

The law relating to the mentally defective : the Mental Deficiency Act, 1913 (3 & 4 Geo. v.c. 28), with introduction, notes, and appendix containing the Lunacy Act, 1890, as amended, and other statutes / by Herbert Davey.

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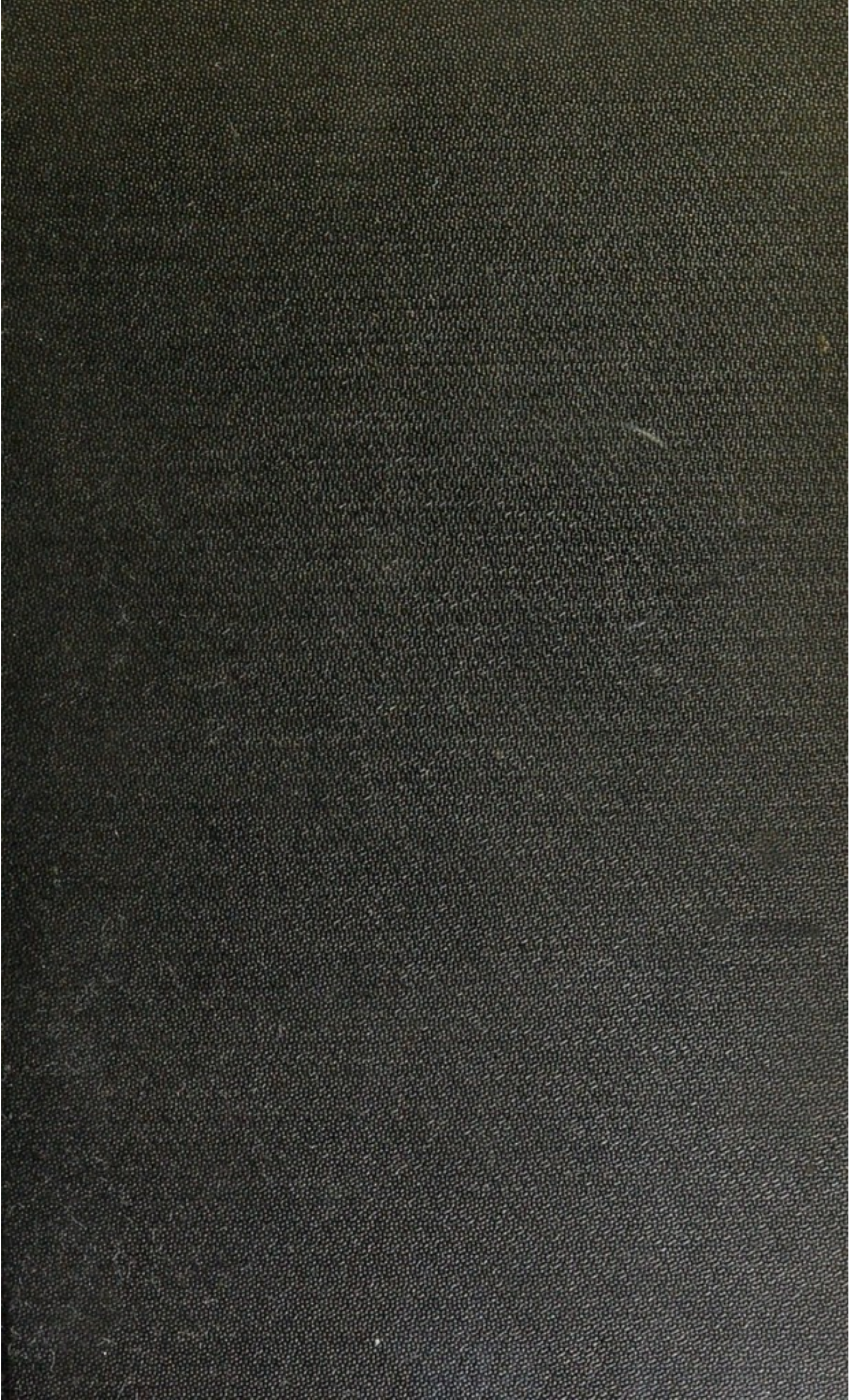
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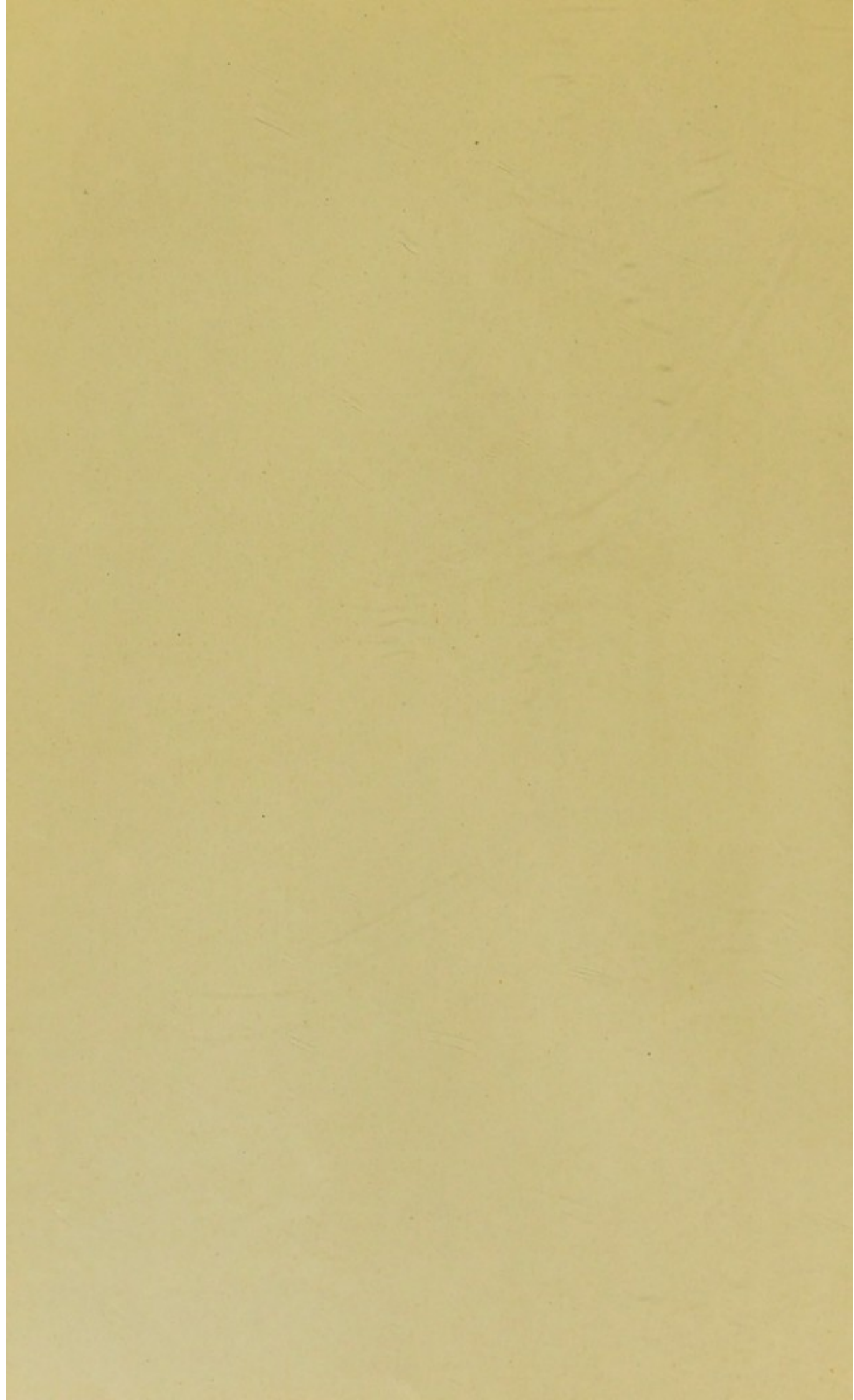
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THE LAW

RELATING TO

THE MENTALLY DEFECTIVE.

BY THE SAME AUTHOR.

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THE LAW

RELATING TO

THE MENTALLY DEFECTIVE.

THE MENTAL DEFICIENCY ACT, 1913

(3 & 4 GEO. V. c. 28),

WITH INTRODUCTION, NOTES, AND APPENDIX CONTAINING THE
LUNACY ACT, 1890, AS AMENDED, AND OTHER STATUTES.

BY

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PREFACE.

THE importance of the provisions for dealing with mentally defective persons contained in the Mental Deficiency Act, 1913, renders it desirable that the legal profession, as well as the members and officials of those public bodies who will be concerned with the arrangements for bringing the Act into operation, shall have an intimate knowledge of the subject, as well as a means of ready reference to the text of the Statute, and of the other numerous enactments which are thereby made wholly or partly applicable.

As regards the legal profession generally, the subject is, perhaps, rather of future interest; but it is a matter of immediate concern, not only to the County Councils and County Borough Councils, who are the local authorities for the purposes of the Mental Deficiency Act, but also to the Poor Law Authorities, the Education Authorities, the Police Authorities, the Lunacy Authorities, the Magistracy, and the Judicial Authorities under the Lunacy Acts and the Mental Deficiency Act, who will have to deal with the 40,000 to 50,000 defectives affected by the new law.

In preparing this volume the Author has accordingly endeavoured to present a reliable guide to the intentions of the Legislature by means of a critical annotation of every section of the Mental Deficiency Act, and by references to numerous legal decisions which have been given in regard to analogous provisions in other enactments.

Many of the provisions of the Lunacy Acts, 1890—1911, are applied by the new Act, and it is obvious that a further large number will be applied by the Regulations to be made thereunder; in fact, the law relating to the Mentally Defective is so interwoven with the lunacy law that it has been found necessary to include the whole of the Lunacy Act, 1890, as amended by subsequent Acts, in this volume.

These are set out in the Appendix, and also the Asylums Officers' Superannuation Act, 1909, and the Elementary Education (Defective and Epileptic Children) Act, 1899, while the applied sections of such Statutes as the Public Health Act, 1875, the Local Government Act, 1888, the Criminal Law Amendment Act, 1885, and the Children Act, 1908, are shown in the notes to the text of the new Act.

For the purpose of ready reference to any part of the new Act, the headings of each page have been made to indicate the subject-matter or the section of the Act therein appearing, while the notes contain numerous cross references, and care has been taken to make the Tables of Cases and Statutes, and especially the General Index, accurate and complete.

My best thanks are due to my friend Mr. H. E. LAWRENCE, Solicitor, for his valuable assistance while the book has been passing through the press.

H. D.

5, KING'S BENCH WALK,

TEMPLE.

November, 1913.

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. This is essential for ensuring the integrity of the financial statements and for providing a clear audit trail. The records should be kept up-to-date and should be easily accessible to all relevant parties.

2. The second part of the document outlines the procedures for the monthly financial review. This involves a thorough examination of the accounts and a comparison of the actual results with the budgeted figures. Any variances should be identified and explained, and appropriate corrective actions should be taken.

3. The third part of the document describes the process of preparing the quarterly financial statements. This includes the consolidation of the data from all departments and the preparation of the income statement, balance sheet, and cash flow statement. The statements should be reviewed and approved by the appropriate authorities before being presented to the board of directors.

4. The fourth part of the document discusses the role of the internal audit function. The internal auditors are responsible for conducting regular audits of the financial and operational activities of the organization. They should report any findings to the board of directors and recommend corrective actions to be taken.

5. The fifth part of the document outlines the procedures for the annual financial audit. This involves the engagement of an external audit firm to conduct a comprehensive audit of the organization's financial statements. The audit firm should provide a detailed report of their findings and recommendations to the board of directors.

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THE LAW

RELATING TO

THE MENTALLY DEFECTIVE.

INTRODUCTION.

THE Mental Deficiency Act, 1913, by which the Legislature has endeavoured, as regards England and Wales (*a*), to "make further and better provision for the care of feeble-minded and other mentally defective persons and to amend the Lunacy Acts," is, primarily, the outcome of the Report of the Royal Commission upon the Care and Control of the Feeble-minded, issued in July, 1908.

TERMS OF REFERENCES TO THE ROYAL COMMISSION.

