shall be a *burial board* for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly;

And the powers and provisions of the Acts hereinbefore mentioned (*b*) (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by

(*b*) 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. cc. 78, 123.

such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorization of any vestry shall be requisite:

Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered:

Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848.

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board;

And such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty:

Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid.

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Resolutions, &c. of vestries not to be void by reason of irregularity of notices, &c.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat unless notice in writing of such defect or irregularity or error

shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof;

And no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

"Burial board."

XXVIII. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts or any of them, or under this Act.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

8 & 9 VICT. CAP. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature. [8th May, 1845.]

'WHEREAS it is expedient to comprise in one general Act 'sundry provisions usually introduced into Acts of parliament "relative to the acquisition of lands required for undertakings "or works of a public nature, and to the compensation to be "made for the same, and that as well for the purpose of "avoiding the necessity of repeating such provisions in each "of the several Acts relating to such undertakings as for en-"suring greater uniformity in the provisions themselves:" be it enacted:

Act to apply to all undertakings authorized by Acts hereafter to be passed.

That this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Interpretations.

And with respect to *the construction of this Act and of Acts to be incorporated therewith*, be it enacted as follows:

* * * * * *

Interpretations in this and the special Act:

III. The following *words and expressions*, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,) (*a*)

(*a*) There was the same interpretation of *number, gender, month, superior courts*, and *oath*, as in 11 & 12 Vict. c. 63, s. 2, *ante*, p. 29.

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure (*a*): "Lands:"

The word "lease" shall include an agreement for a lease: "Lease:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town: "County:"

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate: "the sheriff:" "the clerk of the peace:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together: "Justices:"

Where, under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be re- "Two justices:"

(*a*) *Semble*, this does not include an easement. *Pinchin* v. *London and Blackwall Railway Company*, 1 Jur. (N. S.), 241; 24 L. J., Ch. 417.

quired to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner:"

"the bank:" The expression "the bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

Short title of the Act.

IV. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression, "*The Lands Clauses Consolidation Act*, 1845."

Form in which portions of this Act may be incorporated with other Acts.

V. "And whereas it may be convenient in some cases to incorporate with Acts of parliament hereafter to be passed some portion only of the provisions of this Act:" Be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Purchase of lands by agreement.

And with respect to *the purchase of lands by agreement*, be it enacted as follows:

Power to purchase lands by agreement.

VI. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such

Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose;—and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release;—(that is to say,) all corporations, tenants in tail (*a*) or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest;—and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively,—and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their

(*a*) Inalienable estates tail within this section. *In re Cuckfield Burial Board*, 19 Beav. 153.

cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability to exercise other powers.

VIII. The power herein-after given to enfranchise copyhold lands as well as every other power required to be exercised by the lord of any manor, pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rentcharge or incumbrance, and to agree for the apportionment of any such rentcharge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate;—and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof;—and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

Where vendor absolutely entitled, lands

X. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special

Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum. may be sold on chief rents.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; Payment of rents to be charged on tolls.

And if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

XII. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who under the provisions hereinbefore contained would be enabled to sell and convey lands to sell and convey the lands so authorized to be purchased for extraordinary purposes. Power to purchase lands required for additional accommodation.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; Authority to sell and repurchase such lands.

* * * * * *

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the commissioners of Her Majesty's treasury of the United Kingdom of Great Municipal corporations not to sell without the approbation

of the treasury.

Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Purchase of lands otherwise than by agreement.

And with respect to *the purchase and taking lands otherwise than by agreement*, be it enacted as follows:

* * * * * *

Notice of intention to take lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice (*a*) thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (*b*).

Service of notices on owners and occupiers of lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served (*c*) personally on such parties, or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on a corporation aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be

(*a*) See notice required by 21 & 22 Vict. c. 98, s. 75, *ante*, p. 325.

(*b*) A second notice may be given. *Stamps* v. *Birmingham and Stour Valley Railway Company*, 2 Ph. 673; 17 L. J., Ch. 431.