The Royal Commission was originally appointed in September, 1904, "to consider the existing methods of dealing with idiots and epileptics, and with imbecile, feeble-minded or defective persons not certified under the Lunacy Laws; and in view of the hardship or danger resulting to such persons and the community from insufficient provision for their care, training and control, to report as to the amendments in the law or other measures which should be adopted in the matter, due regard being had to the expense involved in any such proposals and to the best means of securing economy therein." But in November, 1906, the Royal Commission was further authorised "to inquire into the

(*a*) No legislation has followed the Report of the Royal Commission respecting Ireland. As to Scotland, however, see the Mental Deficiency and Lunacy (Scotland) Act, 1913 (3 & 4 Geo. V. c. 38), which follows, broadly, the principles adopted by the Legislature in the Act for England.

constitution, jurisdiction and working of the Commission in Lunacy and of other Lunacy Authorities in England and Wales, and into the expediency of amending the same or adopting some other system of supervising the care of lunatics and mental defectives; and to report as to any amendments in the law which should, in their opinion, be adopted."

GRAVE EXISTING CONDITIONS AS STATED BY THE ROYAL COMMISSION.

At the commencement of the Introduction to their Report, after referring to the terms of the above references, the Commissioners stated their impression of the existing conditions as regards the mentally defective in the following remarkable terms:—

"Of the gravity of the present state of things, there is no doubt. The mass of facts that we have collected, the statements of our witnesses, and our own personal visits and investigations compel the conclusion that there are numbers of mentally defective persons whose training is neglected, over whom no sufficient control is exercised, and whose wayward and irresponsible lives are productive of crime and misery, of much injury and mischief to themselves and to others, and of much continuous expenditure wasteful to the community and to individual families.

"We find a local and 'permissive' system of public education which is available, here and there, for a limited section of mentally defective children, and which, even if it be useful during the years of training, is supplemented by no subsequent supervision and control, and is in consequence often misdirected and unserviceable. We find large numbers of persons who are committed to prisons for repeated offences, which, being the manifestations of a permanent defect of mind, there is no hope of repressing, much less of stopping, by short punitive sentences. We find lunatic asylums crowded with patients who do not require the careful hospital

treatment that well-equipped asylums now afford, and who might be treated in many other ways more economically, and as efficiently. We find, also, at large in the population many mentally defective persons, adults, young persons, and children, who are, some in one way, some in another, incapable of self-control, and who are therefore exposed to constant moral danger themselves, and become the source of lasting injury to the community."

Proceeding with certain extracts from the reports of medical investigators who had been appointed to ascertain the extent and nature of the mental defect prevailing in some typical districts, the Commissioners stated that such extracts were confirmed by much other evidence from both towns and rural districts, and indicated evils of extreme gravity which required the speediest attention, chiefly as regarded feeble-minded persons connected with no institutions and living in the local conditions and surroundings in which they had been brought up, very many being untrained and uncared for, leading irregular and purposeless lives, and, becoming entirely undisciplined, falling into vice and crime.

This evidence, the Commissioners stated, had suggested for their consideration as a main issue how far it was possible to create a system by which these mentally defective persons could, at an early age, be brought into touch with some friendly authority, trained and, as far as need be, supervised during their lives, in co-operation with their relations, when that was to their advantage, or when it was desirable, detained and treated in some measure as the wards of the State. Such evidence, it was also stated, suggested that as so many authorities are brought into contact with these mentally defective persons—the Poor Law, prisons, schools, and the like—in some way a settled plan of action should be established between the various agencies, so that some one supervising authority should see that they did not pass from one authority or institution to another, helped or detained a little at each, but permanently cared for by none.

DEFINITION OF "MENTALLY DEFECTIVE" AS USED IN THE
REPORT OF THE ROYAL COMMISSION.

In paragraph 18 (p. 7) of their Report, the Commissioners stated that the words "mentally defective" were used in their Report to represent the whole group of cases that came within the scope of their investigation, whether at the present time they could or could not be certified under the Lunacy and Idiots Acts. The Commissioners, however, pointed out that "the mentally defective" were divided into two classes, consisting, firstly, of those who from disorder of the mind, or through mental infirmity arising from age or from the decay of their faculties, had lost the power of managing themselves or their affairs; secondly, of those in whom the brain was in some degree undeveloped, and would remain undeveloped throughout life.

The Commissioners further divided the former class into two sections.

In the first of these sections they included those who from disorder of the mind had lost the power of managing themselves or their affairs, and to whom the name "lunatic" had hitherto been given by law and popular usage. In the second of these sections they placed those who through mental infirmity arising from age or from the decay of their faculties had lost the power of managing themselves or their affairs, and to whom they applied the term "mentally infirm," a term recognised in law, and which, inasmuch as both mental infirmity arising from age and that arising from the decay of faculties were included in it, was considered more appropriate than the term "senile dement," very generally applied to this section. This whole class, the Commissioners pointed out, might be said to consist of persons who had at some time been normal in mind, but had become abnormal.

As regards the class in whom the brain was in some degree undeveloped and would remain undeveloped throughout life, and to the members of which such terms as "idiot," "imbecile," "feeble-minded," "moral imbecile" had been

generally and somewhat indiscriminately applied, the Commissioners, while adopting those terms, stated that they had endeavoured to give to them specific meanings, in order to facilitate the introduction of better and more discriminating methods of help and control in regard to those whom the terms represent.

It will be seen that the Legislature has also adopted the above-mentioned terms, with the same object in view, in the Mental Deficiency Act, but has limited the scope of the statute to those persons who have been defective from birth or an early age.

PRINCIPLES ADOPTED BY THE ROYAL COMMISSION IN
DEALING WITH THE PROBLEM OF THE MENTALLY
DEFECTIVE.

The Commissioners then proceeded to refer to the principles on which were based their suggested solution of the problems which had been submitted to them, as follows:—

“(1) Our first principle is that persons who cannot take a part in the struggle of life owing to mental defect, whether they are described as lunatics or persons of unsound mind, idiots, imbeciles, feeble-minded or otherwise, should be afforded by the State such special protection as may be suited to their needs. Heretofore, lunatics, idiots and imbeciles have received the protection of the law. So, also, have persons who have property which is in the hands of the Court of Chancery, but who are not ‘found lunatic by inquisition,’ and persons who ‘through mental infirmity arising from disease or age are incapable of managing their affairs’ or are ‘proved to be of unsound mind and incapable of managing their affairs.’ We propose that this principle of special protection should be extended to all mentally defective persons. This extension is new to English law.

“(2) Our next principle is that the mental condition of these persons, and neither their poverty nor their crime, is the real ground of their claim for help from the State. It

follows that their aid and supervision should be undertaken by some powerful local authority who can ensure that they will receive it from other quarters or, failing this, will provide it themselves. Hitherto a large number of adults, young persons and children who cannot be certified under the Lunacy and Idiots Acts have been supported by public authorities as paupers, on the ground of destitution, or as prisoners, on account of their crime, but they have not been dealt with primarily on the ground of their mental defect.

“(3) Our third principle is that if the mentally defective are to be properly considered and protected as such, it is necessary to ascertain who they are and where they are, and to bring them into relation with the local authority. This should, we think, be done chiefly through the agency of the education authority and other public or *quasi*-public authorities without any undue invasion of the privacy of the family. This suggestion for ascertaining who are mentally defective is also new.

“(4) Next, we adopt the principle that the protection of the mentally defective person, whatever form it takes, should be continued so long as it is necessary for his good. This we consider desirable not only in his interest, but also in the interest of the community. It follows that the State should have authority to segregate and to detain mentally defective persons under proper conditions and limitations, and on their behalf to compel the payment of contributions from relations who are able to pay for their support; or should itself provide such care and accommodation as may be necessary, either directly or through the local authority. This, subject to many variations and adjustments, is an extension to the whole class of the mentally defective of advantages now given to lunatics and idiots only.

“(5) Further, in order to supervise local administration of this nature a central authority is indispensable. This will not only tend to produce efficiency, economy and uniformity, but it will also provide safeguards for the proper care of the mentally defective person. Thus, the central authority,

which we would propose to call the Board of Control, becomes ultimately the general guardian of his person and is responsible for ensuring that his liberty is not unnecessarily curtailed by the local authority. The adoption of this principle also, in the case of the mentally defective generally, represents an extension to a new class of advantages now granted only to lunatics and idiots.

“(6) Our next principle is that in regard to the protection of property all mentally defective persons should have like privileges. The protection of property now afforded to lunatics, idiots and mentally infirm persons should therefore, we think, be extended to all mentally defective persons, and, further, as this duty of protection in the case of these persons is akin to the duty of protection in the affairs of infants and wards, the same judicial authority should, in our judgment, be in charge of both the one and the other. We are of opinion, therefore, that all this administration should be in the hands of the Chancery Division of the High Court instead of partly in their hands and partly, in the case of lunatics and mentally infirm persons, in the hands of the Judge and Masters in Lunacy. This is a reversion to a practice in vogue before the creation of the Judge and Masters in Lunacy. The extension of these privileges to all mentally defective persons is new.

“(7) Lastly, it is, in our opinion, essential that there should be the closest co-operation between judicial and administrative authorities, in this case, the Chancery Division of the High Court and the central authority. There would practically be a division of labour between the Court and the central authority, the Board of Control. In the case of a person who has property and is alleged to be suffering from mental defect, the inquiry in jury cases, or where an issue was directed in the High Court, would be by the King's Bench Division, but in other cases by a legal Commissioner of the Board of Control.”

SUMMARY OF THE REPORT SHOWING BRIEFLY THE PROPOSED
APPLICATION BY THE ROYAL COMMISSION OF THE ABOVE
PRINCIPLES.

The manner in which the Commissioners applied the above principles in the course of their Report was indicated in the following summary of its arguments and conclusions:—

Preamble.—In making this Report we have considered the position and needs of the mentally defective successively in relation to the several branches of administration with which they are chiefly brought into contact; and we have proceeded step by step in formulating the recommendations which we have made, as we have sifted and summarised the evidence which we have received in regard to each branch.

The Poor Law and the Central and Local Authority.—We have taken first the administration of Poor Law Relief in town and country, apart from the Metropolis, and have come to the conclusion that intervention in the case of mentally defective persons should be based as we have said, on the principle that such persons are suffering from mental incapacity, rather than on the principle that they require aid as poor and destitute, and we have concluded that the provision made on their behalf should be organised on that understanding. And as we have recognised the fact that mentally defective persons are found who are being dealt with by several central authorities and at many administrative centres, we have argued that for their sufficient treatment and supervision there should be one central authority, a “Board of Control,” for the general protection and supervision of all mentally defective persons and for the regulation of the provision made for their accommodation, and maintenance, care, treatment, education, training and control. We have further proposed that the local authority which should co-operate with this central authority should be a Statutory Committee of the Council of the County or County Borough for the Care of the Mentally Defective that

should take over the duties of the Visiting Committee of Asylums of the Council. Part of the duties of the Education Committee of the Council would also be transferred. Subject to the approval of the Board of Control this authority would have power to contract for the accommodation of mentally defective persons with any Poor Law or other public authority, public or voluntary agency or private person.

The Metropolis.—We have next dealt with the special conditions of the provision which has been made for the care and maintenance of the mentally defective in London, and have pointed out the necessity of establishing a united and self-consistent administration; and we have recommended that a Statutory Committee of the London County Council for the care of the mentally defective should be the Committee of administration for the Metropolis, and that the functions of the Metropolitan Asylums Board, so far as they refer to the mentally defective, should be transferred to this Committee.

Education.—We have then discussed the education of the mentally defective in its chief bearings; and we have advocated a system of record and limited notification. We have also recommended that for the education and training of all mentally defective children the Board of Control, and the local authorities, represented by the Committees for the care of the mentally defective, should be responsible, subject to ample powers being given to these Committees to contract with the education authority for the supply of special schools and classes, or to take other suitable measures for their education. We have urged that the childhood and schooling of mentally defective children cannot rightly be treated apart from their after life, and that no age can be fixed in their case as separating school time from supervision and after-care. So far as it may be necessary, therefore, the supervision exercised over them by or on behalf of the local authority would be continuous; and both in the education and control of children it is proposed that many methods besides special classes or special homes should be adopted,

such, for instance, as "colonies," family supervision and friendly guardianship and wardship till the age of twenty-one.

Prisons, Casual Wards, Juvenile Offenders, &c.—Passing to other administrative centres we have examined the state of the mentally defective who are in prisons, casual wards and common lodging houses, and we have considered much detailed evidence in regard to juvenile offenders and children in remand homes. We have shown how widespread and unanimous is the opinion that in many cases separation or detention is indispensable, if offences of certain kinds are not to be perpetually perpetrated by weak-minded offenders, and perpetually punished without effect. We have recommended that feeble-minded juvenile offenders should be most carefully examined by medical officers and dealt with in various ways; and that the procedure for the commitment of feeble-minded prisoners, their treatment, and the arrangements for their discharge should be entirely reformed.