(*c*) See notice required by 21 & 22 Vict. c. 98, s. 75, *ante*, p. 325.

found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

XXI. If for *twenty-one days* after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof (*d*), or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed *fifty pounds*, the same shall be settled by *two* justices.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

XXIII. If the compensation claimed or offered in any such case shall exceed *fifty pounds*, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly;

But unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensa-

(*d*) A reasonable time must be given. *Schwinge* v. *London and Brighton Railway Company*, 1 Jur. (N.S.), 368; 24 L. J., Ch. 405.

tion settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for *three* months (*a*) have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

XXIV. It shall be lawful for any justice, upon the application of either party, with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons;

And upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath;

And the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred;

And every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any *two* of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation;

And such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made;

And after any such appointment shall have been made neither party shall have power to revoke the same without

(*a*) That is, three months for the arbitrators and three for the umpire. *Skerratt* v. *North Staffordshire Railway Company*, 2 Ph. 475; 17 L. J., Ch. 161. When award within time, 5 Railway Ca. 527.

the consent of the other, nor shall the death of either party operate as a revocation;

And if for the space of *fourteen days* after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

XXVI. *This is the same as* 11 *&* 12 *Vict. c.* 63, *s.* 124, *ante*, p. 181.

Appointment of umpire.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for *seven days* after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the Special Act, shall be final (*b*).

In case of death of single arbitra-

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to

(*b*) See 12 Jur. 998; 17 L. J., Q. B. 362.

tor the matter to begin *de novo*.

him shall be determined by arbitration under the provisions of this or the Special Act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act, the other to proceed *ex parte*.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for *seven days* neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within *twenty-one days* after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

XXXII. *This is the same as* 11 & 12 *Vict. c.* 63, *s.* 127, *ante*, p. 183.

XXXIII. *The same as* 11 & 12 *Vict. c.* 63, *s.* 128, *ante*, p. 184.

Costs of arbitration how to be borne.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators (*c*), shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*d*).

Award to be delivered to the promoters of the undertaking.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said

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(*c*) Or umpire, *Gould* v. *Staffordshire Potteries Waterworks Company*, 5 Exc. 214; 19 L. J., Exc. 281.

(*d*) See as to time of awarding costs, *Quick* v. *London and North-Western Railway Company*, 18 L. J., Q. B. 89.

award, and allow the same to be inspected or examined by such party, or any person appointed by him for that purpose.

Submission may be made a rule of court.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties (*e*).

Award not void through error in form.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

Promoters of the undertaking to give notice before summoning a jury.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than *ten days* notice (*f*) to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Warrant for summoning jury to be addressed to the sheriff.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking, if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any *two* of them;

And if such sheriff be interested (*g*) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate;

And if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter

(*e*) And gives the court power to set aside the award. *Bradshaw, in re*, 12 Q. B. 562.

(*f*) See *Railstone* v. *York, Newcastle, and Berwick Railway Company*, 14 Jur. 1021.

(*g*) This may be waived. *Baddeley, ex parte*, 5 D. & L. 575. The interest of the under-sheriff is immaterial, *Horsley* v. *South Devon Railway Company*, 20 L. J., C.P. 254; 18 Q. B. 539.

in dispute, and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices ; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place;

And in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall immediately on receiving notice of the delivery of the warrant deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons duly qualified to act as common jurymen (*a*) in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be impannelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid;

And all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

(*a*) As to the proper jurymen, see *Cooling*, in re, 14 Jur. 128.

Sheriff to preside. Witnesses to be summoned.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law.

And, if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Penalty on sheriff and jury for default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit *fifty pounds* for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding *ten pounds*;

And every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on witnesses making default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

XLVI. Not less than *ten days'* notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be sworn.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands and for damage to be assessed separately.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, *and* also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict *separately* (*a*) for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, *and* for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded;

And such verdicts and judgments shall be deemed records,

(*a*) *Semble*, this is directory. *East and West India Docks Company and London and Birmingham Junction Railway Company*, 5 Railway C. 527. See also *Ostler* v. *Cooke*, 18 Q.B. 831; 22 L. J., Q.B. 71.

and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof, or extracts therefrom, on paying for each inspection thereof *one shilling*, and for every one hundred words copied or extracted therefrom *sixpence*, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Costs of the inquiry how to be borne.

LI. On every such inquiry before a jury where the verdict of the jury shall be given for a greater sum than the sum previously offered (*a*) by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking;

But if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry, and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

LII. The costs of any such inquiry (*c*) shall in case of difference be settled by one of the Masters (*d*) of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters

(*b*) See 13 Jur. 610; 18 L. J., Q.B. 199.
(*c*) See *Bray* v. *South-Eastern Railway Company*, 7 D. & L. 307.
(*d*) The decision cannot be reviewed. *Ross* v. *York, Newcastle, and Berwick Railway Company*, 13 Jur. 610; 18 L. Jur., Q.B. 199.

of the undertaking, and if within *seven days* after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly;

And if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor, under the provisions hereinafter contained;

And the payment or deposit of the remainder, if any, of such money, shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff;

And for that purpose the promoters of the undertaking shall, by their warrant to the sheriff, require him to nominate a special jury for such trial;

And thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than *five* nor more than *eight* days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the *eighth* day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give *four* days' notice to the parties; and on the day so appointed

the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Deficiency of special jurymen.

LV. The special jury on such inquiry shall consist of *twelve* of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen;

And if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen who shall not have been previously struck off the aforesaid list, and who may then be attending the court or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons (*a*);

And the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation

(*a*) Want of qualification is the only ground of challenge. *Chelsea Waterworks Company, ex parte*, 10 Exc. 731; 1 Jur. (N. S.), 143.

to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as *two justices* shall nominate for that purpose as hereinafter mentioned.

Two justices to nominate a surveyor.

LIX. Upon application by the promoters of the undertaking to *two justices*, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall by writing under their hands nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices or one of them, make and subscribe the declaration following at the foot of such nomination ; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me

"*A. B.*

"Made and subscribed in the presence of ——."

And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, &c. to be produced to the owner of the lands, on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking. Expenses to be borne by promoters.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith. Purchase money and compensation how to be estimated.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands, or such interest therein as aforesaid, could not be found, or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration. When compensation to absent party has been determined by a surveyor the party may have the same submitted to arbitration.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them. Question to be submitted to the arbitrators.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, If further sum awarded, promoters to

pay or deposit same within fourteen days.

such further sum within *fourteen days* after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the superior courts.

Costs of the arbitration.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party (*a*) shall be entitled (*b*) to any compensation in respect of any lands, or of any interest therein, which shall have been taken (*c*) for or *injuriously affected* (*d*) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction, under the provisions of this (*e*) or the special Act or any Act incorporated therewith; and if the compensation claimed in such case shall exceed the sum of *fifty pounds*, such party may have the same (*f*) settled either by arbitration or by the verdict of a jury, as he shall think fit;

And if such party desire to have the same settled by arbi-

(*a*) A yearly tenant of lands is not within this section. *Reg.* v. *Manchester, Sheffield, and Lincolnshire Railway Company*, 4 E. & B. 88.

(*b*) This clause does not apply where the company have no right to do what they have done, *Broadbent* v. *Imperial Gas light Company*, 3 Jur. (N. S.), 221; 26 L. J., Ch. 276, and see *Blagrove* v. *Bristol Waterworks Company*, 1 H. & N. 369.

(*c*) The lands must be actually taken. *Birkenshaw* v. *Birmingham and Oxford Junction Railway Company*, 6 Rail. C. 600; 5 Exc. 475.