Habitual Inebriates.—We have shown to how large an extent habitual inebriates are mentally defective, and we have recommended that the care and control of mentally defective inebriates should be placed in the hands of the Board of Control and of the local authorities which would hereafter be responsible for the care of mentally defective persons generally.

Mental Defect and Criminal Responsibility.—We have discussed the question of criminal responsibility in relation to mental defect and the methods of judicial procedure which are now in force in regard to lunatics, habitual drunkards and inebriates; and we have argued that in the case of persons who are charged with offences and are alleged to be mentally defective the principle should be adopted of keeping the question of the committal of the alleged offence separate from questions of the alleged mental defect, the relative irresponsibility of the offender and his appropriate treatment when charged with crime or convicted.

Idiot Asylums and Voluntary Homes for the Feeble-minded.—The asylums for idiots and the voluntary homes for the mentally defective are next described by us, and we recommend that the procedure under the Idiots Act should be extended so that not only idiots who are under twenty-one years of age and whose parents or guardians desire to obtain for them admission to an idiot asylum, may be admitted on a single medical certificate, but also that feeble-minded persons, imbeciles, moral imbeciles, and such inebriates, epileptics, and blind or deaf and dumb persons as are mentally defective and less than twenty-one years of age may be admitted to suitable institutions in the same way. We have recommended also that the local authority should have power, subject to the approval of the Board of Control, “to contract with any Poor Law or other public authority, public or voluntary agency, or private person, under such conditions as they may deem advisable, for the care, education, training or maintenance of mentally defective persons, or of epileptics not mentally defective.”

Causation of Mental Defect, Definition and Number of Mentally Defective Persons.—Before considering in detail the formation of the proposed central authority, we have discussed shortly the causation of mental defect and the number and the definition of the class of persons for whom provision should be made or over whom supervision in some form is required. Under the general title of mentally defective persons, besides those who are already recognised as such legally, we have placed the other groups of persons who have not hitherto been recognised as such in law or have only been recognised partially. These groups include imbeciles, feeble-minded persons, moral imbeciles, and such inebriates, epileptics, deaf and dumb, and blind persons as are also mentally defective. For practical and administrative purposes we have defined each of these groups.

The Lunacy Commission.—We have next considered the constitution and the work of the Lunacy Commission in

England and Wales, and have compared it with the General Board of Lunacy in Scotland; and we have discussed the system now in force in England for the examination of plans, contracts and estimates for the construction of asylums, and we have made recommendations for complete financial control. We have shown that at the present time the work of the Lunacy Commission is altogether beyond its numerical strength; and we have made suggestions for modifications in the present system of visitation and discharge.

Various Ways of providing for the Mentally Defective: Intermediate Hospitals, Observation and Reception Wards, Boarding-out, &c.—To increase the resources at the disposal of local authorities for dealing with cases of mental defect and for reducing the pressure upon asylums we have recommended the erection of intermediate hospitals, the institution of large farm colonies as in America, the general establishment of observation and reception wards, and the use and notification of private homes for the treatment of “unconfirmed” cases. We have proposed also the adoption of family care and guardianship, either on the plan of the family colony in force on the Continent or on the plan of “boarding-out” in force in Scotland, organised in connection with the local authorities for the care of the mentally defective and under the inspection of the central authority. In cases in which persons ordered to be detained have to be removed to some temporary place of reception, we have recommended that reception houses or reception wards be used instead of the workhouses.

Certification, &c.—With a view to a simplification of the system of certification and the promotion of uniformity, we have recommended various changes. At the request of the relatives or where no relatives are forthcoming, for the purposes of making an urgency order or of obtaining a reception order on petition, we would allow the Committee to authorise their medical officer or one of their medical officers to act on their behalf. We provide also for the appointment of certi-

fyng medical practitioners who, being specially acquainted with this branch of work, would be likely to act on uniform lines.

Wardship.—In order to ensure that there be continuous control in many cases in which, owing to the lack of any proper care or supervision, such a control could not otherwise be provided in a satisfactory manner, we recommend the introduction of a system of wardship, on the lines of the Poor Law Act of 1899, so that the Committees for the Care of the Mentally Defective may by resolution vest in themselves the rights and powers of the parent until the mentally defective young person reaches the age of twenty-one; and, after the age of twenty-one, we recommend further proposals for continuous care where it is necessary.

Guardianship of Property.—The privileges in regard to the protection and management of property which were allowed to lunatics and to mentally infirm persons under the Lunacy Act of 1890 should, we recommend, be extended to all classes of mentally defective persons.

The Board of Control.—For the central administrative control of the work which we have now passed in review we have recommended that there be a Board of Control. This Board would be formed partly by a re-organisation, partly by an enlargement of the present Lunacy Commission. It would deal with the whole class of mental defectives and could not, therefore, be properly designated a Lunacy Commission. It would consist of a certain proportion of qualified medical men who had an expert knowledge of the various classes of mental defect, and a certain proportion of legal members; for under the proposed scheme, in cases in which inquisition without a jury has to be made, a legal member of the Commission, assisted, if necessary, by a medical member of the Commission as assessor, would undertake it. Also, appointed for a term of years, there would be honorary Commissioners specially qualified to assist the Board; and there would be a paid Chairman. England and Wales would

be divided into districts, and there would be at least eight Assistant District Commissioners.

The Judge and Masters in Lunacy and Chancery Visitors.—The offices of the Judge and Masters in Lunacy should, in our opinion, be merged in the Chancery Division of the High Court, and the duties of the Lord Chancellor's visitors would be included in the duties of the Commissioners of the Board of Control. By these several changes there would, we believe, be a very advantageous concentration of responsibility combined with a control that would extend over the whole administration for the care of the mentally defective.

Finance and the Apportionment of Grants.—All these changes and proposals we have also considered from the point of view of economical management. We have submitted a rough estimate of the expenditure that may be incurred and we have suggested the apportionment of State aid by block grants on the lines proposed to the Royal Commission on Local Taxation by Lord Balfour of Burleigh, Sir Edward Hamilton and Sir George Murray; or, as an alternative, by grants-in-aid to the extent of half the cost of maintenance and management to be made to local authorities on revised conditions. We have proposed also that building grants should be made to local authorities, as suggested by the Royal Commission on Local Taxation in the case of lunatics.

Epileptics.—Finally, after referring not only to the limited and experimental efforts which have been made in our country, but also to the information collected by our Commissioners who visited the United States of America, we have dealt in some detail with the needs of epileptics not mentally defective, and have recommended that the Board of Control be empowered to register, inspect and report on institutions or houses established for their care, and to regulate any institutions or houses in which accommodation may be provided partly for mentally defective persons and partly for epileptics not mentally defective, and that the committees for the care of the mentally defective be authorised to consider and deal with these cases, and to provide for them.

Utilisation and Extension of Existing Agencies.—With regard to epileptics who are not mentally defective, we have given a list of general recommendations relating to the mentally defective which we think should be applicable to these cases.

Throughout, we should add, we have endeavoured to follow and to develop existing lines of administration, and to utilise and extend existing agencies, and though, no doubt, we have proposed some very large modifications and some far-reaching changes in certain directions, we have sought to revise and to extend methods of procedure already in operation rather than to initiate what is entirely new and to supplant what is relatively old.

Conclusion.—The series of recommendations in which our proposals are set out in detail conclude our Report as to England and Wales. On Scotland and Ireland we have reported separately, in their case also concluding our statements with detailed recommendations (*a*).

LEGISLATIVE PROPOSALS FOR ENGLAND AND WALES,
FOLLOWING THE RECOMMENDATIONS OF THE ROYAL
COMMISSION.

Four years elapsed from the time when the Report of the Royal Commission on the Care and Control of the Feeble-minded was issued before any Bill was introduced into Parliament with the object of carrying out the proposed changes.

Then, in 1912, two Bills were introduced in the House of Commons, one by Mr. G. Stewart, M.P. (Wirral), the other by the Right Hon. Reginald McKenna, Secretary of State for the Home Department.

Both the above Bills passed second reading, and having been referred to Standing Committees, were considered in detail.

As regarded the Home Secretary's Bill a few clauses only

(*a*) See footnote, p. 1, *ante*.

were passed by the Committee for Report to the House of Commons, but it was thoroughly understood that the Government intended to re-introduce their Bill early in the 1913 session, and it was, in fact, stated in the King's speech at the re-opening of Parliament, in March, 1913, that renewed consideration would be invited to proposals for the better care and control of the feeble-minded.

The Home Secretary's Bill was accordingly re-introduced on March 25th, 1913, and having passed second reading on June 3rd, was immediately again referred to a Standing Committee, who lost no time in dealing with the various clauses, some of which had been entirely remodelled, while others were quite new. As a result of the close attention thus given to the matter in Parliament, and largely owing to the fact that the Bill had the warm approval of the majority of members in both Houses of Parliament, it passed through its remaining stages very speedily, and received the Royal Assent on August 15th.

The labours of the Royal Commission have, accordingly, so far borne fruit as to render it possible for the local authorities, with State assistance, to provide for a very large number of the mentally defective class for whom, hitherto, no adequate provision had been made.

As regards the feeble-minded and other mentally defective persons for whom provision is made under the Poor Law, the new Act has made little change, but it seems clear that in the course of time its provisions must become automatically applicable to all members of that class of persons who are "defective" within the meaning of the Act, and that whatever other good result may accrue from the provisions of the statute, proper care and treatment will no longer be withheld from large numbers of "defectives" who, under existing conditions, would continue to become habitual inmates of gaols, reformatories and other institutions intended only for the criminal or *quasi*-criminal classes.

General Effect of the New Act.—It has not been deemed necessary, having regard to the fulness of the foregoing

summary of the Report of the Royal Commission, to set forth the whole of the Recommendations of the Commissioners, which were ninety-six in number, and which covered nearly forty pages of the Blue-book; but certain of such Recommendations have been repeated in the notes to the text of the Act, *post*, for the purpose of elucidating the intentions of the Legislature in some cases, and for the purposes of comparison in other cases.

It may, however, at once be stated that, roughly speaking, the Legislature has adopted the main principles underlying the Recommendations of the Royal Commission, and that, while differentiating between the classes of persons who are now to be styled "defectives" and those who are still to be treated as "lunatics," the same Central Authority, consisting of the same body of Commissioners, together with the same staff, will exercise general supervision over the administration of the accommodation, maintenance, care and control of all certified mentally defective persons.

So, also, as regards the local authorities who are to administer the new Act, the councils of the counties and county boroughs in England and Wales have jurisdiction in accordance with the Recommendations. Such authorities have not, however, been given general powers and duties over defectives who may be dealt with under the Poor Law Acts, and the area of chargeability, where the place of settlement or irremovability is known, will still be, as regards lunatics, the union or parish. (*See* sect. 30, proviso (ii) and note thereto, p. 92, *post*.) The Act does not, moreover, provide, as recommended in the Report, for the transfer of the institutions of the Metropolitan Asylums Board to the London County Council for the use of the committee who deal with defectives under the Act in the metropolis; but power is given to the London County Council to contract with the Board if their institutions become certified under the Act for the reception and maintenance of defectives for whose accommodation and maintenance the Council become responsible under the Act. (*See* sect. 38 (1) (b), p. 113, *post*.)

The general provisions for dealing with defectives by certification for admission to institutions or placing under guardianship are in agreement with the Recommendations, as well as regards criminal mentally defectives and those undergoing detention, &c., as in ordinary cases; but while there are provisions for the transfer of lunatics in institutions to institutions for defectives and *vice versâ*, in suitable cases (see sect. 16, p. 64, *post*) the general powers and duties of the local authorities under the Lunacy Acts remain undisturbed. (See sect. 30, proviso (iii), p. 95, *post*.)

A very important departure has been made from the recommendation of the Commissioners that the lunacy jurisdiction exercised by the Judge and Masters in Lunacy should be transferred to the Chancery Division of the High Court, and the jurisdiction of the Masters as separate officials should be abolished. On the contrary, the powers of the Masters have been retained, and the provisions of the Lunacy Acts relating to the management and administration of the estates of lunatics have been applied to the management and administration of the estates of persons who are "defectives" within the new Act. (See sect. 64, p. 170, *post*.)

Further, it has been allowed to remain optional for the local education authorities to provide for the education of mentally defective children who are educable, by means of special classes or schools, under the Elementary Education (Defective and Epileptic Children) Act, 1899 (see App., pp. 322, 323, *post*), with the result that throughout England and Wales there will, for the present, remain no special provision for the education of a number of educable mentally defective children who are not "defectives" subject to be dealt with under sect. 2 of the new Act. A Bill was introduced during the 1913 Session with the object of removing the existing option, and making it compulsory on the local education authorities to make such special provision for the education of children over seven belonging to their area and ascertained to be mentally defective within the meaning of sect. 1 (1) (a) of the Act of 1899. (See App., p. 321, *post*.) Late in the Session it was, however, found that owing to pressure of business, the

Bill could not pass, and it was consequently withdrawn by the Government.