(*d*) See *Penny* v. *South-Eastern Railway Company*, 3 Jur. (N. S.), 957; 26 L. J., Q. B. 225: *London and North-Western Railway Company* v. *Smith*, 1 Mac. & G. 216; 13 Jur. 417: *East and West India Docks, &c., Railway Company* v. *Gattke*, 3 Mac. & G. 155: *Glover* v. *North Staffordshire Railway Company*, 16 Q. B. 912: *London and Yorkshire Railway Company* v. *Evans*, 15 Beav. 322.

(*e*) This clause applies to proceedings under sect. 85. *Adams* v. *London and Blackwall Railway Company*, 2 Mac. & G. 118; 14 Jur. 679; 19 L. J., Ch. 557.

(*f*) No question of title can be inquired into. *Reg.* v. *London and North-Western Railway Company*, 3 E. & B. 443. Nor collateral matter. *Byles, in re*, 11 Exc. 464. The party is entitled to these proceedings, notwithstanding previous attempt at arbitration, which failed. *Ex parte Senior*, 14 Jur. 1093.

tration, it shall be lawful for him to give *notice in writing* (*g*) to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein;

And unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within *twenty-one days* after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided;

Or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid (*h*), and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within *twenty-one days* after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, *with costs* (*i*), by action in any of the superior courts.

Application of compensation.

And with respect to the *purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title*, be it enacted as follows:

Purchase money payable to parties under disability amounting to 200*l.* to

LXIX. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, com-

(*g*) As to this notice, see *Eastham* v. *Blackburn Railway Company*, 9 Ex. 758.

(*h*) As to what the undertakers are then to do, see *Railstone* v. *York, Newcastle, and Berwick Railway Companies*, 15 Q. B. 404; *Richardson* v. *South Eastern Railway Company*, 20 L. J. C. P. 336; 18 Jur. 151.

(*i*) As to the costs to be recovered, see *Richardson* v. *South-Eastern Railway Company*, 11 C. B. 154; 15 C. B. 810; 21 L. J., C. P. 122.

be deposited in the bank.

mittee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the Special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of *two hundred pounds*, the same shall be paid into the bank, in the name and with the privity of the accountant-general of the Court of Chancery in England if the same relate to lands in England or Wales, * * * * to be placed to the account there of such accountant-general *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the Special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said courts;

And such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of monies deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or *incumbrance* (*i*) affecting the land in respect of which such money shall have been paid, or affecting other lands (*k*) settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the Special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct (*l*); or

In payment to any party becoming absolutely entitled to such money.

Order for application

LXX. Such money may be so applied as aforesaid upon an

(*i*) As to what is, see *Sheffield Burgesses, ex parte*, 21 Beav. 162; 2 Jur. (N. S.), 31.

(*k*) See *Ex parte Cambridge Corporation*, 6 Hare, 30.

(*l*) See *In re Hammond's Devisees' Estate*, 22 Jur. 1029: *In re Wright's Estate*, 6 Weekly R. 718: *Ex parte Shaw*, 4 E. & C. 506: *Ex parte Lockwood*, 14 Beav. 158.

order of the Court of Chancery in England * * * * made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant-general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands. and investment meanwhile.

LXXI. If the purchase money or compensation shall not amount to the sum of *two hundred pounds* and shall exceed the sum of *twenty pounds*, the same shall either be paid into the bank, and applied in the manner herein-before directed with respect to sums amounting to or exceeding *two hundred pounds*, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

And in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose;

And the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner herein-before directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

LXXII. If such money shall not exceed the sum of *twenty pounds*, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use Sums not exceeding 20*l.* to be paid to parties.

to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled to be paid into bank.

LXXIII. All sums of money exceeding *twenty pounds* which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid;

And it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy:

Provided always, that it shall be in the discretion of the Court of Chancery in England * * * * or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England, * * * on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in

such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking, upon deed poll being executed.