The Mental Deficiency Act, however, makes it the absolute duty of the local education authorities to ascertain what children within their area are defective children within the meaning of the Act (*see* sects. 30, proviso (iv), 31, pp. 97, 99, *post*), and to notify to the local authority under the Act the names of all defective children over the age of seven years and under sixteen years who are non-educable, and in respect of whom it is opined that they should be dealt with under the Act by way of supervision or guardianship, or by being placed in an institution for defectives. (*See* sect. 2 (2), p. 29, *post*.)

The Act contains special provisions for ascertaining the local authorities responsible for the accommodation and making provision for the guardianship of defectives ordered to be sent to certified institutions or to be placed under guardianship. (*See* sects. 43, 44, pp. 126—138, *post*.) This matter will usually be decided with reference to the "place of residence" of a defective, but it is of importance to note that in the case of doubt as to where a person resides, the expression "place of residence" may often have to be construed by applying the law of settlement as laid down in the Acts relating to the relief of the poor. (*See* sect. 44 (4), p. 135, *post*.)

The expenses of local authorities in respect of persons sent to certified institutions or placed under guardianship will, to the extent of one-half, be defrayed out of State funds. (*See* sect. 30, proviso (i), p. 91, *post*, and sect. 47, pp. 141, 142, *post*.)

The Act also provides for contribution orders being made upon defectives or persons liable for their maintenance (including under certain circumstances the putative father, or the man living with the mother of an illegitimate child) in respect of the expenses of maintenance or guardianship, and any charges incidental thereto. (*See* sects. 13, 14, pp. 57—61, *post*.)

MENTAL DEFICIENCY ACT, 1913.

(3 & 4 GEO. 5, c. 28.)

An Act to make further and better provision for the care of Feeble-minded and other Mentally Defective Persons and to amend the Lunacy Acts.

[15th August, 1913.]

BE it enacted by the King'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:—

PART I.—POWER AND MANNER OF DEALING WITH DEFECTIVES.

Powers of dealing with Defectives.

1. *Definition of Defectives.*—The following classes of persons who are mentally defective shall be deemed to be defectives within the meaning of this Act:—

Defectives within the meaning of the Act.—As already indicated (Introduction, p. 4, *ante*), the words "mentally defective" were used in the Report of the Royal Commission on the Care and Control of the Feeble-minded, to represent the whole group of cases that came within the scope of the reference to the Commission, whether they could or could not be certified under the Lunacy Acts or the Idiots Act, 1886.

The Idiots Act is repealed by the present Act, and "idiots" of all ages will be liable to be dealt with hereunder; but by sect. 30, proviso (iii), p. 95, *post*, "nothing in this Act shall affect the powers and duties of local authorities under the Lunacy Acts, 1890 to 1911, with respect to any defectives who may be dealt with under those Acts, nor shall local authorities under this Act have any duties or powers with respect to defectives who for the time being are, or who might be, provided for by such authorities as aforesaid, except to such extent as may be prescribed by regulations made by the Secretary of State with the concurrence of the Lord Chancellor."

Having regard to the definition of "lunatic" in sect. 341 of the Lunacy Act, 1890, viz., "an idiot, or person of unsound mind," some difficulty may sometimes prevail in determining whether an alleged lunatic is a "defective" within the meaning of the present Act, or is properly certifiable, if certifiable at all, under the Lunacy Acts.

Having regard, however, to the legal presumption that a "lunatic" in the ordinary sense of the word is of the class of persons who have at some time been normal in mind, and have become abnormal, but are capable of recovering their mental balance (*conf. Dormer's Case* (1724), 2 P. Wms. 262; *Re Earl of Ely* (1764), 1 Ridg. P. C. 519), while "defectives" within the meaning of the Mental Deficiency Act, 1913, include only those whose mental defectiveness can be shown to have existed from birth, or from an early age (in the case of "moral imbeciles" from an early age), a great deal of ingenuity ought not to be required, if the medical evidence is properly regarded, in order to satisfy the judicial authority or Court whether the person is or is not a "defective" within the Act. At any rate, where evidence is forthcoming that the circumstances in regard to a person alleged to be a "defective" within the meaning of the Act have been such as to bring him within one or other of the four classes which are specially defined in sect. 1, it seems to be the intention of the Legislature that such person shall be dealt with under this Act, rather than under the Lunacy Acts, excepting as may be otherwise prescribed by regulations made under sect. 30, proviso (iii), p. 96, *post*.

It is, however, to be noted that the present Act excludes the two classes of persons referred to in the recommendations of the Royal Commission as "persons of unsound mind" and "persons mentally infirm." The Commissioners specially distinguished the former class as being those who are lunatics, *i.e.*, "persons who require care and control owing to disorder of the mind and are consequently incapable of managing themselves or their affairs," and are not included in the other classes who were mentioned in their recommendations. The latter class were distinguished as "persons who, through mental infirmity arising from age or from decay of the faculties, are incapable of managing themselves or their affairs." These belong to the class generally known as feeble-minded, but must be carefully distinguished from the class defined in paragraph (c) of this section (p. 23, *post*).

- (a) Idiots; that is to say, persons so deeply defective in mind from birth or from an early age as to be

unable to guard themselves against common physical dangers;

Idiots.—In the repealed Idiots Act, 1886 (49 & 50 Vict. c. 25), s. 17, “idiots” or “imbeciles” do not include lunatics, and “lunatic” does not mean or include idiot or imbecile, while in the Lunacy Act, 1890, s. 341, “lunatic” in that Act means an “idiot or person of unsound mind,” so that idiots might be dealt with under both those Acts.

The definition of “idiots” in the present Act enables a proper distinction to be made. It is the definition which was suggested to the Royal Commission on the care and control of the feeble-minded by the London Royal College of Physicians, and was recommended in the Report of the Commission. Such definition, however, concluded with an example of what the Commissioners meant by common physical dangers, viz., “such as, in the case of young children, would prevent their parents from leaving them alone.”

The distinction between “idiots” and “imbeciles” seems to be almost immaterial so far as the machinery of the Act is concerned; but there may be important distinctions from the administrative standpoint, especially for the purposes of classification and treatment.

It may be assumed that the power of transfer from institutions for lunatics to institutions for defectives under sect. 16 (2) (*see* p. 65, *post*) will be exercised especially in regard to “idiot” lunatics.

(b) Imbeciles; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so;

Imbeciles.—The Royal Commission reported that the following definition which they themselves recommended had been suggested by the London Royal College of Physicians, viz., “persons who are capable of guarding themselves against common physical dangers, but who are incapable of earning their own living by reason of mental defect existing from birth, or from an early age.”

The definition in the new Act, it will be seen, proceeds on very similar lines, but the concluding words seem to imply that, in the case of a child, some effort should have been made to train or teach the individual before certification as an “imbecile” within the

meaning of the Act. In the case of an adult, it would be much less a matter of difficulty to certify as to incapacity of managing himself or his affairs.

- (c) Feeble-minded persons; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection of others, or, in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools;

Feeble-minded persons.—The class known to the Royal Commission as "mentally infirm" has already been mentioned (p. 4, *ante*). In their case it is mental infirmity arising from age or decay, but in regard to "feeble-minded" within the present Act, as within the recommendations of the Commissioners, it is "mental *defectiveness* existing from birth or from an early age," which gives rise to the incapacity rendering them liable to be deemed "defectives" within the Act.

The definition adopted by the Commissioners was, with slight verbal alterations, that suggested by the London Royal College of Physicians, viz., "persons who may be capable of earning a living under favourable circumstances, but are incapable from mental defect existing from birth, or from an early age (a) of competing on equal terms with their normal fellows; or (b) of managing themselves and their affairs with ordinary prudence."

The definition in the present Act is almost in line with the above as to the duration and cause, but is widely divergent as to the effect of the incapacity which shall render a person liable to be deemed a "defective" within the Act. The question of mental capacity for managing themselves or their affairs and of competition with others is set aside, and that of inability of management is disregarded. Both such mental disqualifications have been clearly seen to include far too wide a class, and it is not too much to say that the present scope of the definition is within proper limits, having regard to the safeguards provided in the requirements for certification or adjudication.

"Care, supervision and control."—The person, if an adult, must be shown to require "care, supervision and control" either

(1) for his own protection, or (2) for the protection of others. Taken together, the words "care, supervision and control" imply something more than could be afforded to the patient in his own home or under ordinary conditions if he were not the subject of lawful detention. Some light is thrown on the meaning of the expression as a whole by the use of the words "care and supervision" alone in sects. 11 (2), (4) (a), 12 (1), pp. 53, 54, *post*, relating to the steps to be taken for effecting the discharge of a "defective" who has been placed in an institution or home, or under guardianship under the provisions of the Act.

The words "for their own protection or for the protection of others," obviously relate to the necessity for the care, supervision, and control of a patient, and a mentally defective person could not legally be detained under the Act as a "feeble-minded person" unless circumstances were shown to exist combining the need for the "care, supervision and control" combined with insufficient protection. A mere weakling would not come within the class, for instance, unless his mental deficiency subjected him to harm at the hands of others; nor would a physical degenerate of great strength be subject to be detained if he were perfectly harmless to others.

In the case of children.—The further provision in regard to children who are "feeble-minded persons" within the Act is one of the utmost importance. It will be seen that the local education authorities have special duties in regard to this class as well as other classes of children who are "defective" within the meaning of the Act (*see* sect. 2 (2), p. 29, *post*, and sect. 31, p. 99, *post*).

(d) Moral imbeciles; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.

Moral imbeciles.—Parliament has practically adopted the recommendation of the Royal Commission as to the definition of this new class of persons who may be subjected to detention. The only alteration made by the Legislature is to insert the word "permanent" before the words mental defect.

In this instance the Royal College of Physicians suggested the following as a definition, viz., "a person who displays from an early age (*and in spite of careful up-bringing*), strong vicious or criminal propensities on which punishment has little or no deterrent effect," but the italicised words are now omitted, and when some *permanent*

mental defect is displayed there must also be evidence that the person has undergone punishment, by parental correction or otherwise, on account of his propensities, and that such punishment has not acted as a deterrent. As a guide only to the meaning of paragraph (d), *supra*, reference may be made to the three paragraphs from the Report of the Royal Commission setting forth briefly the principles adopted by the Commission in dealing with the problem of the mentally defective (Introduction, p. 10, *ante*, *sub tit.* "Prisons, casual wards, juvenile offenders," *et seq.*).

Evidence of the previous punishment of the alleged "moral imbecile" in respect of his particular form of vice or crime seems to be necessary in order to obtain certification as a "defective" within the meaning of the Act. Hence it would appear that in regard to some of this class, concerning whom additional evidence will be required before an order for detention can be made (*see* sect. 2 (1) (b), p. 26, *post*), there may be difficulty in obtaining orders under the provisions of the Act.

2. Circumstances rendering Defectives subject to be dealt with.]—(1) A person who is a defective may be dealt with under this Act by being sent to or placed in an institution for defectives or placed under guardianship—

Defective.—*I.e.*, within one of the classes enumerated in the foregoing section.

Institution.—*See* definition, sect. 71, *post*; also definitions of "certified house" and the provisions in regard thereto, sects. 71, 49 (2), 67 (2), pp. 145, 174, 181, *post*.

As to certification and provision of institutions, *see* sects. 36—39, pp. 110—120, *post*.

Under guardianship.—*I.e.*, in the care of and under the supervision and control of some person upon whom will devolve the powers and duties of persons appointed guardians of defectives under this Act in accordance with the regulations made under sect. 41 (1) (1), p. 124, *post*.

As to variation of a guardianship order on the application of a guardian, &c., *see* sect. 7, p. 39, *post*.

(a) at the instance of his parent or guardian, if he is an idiot or imbecile, or at the instance of his parent if, though not an idiot or imbecile, he is under the age of twenty-one; or

"Parent or guardian."—*See* definition, sect. 71, p. 179, *post*. An alleged defective to whom paragraph (b) of this section does not

apply, can, if he is neither an idiot or imbecile, only be dealt with at the instance of a parent, and then only if he is under twenty-one years of age. See sect. 3, *post*, as to the provisions for certification, &c. of "defectives" who may be dealt with under this subsection.

Having regard to the limitation of the powers of guardians under the above provision, it would appear that the father, if alive, would be the only person empowered to act in the case of a legitimate child. Where a child has no living father, or, in the case of an illegitimate, the mother, can institute proceedings under paragraph (a) of sect. 2 (1), *supra*.

The following statutes may be referred to with reference to the subject of parental control. The Infant Felons Act, 1840 (3 & 4 Vict. c. 90); Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 35; Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 4; Custody of Infants Act, 1873 (36 & 37 Vict. c. 12), ss. 1, 2; Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27); Custody of Children Act, 1891 (54 Vict. c. 3); Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39); Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 1; Poor Law Act, 1899 (62 & 63 Vict. c. 37), s. 1; Children Act, 1908 (8 Edw. 7, c. 67), ss. 21, 22.

As to the right of a parent to revoke his agreement to renounce the custody of a child, *conf. Reg. v. Barnardo* (1889), 58 L. J. Q. B. 553; *Reg. v. Barnardo, Gossage's Case* (1890), 59 L. J. Q. B. 345; *Humphrys v. Polak* (1901), 70 L. J. K. B. 752.

Where, however, a child has been committed to the care of a relative of the child, or some other fit person, by order of a Court under sect. 21 of the Children Act, 1908, it is provided by sect. 22 (1) that while such order is in force the child shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person.

The expression "fit person," used in sect. 21 of the Children Act, includes "any society or body corporate established for the reception or protection of poor children, or the prevention of cruelty to children," *ibid.*, sect. 38. It is submitted that a defective child might be dealt with at the instance of any relative or "fit person" as being a "guardian" within the meaning of that term in sect. 71 of the Act (*see p. 179, post*).

- (b) if in addition to being a defective he is a person—
- (i) who is found neglected, abandoned, or without visible means of support, or cruelly treated; or
 - (ii) who is found guilty of any criminal offence,

or who is ordered or found liable to be ordered to be sent to a certified industrial school; or

(iii) who is undergoing imprisonment (except imprisonment under civil process), or penal servitude, or is undergoing detention in a place of detention by order of a court, or in a reformatory or industrial school, or in an inebriate reformatory or who is detained in an institution for lunatics or a criminal lunatic asylum; or

(iv) who is an habitual drunkard within the meaning of the Inebriates Acts, 1879 to 1900; or

(v) in whose case such notice has been given by the local education authority as is hereinafter in this section mentioned; or

(vi) who is in receipt of poor relief at the time of giving birth to an illegitimate child or when pregnant of such child.

“In addition to being a defective.”—The power to deal with a defective under this paragraph may be at the instance of his parent or guardian, or otherwise, *see* sect. 4, *post*, but is only exerciseable in cases where the “defective” belongs to one of the four classes defined in sect. 1, pp. 20—24, *ante*, and there is evidence that one of the sub-paragraphs of sect. 2 (b) is applicable to him.

The requirements as to the making of orders in regard to such cases are contained in sects. 5—9, pp. 33—50, *post*.

Found neglected, &c.—As regards sub-paragraph (i), it seems unnecessary to do more than point out that the circumstances of each case must determine the question of neglect, &c. A defective who is found homeless, or wandering unattended, or who is found living alone and without the necessaries of life, or is found deprived of such necessaries, would, it is submitted, come within the paragraph.

Found guilty, &c.—The procedure in cases of defectives coming within sub-paragraph (ii) is contained in sect. 8, pp. 40—47, *post*.

As regards children liable to be sent to industrial schools, provisions are made by sect. 58 of the Children Act, 1908 (*see* note to sect. 8 (1), p. 40, *post*).

Under sect. 44 of such Act, the expression *certified* industrial school means a school for the industrial training of children, in

which children are lodged, clothed and fed, as well as taught, and which school has been duly certified by the Secretary of State under such section.

Undergoing imprisonment . . . detention.—The procedure in regard to defectives coming within sub-paragraph (iii) is contained in sect. 9, p. 47, *post*, except as regards persons detained in institutions for lunatics under the Lunacy Acts, as to whom, *see* sect. 16 (2), p. 65, *post*.

Persons are so detained either in consequence of an inquisition (*see* Lunacy Act, 1890, s. 90, App., p. 223, *post*), or in ordinary cases (*i.e.*, cases not under inquisition), under (1), an urgency order (*ibid.*, sect. 11); or (2), a reception order obtained on petition to a judicial authority (*ibid.*, sects. 4—8); or (3), under a summary reception order made by a magistrate when the lunatic is found wandering, or is a pauper, or is neglected (*ibid.*, sects. 13—21); or (4), under an order made by the Commissioners in Lunacy (*ibid.*, sect. 23); or (5), under an order made under the Criminal Lunatics Acts; or (6), under an order made under the Idiots Act, 1886 (49 & 50 Vict. c. 25), which is repealed by sect. 67 of the new Act.

The statutes governing detention of criminal lunatics are the Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2; Lunatics Removal (India) Act, 1851 (14 & 15 Vict. c. 81), ss. 1, 2; Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2; Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), s. 2.

For practical purposes criminal lunatics may be divided into (a) King's pleasure lunatics, and (b) Secretary of State's lunatics. Both classes are in custody by virtue of orders of Courts of law, and cannot be discharged without a warrant signed by the Secretary of State (*see* provision for procedure under the present Act, sect. 9, p. 47, *post*).

As to the detention of children and young persons under sixteen in places of detention and reformatory schools, *see* note to sect. 9, p. 48, *post*; and in industrial schools, *see* note to sect. 8 (1), p. 40, *post*.

As to persons who may be sent to an inebriate reformatory, *see* note to sect. 9, p. 49, *post*.

Habitual drunkards.—It is submitted that a defective coming within the definition in sect. 3 of the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), *viz.*, "a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself, or herself, or to others, or incapable of managing himself

or herself, and his or her affairs," may be ordered to be detained under the present Act.

The above definition includes a person who, by habitual drinking, is habitually not in a fit condition to manage himself and his affairs, and is not confined to the case of a person who, as the result of drinking, is incapable of managing his affairs even when sober. (*Eaton v. Best* (1909), 78 L. J. K. B. 425.)

In receipt of poor relief at the time, &c.—The class in subparagraph (vi) will naturally chiefly consist of single women, but it will include also a certain proportion of feeble-minded married women who have drifted into the workhouses. There may be little to distinguish most of these women from the definition of "moral imbeciles" with strong vicious propensities, but they should, usually, be dealt with under the definition of "feeble-minded persons" in sect. 1 (c), p. 23, *supra*.

For the procedure of the local authorities in regard to alleged defectives who are in receipt of poor relief, *see* sect. 30, proviso (ii), p. 92, *post*, and the prescribed regulations.

(2) Notice shall, subject to regulations made by the Board of Education, to be laid before Parliament as hereinafter provided, be given by the local education authority to the local authority under this Act in the case of all defective children over the age of seven—

Notice shall . . . be given.—This sub-section places the duty of notification only upon the local education authority, but *see also* sects. 30, proviso (iv), and 31, pp. 97, 99, *post*. *See also* Introduction, p. 18, *ante*, as to the present optional powers of local education authorities in regard to defective children.

Local authority.—*I.e.*, the county or county borough council (*see* sect. 27, p. 79, *post*).

Defective children over seven.—Notice under this section must be given only in respect of children over seven years of age, but the local education authority are to ascertain what children of any age within their area are defective children within the meaning of the Act (*see* sects. 30, proviso (iv), 31, pp. 97, 99, *post*).

- (a) who have been ascertained to be incapable by reason of mental defect of receiving benefit or further benefit in special schools or classes, or who cannot be instructed in a special school or class without

detriment to the interests of the other children, or as respects whom the Board of Education certify that there are special circumstances which render it desirable that they should be dealt with under this Act by way of supervision or guardianship;

Children ascertained to be incapable.—Note the distinction between the description of children who are to be deemed defectives under the classification “feeble-minded persons” in sect. 1 (*supra*), viz., such as “*appear to be permanently incapable of receiving proper benefit,*” and the description in sect. 2 (2) (a), viz., “*who have been ascertained to be incapable . . . of receiving benefit or further benefit.*” When ascertained they are notifiable, and then immediately become subject to be dealt with under sect. 2 (1) (b) (v).

Special schools or classes.—The expression “special school or class” means a special school or class within the meaning of the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32) (*see App., p. 321 et seq., post*).

The power of making provision for defective children under the Act of 1899 is optional (*see Introduction, p. 18, ante*).

Dealt with by way of supervision or guardianship.—*I.e.*, apparently, by a voluntary institution or a private home, or a friendly guardian or ward (*see Introduction, p. 9, ante, sub tit. Education*).

(b) who on or before attaining the age of sixteen are about to be withdrawn or discharged from a special school or class, and in whose case the local education authority are of opinion that it would be to their benefit that they should be sent to an institution or placed under guardianship.

Age of sixteen.—This age is fixed as the maximum for education of defective children by sect. 11 of the Act of 1899 (*see App., p. 328, post*).

The provisions of the new Act will only enable the local authorities to provide for the future of such non-educable children as have been notified to them under sub-sect. (2), *supra*, and sect. 31, p. 99, *post* (*see sect. 30, proviso (iv), p. 97, post*).

Sent to an institution, &c.—*I.e.*, by means of an order on adjudication of a petition under sects. 5, 6, pp. 33—38, *post*.

3. Power to deal with Defectives at instance of Parent or Guardian.]—(1) The parent or guardian of a defective who is an idiot or imbecile, and the parent of a defective who though not an idiot or imbecile is under the age of twenty-one, may place him in an institution or under guardianship: Provided that he shall not be so placed in an institution or under guardianship, except upon certificates in the prescribed form signed by two duly qualified medical practitioners, one of whom shall be a medical practitioner approved for the purpose by the local authority or the Board, and, where the defective is not an idiot or imbecile, also signed, after such inquiry as he shall think fit, by a judicial authority for the purposes of this Act, stating that the signatories of the certificate are severally satisfied that the person to whom the certificate relates is a defective and the class of defectives to which he belongs, accompanied by a statement, signed by the parent or guardian, giving the prescribed particulars with respect to him.

Parent or guardian.—See note to sect. 2 (1) (a), p. 25, *ante*. In a case in which the provisions of this section are not applicable, the parent or guardian may proceed by application by petition for an order under sect. 5, p. 33, *post*.

Institution.—A defective may also be placed in a “certified house” (see sect. 49 (2), p. 145, *post*), or in an “approved home” (see sect. 50, p. 147, *post*). Definitions of these terms are contained in sect. 71, p. 181, *post*; see also sect. 67 (2), p. 174, *post*.

See sub-sect. (2), p. 32, *infra*, as to notice to Board of Control of reception of defectives under this section.

Certificates in the prescribed form.—*I.e.*, in the form prescribed by regulations made under this Act (see sects. 20, 71, pp. 71, 179, *post*).

The Board.—*I.e.*, the Board of Control (see sub-sect. (2), *infra*).

Where the defective is not an idiot or imbecile.—In the case of procedure by a parent for certification of his child, otherwise than as an “idiot” or “imbecile,” there must be an additional signatory to each of the medical certificates by a person who is a judicial authority (see sect. 19, p. 70, *post*).

Statement giving prescribed particulars.—*I.e.*, the particulars prescribed by the regulations (see sects. 20, 71, pp. 71, 179, *post*).

Duration of detention, withdrawal, &c.—See provisions of sect. 12, p. 54, *post*.

(2) Where a defective has been so placed in an institution for defectives or under guardianship, the managers of the institution, or the person under whose guardianship he has been placed, shall, within seven days after his reception, send to the Board of Control hereinafter constituted (in this Act referred to as the Board) notice of his reception and such other particulars as may be prescribed.

Notice of reception and prescribed particulars.—*I.e.*, prescribed by regulations made under this Act (*see* sects. 20, 71, pp. 71, 179, *post*).

4. Power to deal with Defectives otherwise than at instance of Parent or Guardian.—A defective subject to be dealt with under this Act otherwise than under paragraph (a) of subsection (1) of section two of this Act may so be dealt with—

“**Subject to be dealt with otherwise.**”—This provision enables a parent or guardian to obtain an order of a judicial authority in the case of any defective who may be dealt with under sect. 2 (1) (a), if such defective is also subject to be dealt with under sect. 2 (1) (b). Sect. 5 (1), *post*, provides that an order shall be obtainable by “any relative or friend of the alleged defective,” and, while the definition of “relative” clearly includes the parent (*see* sect. 71, p. 179, *post*), the word “friend,” though not defined in the Act, it is submitted, may include a guardian. *See also* provisoes to sect. 6 (3), p. 37, *post*, as to the consent of the parent or guardian to an order made on a petition not presented by a parent or guardian.