LXXV. Upon deposit in the bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct;

And in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein;

And thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are

herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the *owner* (*a*) of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant-general of the Court of Chancery in England * * * to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in;

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circum-

(*a*) *Douglas* v. *London and North-Western Railway Company*, 3 Kay & J. 173; 3 Jur. (N. S.), 181.

stances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein;

And thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England * * * * may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

LXXIX. (*a*) If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

(*a*) See *Sunderland, ex parte*, 1 Drew 184; 16 Jur. 370.

Costs in cases of money deposited

LXXX. In all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the *wilful refusal* (*a*) of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England * * * * to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking;

(That is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for,—and the costs of the investment of such monies in Government or real securities,—and of the re-investment thereof in the purchase of other lands, and also—the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and—for the payment out of court of the principal of such monies or of the securities whereon the same shall be invested, and—of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants:

Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England * * * * that it is for the benefit of the parties interested in the said

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(*a*) See *Ex parte Dashwood*, 3 Jur. (N.S.). 103; 26 L. J., Ch. 299: *Bradshaw, ex parte*, 12 Jur. 888; 17 L. J., Ch. 454: *Divers, in re*, 1 Jur. (N.S.), 995.

The costs of an abortive attempt to reinvest not to be paid by the promoters of the undertaking. *Ex parte Copley*, 22 Jur. 297.

See further as to costs, *In re Taylor*, 1 Mac. & G. 210; *Braithwaite's T.*, 17 Jur. 753; *Woolley's Estate*, Ib. 850; *Carpmael* v. *Profit*, Ib. 875; *Ex parte Harborough*, Ib. 1045; *London, Brighton, and South Coast Railway Company, in re*, 18 Beav. 608; *Manchester and Southport Railway Company, in re*, 19 Beav. 365; *Longworth's Estate, in re*, 1 Kay & J. 220; *Hungerford, in re*, Ib. 413; *Beddoes, ex parte*, 2 Sm. & G. 466; *Armitage* v. *Askham*, 1 Jur. (N.S.), 227; *In re Nash*, 1 Jur. (N.S.), 1082; *Ellison's Estate, in re*, 1 Jur. (N.S.), 1155, 2 Jur. (N.S.), 293; *Ex parte Sheffield Burgesses*, 21 Beav. 162; *Dixon* v. *Jackson*, 25 L. J., Ch. 588; *Toft, in re*, 2 Jur. (N.S.), 131; *Eastern Counties Railway, ex parte Payton*, 2 Jur. (N.S.), 1013; *Guilden Sutton, ex parte*, 2 Jur. (N.S.), 793.

monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the *conveyances of lands*, be it enacted as follows:

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit;

And all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands (*b*), and of any outstanding terms or

(*b*) See *South Wales Railway Company, in re*, 14 Beav. 418; 15 Jur. 1145; 20 L. J., Ch. 539.

interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing Masters of the Court of Chancery, * * * upon an order of the same court, to be obtained upon petition in a summary way by either of the parties;

And the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner herein-before provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Entry on lands.

With respect to *the entry upon lands by the promoters of the undertaking*, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands (*a*) which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interest therein:

(*a*) This section does not apply to works on the company's own land—*Hutton* v. *South-Western Railway Company*, 13 Jur. 486.

Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than *three* nor more than *fourteen days' notice* to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security, and giving bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit (*b*) in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested (*c*) in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by *two* justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any *two* of them, with *two* (*d*) sufficient sureties, to be approved by *two* justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned (*e*) for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so

(*b*) See *Stevens, ex parte*, 2 Phil. 772; 13 Jur. 2.

(*c*) *Willey* v. *South-Eastern Railway Company*, 13 Jur. 241; 18 L. J., Ch. 201.

(*d*) *Barker* v. *North Staffordshire Railway Company*, 2 De G. & S. 55; 12 Jur. 324, 589.