As to the person who is to be regarded as the “parent or guardian” of a defective, *see* note to sect. 2 (1) (a), p. 25, *ante*.

Variation of orders.—*See* sect. 7, p. 39, *post*.

(a) under an order made by a judicial authority on a petition presented under this Act; or

Judicial authority.—*See* sect. 19, p. 70, *post*.

Petition under this Act.—*See* sects. 5, 6, pp. 35—38, *post*.

- (b) under an order of a court, in the case of a defective found guilty of a criminal offence, punishable in the case of an adult with imprisonment or penal servitude, or liable to be ordered to be sent to an industrial school; or

Procedure by Criminal Courts.—*See* sect. 8, p. 40, *post*.

- (c) under an order of the Secretary of State, in the case of a defective detained in a prison, criminal lunatic asylum, reformatory or industrial school, place of detention, or inebriate reformatory;

Order of Secretary of State.—*See* sect. 9, p. 47, *post*.

but no such order shall be made except in the circumstances and in the manner hereinafter specified.

Requirements as to the making of Orders.

5. Presentation of Petitions.]—(1) An order of a judicial authority under this Act shall be obtainable upon a private application by petition made by any relative or friend of the alleged defective, or by any officer of the local authority under this Act authorised in that behalf.

Judicial authority.—*See* definition, sect. 19, p. 70, *post*.

Relative.—*See* definition, sect. 71, p. 179, *post*. The expression includes the husband or wife of the defective.

Officer of the local authority.—*I.e.*, a duly authorised officer of the county or county borough council (sect. 27). *See* sects. 62, 63, pp. 168, 169, *post*, as to protection of officers and persons putting the Act into force; *see also* sect. 30 (g), p. 91, *post*, as to general powers and duties of the county and county borough councils, subject to the provisos to that section.

(2) Every petition shall be accompanied by two medical certificates, one of which shall be signed by a medical practitioner approved for the purpose by the local authority or the Board, or a certificate that a medical examination was impracticable, and by a statutory declaration made by the

petitioner and by at least one other person (who may be one of the persons who gave a medical certificate) stating—

Certificates and declaration.—These must be in the forms prescribed by the regulations.

- (a) that the person to whom the petition relates is a defective within the meaning of this Act, and the class of defectives to which he is alleged to belong; and

Defective . . . class.—See sect. 1, p. 20, *ante*.

- (b) that that person is subject to be dealt with under this Act, and the circumstances which render him so subject; and

Person subject to be dealt with.—See sect. 2 (1) (b), p. 26, *ante*.

- (c) whether or not a petition under this Act, or a petition for a reception order under the Lunacy Acts, 1890 to 1911, has previously been presented concerning that person, and, if such a petition has been presented, the date thereof and the result of the proceedings thereon; and

Petition under Lunacy Acts.—See Lunacy Act, 1890 (53 Vict. c. 5), ss. 4—6; App., pp. 185, 186, *post*.

- (d) if the petition is accompanied by a certificate that a medical examination was impracticable, the circumstances which rendered it impracticable.

(3) If a petition is not presented by a relative or by an officer of the local authority, it shall contain a statement of the reasons why the petition is not presented by a relative, and of the connection of the petitioner with the person to whom the petition relates and the circumstances under which he presents the petition.

“**Relative.**”—See definition, sect. 71, p. 179, *post*.

“**Officer of the local authority.**”—See note to sub-sect. (1), p. 33, *supra*.

“**Statement of reasons.**”—The statement will be required in the case of a petition presented by any friend who is not a relative, including any person who is the guardian of the alleged defective, or, in the case of a petition presented by direction of the Board of Control, under sub-sect. (4), *infra*.

(4) Where the Board are satisfied that a petition under this section ought to be presented concerning any person, and that the local authority have refused or neglected to cause a petition to be presented, they may direct an inspector or other officer to present a petition, and this section shall apply accordingly.

Where the Board are satisfied.—It is to be observed that the Board of Control can only take action under this sub-section in a case of refusal or neglect by the local authority. Sect. 30, p. 87, *post*, which sets forth the general powers and duties of local authorities under the Act, by proviso (i) enables a local authority to refuse to deal with cases of defectives under circumstances therein mentioned. *See also* provisos (ii) to (iv) of that section relieving local authorities from any duties in regard to certain defectives.

May direct an inspector or other officer.—The directions so given will authorise the inspector or other officer of the Board of Control to take the necessary steps, and obtain the necessary certificates and statutory declaration. The statement of reasons mentioned in sub-sect. (3), p. 34, *supra*, must be included in the petition.

6. Procedure on hearing Petitions.]—(1) Upon the presentation of the petition and such documents as aforesaid, the judicial authority shall either visit the person to whom the petition relates or summon him to appear before him.

Upon the presentation of the petition.—The judicial authority to whom the petition is presented is required to see the alleged defective either by visiting the person, or by the appearance of the person in answer to a summons.

“**Documents as aforesaid.**”—*See* sect. 5 (2), p. 33, *ante*.

(2) Proceedings before the judicial authority may, in any case if the judicial authority thinks fit, and shall, if so desired by the person to whom the petition relates, be con-

ducted in private, and in that case no one except the petitioner, the person to whom the petition relates, his parents or guardian and any two persons appointed for the purpose by the person to whom the petition relates, or by his parents or guardian, and the persons signing the medical certificates and the statutory declaration accompanying the petition shall, without leave of the judicial authority, be allowed to be present.

Proceedings before the judicial authority.—The judicial authority has the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, costs and otherwise, as if he were acting in the exercise of his ordinary jurisdiction (*see* sect. 19 (2), p. 71, *post*).

Proceedings in private.—In the case of a request by the alleged defective named in the petition, the proceedings upon the petition must be conducted in private. It is not left to the discretion of the judicial authority whether the request of the alleged defective be granted, but it is in the discretion of the judicial authority to decide as to the presence of any other person than those named in the sub-section, *e.g.*, such other person as may be required to give evidence touching the antecedents of the alleged defective.

(3) If the judicial authority is satisfied that the person to whom the petition relates is a defective and is also satisfied that he is subject to be dealt with under this Act, the judicial authority may, if he thinks it desirable to do so in the interests of such person, make an order either ordering him to be sent to an institution the managers of which are willing to receive him, or appointing a suitable person to be his guardian, and the order shall state the class of defectives to which he belongs, and the circumstances which render him subject to be dealt with under this Act:

“**Defective**” subject to be dealt with.—*See* sects. 1, 2, pp. 20—30, *ante*.

“**Order.**”—An order of a judicial authority will be made in one of the forms prescribed by the regulations of the Secretary of State.

“**To be sent to an institution.**”—*See* definition, sect. 71, also sects. 35—37, pp. 109—111, *post*. A “defective” may be ordered to

be sent to a "certified house" as defined by sect. 71, p. 181, *post*, when the petition has been presented by a relative or friend (*see* sect. 49 (2), p. 145, *post*); but he cannot be ordered to be sent to an "approved home" as defined by sect. 71, p. 181, *post* (*see* sect. 50 (2), p. 148, *post*).

Effect and duration of orders.—*See* sects. 10, 11, pp. 50—54, *post*.

Protection of officers and persons putting Act in force.—*See* sects. 62, 63, pp. 168, 169, *post*.

Provided that—

- (a) where the petition is not presented by the parent or guardian, the order shall not be made without the consent in writing of the parent or guardian, unless it is proved to the satisfaction of the judicial authority that such consent is unreasonably withheld, or that the parent or guardian cannot be found, but consent shall not be deemed to be unreasonably withheld if withheld with the *bonâ fide* intention of benefiting the defective; and

Consent in writing of "parent or guardian."—*See* note to sect. 2 (1) (a), pp. 25, 26, *ante*. Where there is a known parent or guardian of the "alleged defective," notice of the proceedings must be given to such person, and a reasonable time must elapse, allowing for absence from home and other circumstances, before it can be assumed that the consent is "unreasonably withheld," or that the parent or guardian "cannot be found." There is no absolute direction that the parent or guardian is to be given an opportunity of being present at the proceedings before the judicial authority, but it is clearly intended that when possible such opportunity must be given. Nevertheless, if it is known that the parent or guardian has deserted the alleged defective and gone abroad, without leaving an address, it is submitted that it may be generally assumed such person "cannot be found" within the meaning of the proviso.

- (b) nothing in this section shall prevent an order being made, notwithstanding that the person to whom the petition relates does not appear to the judicial authority to belong to the class of defectives to

which he is in the petition alleged to belong, if the judicial authority is satisfied that he is a defective.

“If the judicial authority is satisfied.”—It is submitted that this proviso only relates to the description of the alleged defective in the petition, and does not get rid of the necessity for obedience to the requirements of proviso (a), *supra*.

“Class of defectives.”—*See* sect. 1, p. 20, *ante*.

“That he is a defective.”—*I.e.*, a defective within the meaning of the Act.

(4) If the judicial authority is not satisfied that the person to whom the petition relates is a defective, and subject to be dealt with under this Act, or that it is desirable in the interests of such person that an order should be made, the judicial authority may, if he thinks fit, adjourn the case for a period not exceeding fourteen days for further evidence or information, and may order that the person to whom the petition relates shall submit himself to medical examination, or may dismiss the petition:

Provided that, unless the petition is dismissed, the judicial authority shall order a medical examination in any case where the petition was accompanied by a certificate that a medical examination was impracticable.

Adjournment of proceedings.—The judicial authority is empowered to adjourn the proceedings upon the hearing of a petition to any day up to and including the fourteenth day after the day of hearing.

It is, however, a question of great doubt whether there is any power to detain an alleged defective during an adjournment, for even in a case where there is power to remove a defective to a place of safety under sect. 15, p. 62, *post*, there is power only to detain the defective until a petition can be *presented*. *See*, however, express power of detention conferred upon a criminal Court by sect. 8 (3), p. 45, *post*, in cases of persons charged with offences.

The medical examination to which the alleged defective may be ordered to submit himself will be a further examination by an independent practitioner, inasmuch as there will already have been two medical certificates, except where it has been certified that a medical examination was impracticable (*see* sect. 5 (2), p. 33, *ante*).

7. Variation of Orders.]—(1) Where an order has been made that a defective be placed under guardianship the judicial authority which made the order, or any other judicial authority, or, where the original order was not made by a judicial authority, any judicial authority may, on application being made for the purpose by the guardian or by the Board or by the local authority, and on being satisfied that the case is or has become one unsuitable for guardianship, order that the defective be sent to an institution.

Defectives under guardianship.—As to the effect of an order that a defective be placed under guardianship, and duration of detention under orders, *see* sects. 10, 11, pp. 50—54, *post*.

Orders not made by judicial authorities.—*I.e.*, made by a criminal Court under sect. 8, p. 40, *post*, or by the Secretary of State under sect. 9, p. 47, *post*.

“Application by the guardian.”—*I.e.*, the guardian who was appointed as such by the original order.

“Institution.”—*See* note to sect. 6 (3), p. 36, *ante*.

(2) A person appointed to be guardian of a defective may, on the application of the local authority or of the Board or of any other person who appears to be interested, be removed from his office by any such judicial authority as aforesaid, and, where a person appointed to be guardian of a defective dies, or resigns his office, or is removed from his office, such judicial authority as aforesaid may, on the like application, appoint a suitable person to act in his stead.

Appointed to be guardian of a defective.—*I.e.*, appointed by order of a judicial authority, or Court, or the Secretary of State, under and for the purposes of the Act.

“Other person . . . interested.”—*E.g.*, the parent, or guardian, or relative or friend, who was concerned in the original appointment.

(3) An order under this section shall not be made without giving to the local authority and, where practicable, to the relative or other person who presented the original petition

and to the parent or guardian of the defective, an opportunity of being heard.

Notice of application to vary an order.—Notice must be given to the local authority of the intention to apply for the variation of a guardianship order, whether the original order was obtained upon the petition of the local authority, or by a relative or friend of the defective. The section does not, however, indicate whether notice is to be given to the local authority of the place wherein the defective is living at the time of the application, or to the local authority comprising the place in which the original order was made.

Parent or guardian.—*See* note to sect. 2 (1) (a), p. 25, *ante*. Notice must also be given to the parent or guardian, where practicable, upon any application to vary an original guardianship order, but the consent of the parent is not required, under this sub-section, to obtain a variation of the original order.

8. *Procedure in Cases of Persons guilty of Offences, &c.*]

—(1) On the conviction by a Court of competent jurisdiction of any person of any criminal offence punishable in the case of an adult with penal servitude or imprisonment, or on a child brought before a Court under section fifty-eight of the Children Act, 1908, being found liable to be sent to an industrial school, the Court, if satisfied on medical evidence that he is a defective within the meaning of this Act, may either—

On conviction, &c.—*See*, however, proviso at the end of this sub-section; also sub-sect. (4), p. 45, *infra*.