(*e*) See *Hoskins* v. *Philips*, 3 Exc. 168; 18 L.J., Exc. 1: *Poynder* v. *Great Northern Railway Company*, 2 Ph. 330: 16 L. J., Ch. 444: *Langham* v. *the same*, 11 Jur. 839.

entered upon, together with interest thereon at the rate of *five* pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained;

And upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such *lands* (*f*), without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit being made, cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the accountant-general of the Court of Chancery in England, * * * * to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court;

And upon such deposit being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the conditions of the bond to be given by the promoters of the undertaking, as herein-before mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated;

(*f*) See *Ramsden* v. *Manchester, South Junction, and Altrincham Railway Company*, 5 Railway C., 552; *Lougham* v. *Great Northern Railway Company*, 1 De G. & S. 486. Diversion of a stream is the using of land: *Ferrand* v. *Bradford Incorporation*, 21 Beav. 412; 4 Jur. (N.S.), 175.

And upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in England, * * * * upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant-general is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the accountant-general of the Court of Chancery in England, * * * * to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require, (subject nevertheless to being dealt with as herein-after provided, and not otherwise,) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof;

And in every such case, within *ten* days after the re-opening of the said accountant-general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the accountant-general, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant-general accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

Penalty on the promoters of the undertaking entering upon lands

LXXXIX. If the promoters of the undertaking or any of their contractors shall, *except as aforesaid*, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the

without consent before payment of the purchase money.

special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of *ten pounds*, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before *two* justices;

And if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of *twenty-five pounds* for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts:

Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

XCI. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder

the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house (*a*) or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Intersected Lands.

And with respect to *small portions of intersected land*, be it enacted as follows:

Owners of intersected lands may insist on sale.

XCIII. If any lands not being situate in a *town* (*b*) or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the Special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which

(*a*) See *Grosvenor* v. *Hampstead Junction Railway Company*, 3 Jur. N.S., 1085; 26 L. J., Ch., 731; *Barker* v. *North Staffordshire Railway Company*, 2 De G. & S. 55; 12 Jur. 324, 589; *Sparrow* v. *Oxford Junction Railway Company*, 16 Jur. 703; 21 L. J., Ch., 731; *Swinge* v. *London and Blackwall Railway Company*, 1 Jur., N.S., 368; *Spackman* v. *Great Western Railway Company*, 1 Jur., N.S., 790.

(*b*) See *Elliott* v. *South Devon Railway Company*, 2 Ex. 725.

the same can be thrown, so as to be conveniently occupied therewith;

And if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the Special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Copyholds.

And with respect to *copyhold lands*, be it enacted as follows:

Conveyance of copyhold lands to be enrolled.

XCV. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure or of the nature thereof shall be entered on the rolls of the manor of which the same shall be held or parcel;

And on payment to the steward (*a*) of such manor of such

(*a*) As to the lord, see the *Eccl. Comm.* v. *London and South-Western Railway Company*, 14 C. B. 743; 22 L. J., C. P. 177.

fees (*b*) as would be due to him on the surrender of the same lands to the use of a purchaser thereof, he shall make such enrolment;

And every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure;

Nevertheless, until such lands shall have been enfranchised by virtue of the powers herein-after contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

XCVI. Within *three months* after the enrolment of the conveyance of any such copyhold or customary lands, or within *one month* after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then, within *one month* after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him;

And if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation;

And in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lord of the manor to enfranchise on payment

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases herein-before in that behalf provided, the

(*b*) No fee is payable on admittance, *Cooper* v. *Norfolk Railway Company*, 13 Jur. 195; 18 L. J. Ex. 176.

of compensation.

lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage;

And in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the Special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices;

And the enfranchisement of any copyhold or customary lands taken by virtue of this or the Special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents;

And with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common Lands.

And with respect to any such *lands being common or waste* lands, be it enacted as follows:

Compensation for common lands, where held of a manor, &c. how to be paid.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil;

And the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners;

And upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c. to convey to the promoters of the undertaking, on receiving compensation for his interest.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases herein-before in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance;

And in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for

CI. The compensation to be paid with respect to any such

common lands not held of a manor how to be ascertained.

lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor or other party entitled to the soil thereof in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands to be appointed as next herein-after mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights;

And every such meeting shall be called by public advertisement to be inserted once at least in *two* consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than *fourteen* nor less than *seven* days prior to any such meeting; and notice of such meeting shall also, not less than *seven* days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor a like notice shall be given to the lord of such manor.

Meeting to appoint a committee.

CIII. It shall be lawful for the meeting so called to appoint a committee not exceeding *five* in number of the parties entitled to any such rights, and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such com-

monable and other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein, and all such parties shall be bound by such agreement; the undertaking.

And it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any *three* of them, for such compensation, shall be an effectual discharge for the same, and such compensation, when received, shall be apportioned by the committee among the several persons interested therein according to their respective interest, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation. Disputes to be settled as in other cases.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor to be appointed by *two* justices as herein-before provided in the case of parties who cannot be found. If no committee be appointed, the amount to be determined by a surveyor.

CVII. Upon payment or tender to such committee, or any *three* of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in *England*, * * * * Upon payment of compensation payable to commoners the lands to vest.

by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in Mortgage.

And with respect to *lands subject to mortgage*, be it enacted as follows:

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the Special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the Special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of *six* months, computed from the day of giving such notice;

And if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given *six* months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of *six* months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Deposit of mortgage money on refusal to accept.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the expiration of *six* months' notice as aforesaid, such further interest as would at that time become due;

And it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such land, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation;

And the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in

refused on tender.

such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon;

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession;

Nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the Special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation;

And the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of

the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend;

And thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money when refused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon;

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof;

Nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the

residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

CXIV. Provided always, that in any of the cases herein-before provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions herein-before contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances;

And if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation;

And until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

Rentcharges.

And with respect to *lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance* not herein-before provided for, be it enacted as follows:

Release of

CXV. If any difference shall arise between the promoters

(a) See *Ranken* v. *East and West India Docks, &c. Railway Company*, 12 Beav. 298.

of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the Special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the Special Act, the same shall be determined as in other cases of disputed compensation. lands from rentcharges.

CXVI. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the Special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by *two* justices; Release of part of lands from charge.

But if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; Deposit in case of refusal to release.

And if he fails so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner herein-before provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they Charge to continue on

lands not taken.

were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge;

And if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or *two* of them shall subscribe or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

And with respect to *lands subject to leases*, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands;

And such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part;

And if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such

lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act;

And as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein (*a*), he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same;

And the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by

(*a*) *Reg.* v. *The Rochdale Improvement Commissioners*, 2 Jur. (N. S.), 861.

them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater interest claimed than from year to year lease to be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power;

And if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within *twenty-one* days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

* * * * *

Interests omitted to be purchased.

And with respect to *interests in lands* which have *by mistake* been *omitted to be purchased*, be it enacted as follows:

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which, under the provisions of this or the special Act or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within *six months* after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within *six months* after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits

or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity;

And such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the *full costs* (*a*) and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

(*a*) Costs between attorney and client. *Doe and Hyde* v. *Mayor of Manchester*, 12 C. B. 474.

Sale of superfluous Land.

And with respect to *lands acquired by the promoters* of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, but which shall *not be required for the purposes thereof*, be it enacted as follows:

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

CXXVII. Within the prescribed period, or if no period be prescribed within *ten* years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the Special Act;

And in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands, they shall, unless such lands be situate within a *town*, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands;

And where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks.

CXXIX. If any such persons be desirous of purchasing such lands, then within *six weeks* after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for *six weeks* they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease;

And a declaration in writing made before a justice by such person not interested in the matter in question, stating that such order was made and was refused, or not accepted within *six weeks* from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any *two* of the directors or managers thereof acting by the authority of the body;

And a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him;

And a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the Special Act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, adminis-

trators and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and poor's rate to be made good.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the Special Act, or any Act incorporated therewith, of any lands charged with the land tax or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to

make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the Special Act;

And on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively;

Nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

Service of notices upon company.