Children Act, 1908, s. 58.—The following are the provisions of this section:—

Children liable to be sent to industrial schools.—(1) Any person may bring before a petty sessional Court any person apparently under the age of fourteen years who—

- (a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street, premises or place for the purpose of so begging or receiving alms; or
- (b) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wan-

- dering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship; or
- (c) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing penal servitude or imprisonment; or
 - (d) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
 - (e) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section four or section five of the Criminal Law Amendment Act, 1885, in respect of any of his daughters, whether legitimate or illegitimate; or
 - (f) frequents the company of any reputed thief, or of any common or reputed prostitute; or
 - (g) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child,

and the Court before which a person is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient so to deal with him, may order him to be sent to a certified industrial school. Provided that a child shall not be treated as coming within the description contained in paragraph (f) if the only common or reputed prostitute whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination.

(2) Where a child apparently under the age of twelve years is charged before a Court of assize or quarter sessions or a petty sessional Court with an offence punishable in the case of an adult by penal servitude or a less punishment, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school.

(3) Where a child, apparently of the age of twelve or thirteen years, who has not previously been convicted, is charged before a petty sessional Court with an offence punishable in the case of an adult by penal servitude or a less punishment, and the Court is satisfied that the child should be sent to a certified school but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified

industrial school, the Court may order the child to be sent to a certified industrial school, having previously ascertained that the managers are willing to receive the child:

Provided that the Secretary of State may, on the application of the managers of the industrial school, by order transfer the child to a certified reformatory school.

(4) Where the parent or guardian of a child proves to a petty sessional Court that he is unable to control the child, and that he desires the child to be sent to an industrial school under this Part of this Act, the Court, if satisfied on inquiry that it is expedient so to deal with the child, and that the parent or guardian understands the results which will follow, may order him to be sent to an industrial school:

Provided that, if the Court thinks that it is expedient that the child instead of being sent to a certified industrial school should be placed under the supervision of a probation officer, the Court may deal with him in like manner as, if he had been charged with an offence, the Court might have dealt with him under the Probation of Offenders Act, 1907, so, however, that the recognisance on entering into which he is discharged shall bind him to appear for having a detention order made against him.

(5) Where the guardians of a poor law union or the managers of a district poor law school satisfy a petty sessional Court that any child maintained in a workhouse or district poor law school is refractory or is the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, and that it is desirable that the child be sent to an industrial school under this Part of this Act, the Court may, if satisfied that it is expedient so to deal with the child, order him to be sent to a certified industrial school.

(6) A petty sessional Court may, on the complaint of a local education authority, made in accordance with the provisions of section twelve of the Elementary Education Act, 1876, for the purpose of enforcing an attendance order, order a child to be sent to a certified industrial school as provided in that section:

Provided that, if upon any such complaint it appears to the Court that the child comes within one of the descriptions mentioned in sub-section one of this section, the Court may, on the application of the local education authority, proceed under that sub-section and not under this sub-section or section twelve of the Elementary Education Act, 1876.

(7) Where under this section a Court is empowered to order a child to be sent to a certified industrial school the Court, in lieu of ordering him to be so sent, may in accordance with the provisions

in Part II. of this Act, make an order for the committal of the child to the care of a relative or other fit person named by the Court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

(8) It shall be the duty of the police authority to take proceedings under sub-section one of this section as respects any child in their district who appears to the authority to come within one of the descriptions mentioned in that sub-section, unless—

- (a) the case is one within the cognisance of the local education authority and that authority decide themselves to take the proceedings; or
- (b) proceedings are being taken by some other person; or
- (c) the police authority are satisfied that the taking of proceedings is undesirable in the interests of the child.

Industrial school.—This expression, as used in the Children Act, 1908, means “a school for the industrial training of children, in which children are lodged, clothed and fed, as well as taught” (*ibid.* sect. 44).

Court, if satisfied on medical evidence.—It would appear that the evidence of only one medical practitioner, *e.g.*, the gaol doctor, that the person or child is a “defective” may be accepted by the Court, but further medical or other evidence may be called (*see* sub-sects. (2), (5), pp. 45, 46, *infra*).

A defective within the meaning of the Act.—*See* sect. 1, p. 20, *ante*.

- (a) postpone passing sentence or making an order for committal to an industrial school, and direct that a petition be presented to a judicial authority under this Act with a view to obtaining an order that he be sent to an institution or placed under guardianship; or

Court may direct presentation of petition.—Notice will have been given by the police authority to the local authority, under sub-sect. (5), p. 46, *infra*, that the person charged appears to be a “defective,” and the local authority will accordingly usually be represented by an officer present in Court when the alleged defective is about to be tried. Notice will also have been given to the person charged, and to his parent or guardian, if known. The Act is silent as to whom the Court may give its direction for presentation of a petition, but it may be assumed that such direction will be given to the officer of the local authority.

A petition presented by direction of the Court will be subject to the formalities as to certificates, notices, &c., as are required by sects. 5, 6, pp. 33—38, *ante*.

As to detention pending the presentation of such petition and adjudication thereof, *see* sub-sect. (3), p. 45, *infra*.

(b) in lieu of passing sentence or making an order for committal to an industrial school, itself make any order which if a petition had been duly presented under this Act the judicial authority might have made, which order shall have the like effect as if it had been made by a judicial authority on a petition under this Act:

Court may itself make an order.—The Court may act either on evidence given during the trial or other proceedings, or may call for further or other evidence (sub-sect. (2), p. 45, *infra*), and if satisfied on medical evidence that the person or child is a “defective,” may make an order such as a judicial authority may make under sect. 6 (3), p. 36, *supra*, which order will have effect as provided by sects. 10, 11, pp. 50, 51, *post*.

Variation of orders.—*See* sect. 7, p. 39, *ante*.

Provided that, if the Court is a Court of summary jurisdiction and the case is one which the Court has power to deal with summarily, the Court, if it finds that the charge is proved, may give such directions or make such order as aforesaid without proceeding to a conviction, and such a person shall for the purposes of this Act be deemed to be a person found guilty of an offence.

Found guilty of an offence.—This provision appears to have been necessary in order that a person found by the Court to be a “defective” within sect. 1, p. 20, *ante*, may be rendered liable to be dealt with under the Act as provided by sect. 2 (1) (b) (ii), p. 26, *ante*.

Responsibility of local authority.—By sect. 43 (1), p. 126, *post*, it is provided that the council of the county or county borough in which the person resided, to be specified in the order of the Court (as to the determination of which, *see* sect. 44 (1), (3), (4), *post*), will be responsible for providing the necessary accommodation, or

for making provision for the guardianship of the person, and by sect. 43 (2), such council is to have an opportunity of being heard upon the question of providing accommodation for the defective in an institution provided by the council.

Contributions by Treasury.—It is clearly intended, though no specific provision is made in the Act for the payment by the State of any part of the expenses of maintenance, &c. of a defective in respect of whom there has been an order of a Court or judicial authority after having been found guilty of an offence, or having been ordered or found liable to be ordered to be sent to an industrial school under sect. 8, that the local authority responsible for the defective shall be reimbursed by the Exchequer to the extent of one half of the cost (*see* sects. 30, proviso (i), 47, proviso, pp. 91, 141, *post*).

(2) The Court may act either on the evidence given during the trial or other proceedings, or may call for further medical or other evidence.

(3) Where the Court so directs a petition to be presented against a person, it may order him to be detained in an institution for defectives or in a place of safety for such time as is required for the presentation of the petition and the adjudication thereof.

Detention by order of Court.—This sub-section fully provides for the detention of an alleged defective not only until a petition can be presented, but until the same has been adjudicated. In the case of an alleged defective who is the object of a petition to a judicial authority under sect. 5, p. 33, *supra*, there appears to be no provision for detention, except such as may be afforded by his being removed to a place of safety under sect. 15, p. 62, *post*, which only provides for detention *until a petition under this Act can be presented* (*see* note to sect. 6 (4), p. 38, *supra*).

Institution . . . place of safety.—*See* definitions of these terms in sect. 71, pp. 179, 180, *post*; also the provisions of sects. 15, 35—37, 49 (2), 67 (2), pp. 62, 109—111, 145, 174, *post*.

An alleged defective could not under this sub-section, be sent to a certified house or an approved home (*see* sect. 49 (2), 50, pp. 145, 147, *post*).

(4) Where it appears to any Court of summary jurisdiction by which a person charged with an offence is remanded or committed for trial that such person is a defective, the

Court may order that pending the further hearing or trial he shall be detained in an institution for defectives, or be placed under the guardianship of any person on that person entering into a recognisance for his appearance.

Detention during and on committal for trial.—It is to be noted that this sub-section does not empower the Court to send the defective to a "place of safety" (*see* definition, sect. 71, p. 179, *post*).

The provision of places of safety is only for persons who appear to be defectives, and in regard to whom it is intended to present a petition to a judicial authority.

The object of the sub-section appears to be to provide for the treatment *ab initio* of the person charged as a defective, where the Court has satisfied itself, under sub-sect. (1), that the person charged is a defective, and would be prepared to make an order for detention or placing under guardianship if the criminal proceedings were at an end.

Institution for defectives.—*See* definition, sect. 71, p. 180, *post*, also sects. 35—37, pp. 109—111, *post*. The defective cannot be ordered to be sent to an approved home (*see* sect. 50, p. 147, *post*).

Responsibility of local authority.—*See* note to sub-sect. (1), proviso, p. 44, *supra*.

Contributions by Treasury.—It would appear that the local authority would be responsible for the expenses of maintenance of any person temporarily detained under this sub-section, but that such authority would be entitled to a share of the State grant of 150,000*l.* provided under sect. 47, p. 141, *post*, in part repayment of such expenses.

(5) Where it appears to the police authority that any person charged with an offence is a defective, they shall communicate with the local authority, and it shall be the duty of the police authority to bring before the Court such evidence as to his mental condition as may be available:

Provided that, where it is intended to bring such evidence before the Court, the police authority shall give notice of the intention to the person charged, and to his parent or guardian, if known.

Duties of police authorities.—The police must communicate

with the local authority of the district in which the person is charged, and such authority will thus be given an opportunity of being represented at the hearing before the Court.

A similar opportunity must be given to the parent or guardian of the alleged defective, where possible, so that the Court may be in possession of all available information as to the history of the case, and the parent or guardian may, if he so desires, be enabled to offer to make suitable provision for the prisoner, if discharged.

Parent or guardian.—See note to sect. 2 (1) (a), p. 25, *ante*.

9. Procedure in case of Defectives undergoing Imprisonment, &c.]—Where the Secretary of State is satisfied from the certificate of two duly qualified medical practitioners that any person who is undergoing imprisonment (except imprisonment under civil process) or penal servitude, or is undergoing detention in a place of detention by order of a Court, or in a reformatory or industrial school or in an inebriate reformatory, or who is detained in a criminal lunatic asylum, is a defective, the Secretary of State may order that he be transferred therefrom and sent to an institution for defectives, the managers of which are willing to receive him, or that he be placed under guardianship, and any order so made shall have the like effect as if it had been made by a judicial authority on petition under this Act.

“Certificate of two . . . practitioners.”—Only one certificate, which will be in the form prescribed by the regulations, is necessary, provided it is signed by both the medical practitioners.

Order for transfer by Secretary of State.—The provisions of this section carry out one of the reforms which have been urgently pressed by the Prison Commission, governors of gaols, and many others who have had experience of the existing evils attending the confinement in custody, along with ordinary offenders, of mentally defective persons who have been found guilty of crime. It is to be noted, however, that the section provides for somewhat different procedure to that suggested by the Royal Commission on the Feeble-minded, who recommended in their Report as follows:—
“That subject to the approval of the Secretary of State, any officer having in custody any person under sentence or order of detention, shall at any time during detention hand over such person if certified to be mentally defective, to the care of the committee responsible

for him, and it shall be the duty of the committee to maintain that mentally defective person in a suitable institution."

Shortly stated, the Secretary of State may make an order in the case of a person who he is satisfied is a defective within sect. 1 of the Act, and who, in addition, is a person undergoing detention in prison or elsewhere for some criminal offence, or is a child who is undergoing detention under the Children Act, 1908 (8 Edw. 7, c. 67).