CXXXIV. And be it enacted, that any summons (*a*) or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Tender of amends.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the Special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action;

And if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court (*b*).

(*a*) See, however, 11 & 12 Vict. c. 63, s. 140.
(*b*) See Ib., s. 139.

Recovery of penalties.

And with respect to the *recovery of forfeitures, penalties, and costs* (*a*), be it enacted as follows:

Penalties to be summarily recovered before two justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before *two* justices:

And on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons;

And every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode;—and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them;

And upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be levied by distress.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Penalties how to be levied.

CXXXVIII. Where in this or the Special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same;

(*a*) See 11 & 12 Vict. c. 63, s. 129, *ante*, pp. 184, 5.

And the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained (*b*).

Application of penalties.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder *to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish* (*c*), or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Distress against the treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed *twenty* pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly;

But no such distress shall issue against the goods of such treasurer unless *seven days'* previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence;

And if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

CXLI. *The same as the last section of* 11 & 12 *Vict. c.* 63, *s.* 131.

(*b*) See 11 & 12 Vict. c. 63, s. 131.

(*c*) See, however, 11 & 12 Vict. c. 63, s. 133, and 21 & 22 Vict. c. 98, s. 76.

Penalties to be sued for within six months.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the Special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within *six months* next after the commission of such offence.

Penalty on witnesses making default.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the Special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter ;

And if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Form of conviction.

CXLIV. The justices before whom any person shall be convicted of any offence against this or the Special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this Act annexed.

Proceedings not to be quashed for want of form.

CXLV. No proceeding in pursuance of this or the Special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts (*a*).

Parties allowed to appeal to quarter sessions on giving security.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the Special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen ;

(*a*) See 11 & 12 Vict. c. 63, s. 137.

But no such appeal shall be entertained unless it be made within *four* months next after the making of such determination or adjudication, nor unless *ten days'* notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with *two* sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon (*b*).

Court to make such order as they think reasonable.

CXLVII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable;

And they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, and be it enacted (*c*), that, *notwithstanding anything herein* or *in the Special Act* or any Act incorporated therewith *contained*, every penalty or forfeiture imposed by this or the Special Act or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed

(*b*) See 11 & 12 Vict. c. 63, s. 135, and *In re Richards*, 13 Jur. 1095; 18 L. J., Q. B. 310; *R.* v. *South-Western Railway Company*, 13 Q. B. 988; *In re Edmundson*, 17 Q. B. 67.

(*c*) See 21 & 22 Vict. c. 98, s. 67.

2 & 3 Vict. c. 71.

in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis;"

And every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act;

And every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

CXLIX. *Same as* 11 & 12 *Vict. c.* 63, *s.* 147.

CL. and CLI. *Not incorporated.*

SCHEDULES

REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

Form of Conveyance.

I ——, of ——, in consideration of the sum of —— paid to me [*or, as the case may be*, into the Bank of England *or* Bank of Ireland], in the name and with the privity of the accountant-general of the Court of Chancery, *ex parte* "the promoters of the undertaking" [*naming them*] *or* to *A. B.* of ——, and *C. D.* of ——, two trustees appointed to receive the same], pursuant to the [*here name the Special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their suc-

cessors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the —— day of —— in the year of our Lord ——.

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I ——, of ——, in consideration of the rentcharge to be paid to me, my heirs and assigns, as herein-after mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the Special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of —— by equal quarterly [*or* half-yearly, *as agreed upon*], portions henceforth on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the —— day of —— in the year of our Lord ——.

SCHEDULE (C.)

Form of Conviction.

—— to wit.

Be it remembered, that on the —— day of —— in the year of our Lord ——, *A. B.* is convicted before us, *C. D.*, two of Her Majesty's justices of the peace for the county of —— [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the Special Act*]. Given under our hands and seals, the day and year first above written.

C. D.

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