Places of detention.—Sect. 108 of the Children Act, 1908 (8 Edw. 7, c. 67), requires the provision of such places of detention by the police authorities for every petty sessional division within their district as may be required for the purposes of the Act, and the keeping of a register of the places of detention so provided by them. Sects. 102—104 of the same Act place restrictions on the punishment of children and young persons under the age of sixteen years, and provide for their detention in the case of certain crimes. Sect. 106 provides for their custody in a place of detention, as follows:—"Where a child or young person is convicted of an offence punishable, in the case of an adult, with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, and the Court considers that none of the other methods in which the case may legally be dealt with is suitable, the Court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under this Part of this Act, and named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Part of this Act, be sentenced to imprisonment or committed to prison, nor in any case exceeding one month."

Reformatory school.—This term, as defined in sect. 44 of the Children Act, 1908, means "a school for the industrial training of youthful offenders, in which youthful offenders are lodged, clothed and fed, as well as taught"; and by sect. 57 (1), of such Act it is provided that—"Where a youthful offender, who, in the opinion of the Court before which he is charged, is twelve years of age or upwards, but less than sixteen years of age, is convicted, whether on indictment, or by a petty sessional Court, of an offence punishable, in the case of an adult, with penal servitude or imprisonment, the Court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be sent to a certified reformatory school: Provided that where the offender is ordered to be sent to a certified reformatory school, he shall not in addition be sentenced to imprisonment."

Industrial schools.—See definition in note to sect. 2 (1) (b), p. 27, *ante*; and as to children liable to be sent to such schools, see note to sect. 8 (1), p. 40, *ante*.

Detention in inebriate reformatory.—Under the Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 1, “where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the Court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is or is found by the jury to be a habitual drunkard, the Court may, in addition to, or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him.” Sect. 2 of the Act provides also for the detention of a person who, within twelve months preceding the date of the commission of any of the offences of drunkenness mentioned in the First Schedule to the Act, has been convicted summarily at least three times of any of such offences, for a term not exceeding three years.

Detention in criminal lunatic asylum.—This section does not provide for orders being made for the transfer of persons not being criminals who become defectives while being detained in institutions for lunatics. There is a special provision in regard to such persons in sect. 16, p. 65, *post*, under which section defectives may also be transferred from institutions for defectives to institutions for lunatics.

The statutes governing the detention of criminal lunatics are set out in the note to sect. 2 (1) (b), p. 28, *ante*, wherein are also set out references to the provisions of the Lunacy Act under which ordinary lunatics are detained.

Institution for defectives.—See sect. 71, p. 180, *post*; also sects. 35—37, pp. 109—111, *post*, sect. 49 (2), p. 145, *post*, and sect. 67 (2), p. 174, *post*.

A defective cannot be ordered to be sent to an approved home (*see* sect. 50, p. 147, *post*).

Effect of orders and duration of detention thereunder.—*See* sects. 10, 11, pp. 50—54, *post*.

Responsibility of local authority.—By sect. 43 (1), p. 126, *post*, it is provided that the council of the county or county borough in which the person resided (as to the determination of which area in criminal cases, *see also* sect. 44) will be responsible for providing the necessary accommodation, or for making provision for his

guardianship; but by sect. 43 (2) such council must have an opportunity of being heard before an order is made, or, if the order is made by the Secretary of State, of making representations to him upon the question of providing accommodation for the defective.

Contributions by Treasury.—It is clearly intended, though no specific provision is made in the Act for the payment by the State of any part of the expenses of maintenance, &c. of a defective in respect of whom the Secretary of State makes an order under sect. 9, that the local authority responsible for the defective shall be reimbursed by the Exchequer to the extent of one-half of the expense of such person (*see* sects. 30, proviso (i), 47, proviso, pp. 91, 141, *post*).

Effect and Duration of Orders, &c.

10. Effect of Orders.—(1) An order that a defective be sent to an institution shall authorise the conveyance of that person to and his reception in the institution mentioned in the order, at any time within fourteen days (or, if the person is in a place of safety, within twenty-one days) after the date of the order, and his detention in that institution for such period as is hereinafter mentioned, and he shall be liable to be detained in the institution accordingly.

Conveyance to institution.—This sub-section only refers to the case of any person who has been adjudged to be a defective subject to be dealt with under the Act (*see* sect. 2 (1), p. 25, *supra*), and has been ordered to be sent to an institution under sects. 6 (3), 7 (1), 8 (1) (b), or 9, pp. 36—47, *ante*.

No authority is given to convey an alleged defective to an institution, or to receive him therein during the adjournment of the hearing of a petition under sect. 6 (4), p. 38, *ante*, though in such a case he might, perhaps, be conveyed to and received in a "place of safety" under sect. 15, p. 62, *post*. As to the case of an alleged defective, in respect of whom a Court has directed the presentation of a petition, *see* sect. 8 (4), p. 45, *ante*.

The institution must be named in the reception order.

Time for conveyance.—A reception order will remain in force, for the purpose of conveying the defective to an institution only, until and including the fourteenth day after the date when it was made, but where a defective is already an inmate of a place of safety (*see* definition, sect. 71), the conveyance of the defective to the institution named in the order may take place at any time up to and including the twenty-first day from the date of the order.

Period of detention.—The temporary detention of an alleged defective sent to an institution by an order of a Court is provided for by sect. 8 (3), p. 45, *supra*.

Protection of officers, &c.—*See* sects. 62, 63, pp. 168, 169, *post*.

(2) An order that a defective be placed under guardianship shall, subject to regulations made by the Secretary of State, confer on the person named in the order as guardian such powers as would have been exerciseable if he had been the father of the defective and the defective had been under the age of fourteen, and the guardian shall also have power to warn persons against supplying intoxicants to him or for his use.

Under guardianship.—*See* note to sect. 2 (1), p. 25, *ante*.

Powers of father over child under fourteen.—These powers include the right to keep the child in order and obedience, to impose reasonable restraints upon him, to lawfully correct him in a reasonable manner, and to retain the custody and control of the child.

Power to warn against supply of intoxicants.—The term "intoxicants" is defined in sect. 71, p. 179, *post*. As to the offence of supplying intoxicants to a defective contrary to warning, *see also* sect. 52, p. 154, *post*. The order placing the defective under guardianship will be a sufficient authority to satisfy any requisition under the proviso to sect. 52.

11. Duration of Detention under Orders.]—(1) An order made under this Act that a defective be sent to an institution or placed under guardianship shall expire at the end of one year from its date, unless continued in manner hereinafter provided:

Provided that in the case of any institution the Board may by order direct that orders that persons be sent thereto shall, unless continued as hereinafter provided, expire on the quarter day next after the day on which the orders would have expired under the above provision.

Order made under this Act.—*See* sects. 6 (3), 7 (1) (b), 8 (1), 9. The section does not apply to orders made in regard to alleged defectives under sect. 3 (4) (*see* pp. 45, 46, *ante*).

Institution.—See definition, sect. 71, p. 180, *post*; also sects. 35—39, pp. 109—119, *post*, and sects. 49 (2), 67 (2), pp. 145, 174, *post*.

Discharge of defective before expiration of order.—As to the powers of Commissioners at any time to discharge any person detained in a “certified institution,” or “certified house,” or under guardianship under this Act, see sect. 25 (2), p. 78, *post*.

As to the powers and duties of visitors in respect of a defective attaining twenty-one years of age while under detention, see sub-sect. (2), proviso, and sub-sect. (3), *infra*.

(2) An order shall remain in force for a year after the date when under the preceding provisions of this section it would have expired, and thereafter for successive periods of five years, if at that date and at the end of each period of one and five years respectively the Board, after considering such special reports and certificate as is hereinafter mentioned and the report of any duly qualified medical practitioner who, at the request of the defective or his parent or guardian or any relative or friend, has made a medical examination of the defective and the means of care and supervision which would be available if the defective were discharged consider that the continuance of the order is required in his interests and make an order for the purpose:

Provided that, where a defective was, at the time of being sent to the institution or placed under guardianship, under twenty-one years of age, the case shall be reconsidered by the visitors appointed under this Act within three months after he attains the age of twenty-one years.

Periodical continuance of detention orders.—The first part of this sub-section is very similar to the provision in regard to reception orders under the Lunacy Acts (see App., pp. 203, 204, *post*).

The date of the detention order will be excluded in computing the time it remains in force (*conf. South Stafford Tramways v. Sickness, &c. Association* (1891), 60 L. J. Q. B. 47).

The Board of Control alone have power to continue the order of detention. See sub-sect. (5), p. 54, *infra*, as to evidence of such continuance.

Special reports and certificates.—See sub-sect. (4), p. 53, *infra*. The visitors must personally see the defective.

Parent or guardian . . . relative.—See definition, sect. 71, p. 179, *post*.

Visitors appointed under this Act.—See sect. 40, p. 120, *post*.

Defective attaining twenty-one years of age.—The proviso suggests the importance of correctly ascertaining the age of every defective at the time of the making of the original order.

(3) On such reconsideration the visitors shall visit the defective or summon him to attend before them and inquire into his mental condition and the means of care and supervision which would be available if he were discharged and into all the circumstances of the case, and, if it appears to them that further detention in an institution or under guardianship is no longer required in the interests of the defective himself, shall order him to be discharged:

Provided that, if the visitors do not order his discharge, the defective or his parent or guardian may, within fourteen days after the decision of the visitors has been communicated to the defective and his parent or guardian, appeal to the Board.

Procedure on reconsideration.—This procedure relates only, as required by the foregoing proviso, to defectives who have attained twenty-one, and it must be in accordance with the regulations of the Secretary of State made under sect. 20 (d), p. 71, *post*.

If the defective is summoned to attend before the visitors, it will be the duty of the guardian or other person having him under his care to provide the necessary facilities.

Action by visitors after inquiry.—The visitors are hereby enabled to order a defective to be discharged if they think fit, but if their decision is against such discharge, an appeal lies to the Board of Control within fourteen days after such decision has been communicated to the defective himself, and also to his parent or guardian (*see* definition, sect. 71, p. 179). Either the defective or his parent or guardian may appeal.

The procedure on appeals will be in accordance with the regulations made under sect. 20, p. 71, *post*.

(4) The special reports above mentioned shall be—

(a) A special report by the visitors made within one

month after having seen the defective as to his mental condition and the means of care and supervision which would be available if he were discharged, and stating whether, in the opinion of the visitors, the defective is still a proper person to be detained in his own interest in an institution or under guardianship; and

- (b) A special report as to the mental and bodily condition of the defective made, in the case of a person detained in an institution, by the medical officer of that institution, and in any other case by a duly qualified medical practitioner, and shall be accompanied by a certificate that the defective is still a proper person to be detained in his own interest in an institution or under guardianship, and the person sending the special report shall give to the Board such further information concerning the defective to whom the special report relates as they may require.

Special reports.—These special reports, which are to be considered by the visitors in dealing with defectives under sub-sect. (2), p. 52, *supra*, will be in the forms prescribed by the regulations made under sect. 20 (e), p. 71, *post*.

The report required under the above paragraph (a) will be made by the visitors, who shall have seen the defective, and must be made within one month of the interview.

Accompanied by a certificate.—The certificate will have to be given by the medical officer or other duly qualified medical practitioner making the special report. As to the special report (b) in the case of a certified house, *see* sect. 49 (2) (d), p. 147, *post*.

(5) A certificate under the hand of the secretary to the Board that an order has been continued to the date therein mentioned shall be sufficient evidence of the fact.

Secretary to the Board.—*I.e.*, the Board of Control, in whom alone are vested the powers of continuing such orders.

12. Duration of Detention not under Orders].—(1) Where a defective has been placed by his parent or guardian in an

institution or under guardianship, it shall be lawful for such parent or guardian to withdraw him from the institution or guardianship at any time on giving notice in writing for the purpose to the Board, unless the Board, after considering what means of care and supervision would be available if he were discharged, determine within fourteen days after receiving the notice that the further detention of the defective in the institution or under guardianship is required in the interests of the defective, and, where the Board have so determined, no further notice by the parent or guardian shall be allowed till after the expiration of six months from the last previous notice.

Parent or guardian.—See definition, sect. 71, p. 179, *post*; also note to sect. 2 (1) (a), p. 25, *ante*.

This section relates only to cases of defectives who have been dealt with under sect. 3, p. 31, *ante*.

Institution.—See definition, sect. 71, p. 180, *post*; also sects. 35—39, pp. 109—120, *post*. See also sect. 49 (2), p. 145, *post*, as to the application to certified homes and patients therein of the provisions of the Act relating to institutions and patients therein.

Withdrawal of defective.—It is to be noticed that the power of withdrawal is only given to the parent or guardian at whose instance the defective was originally dealt with. Fourteen days' notice is required to enable the Board of Control to veto the withdrawal if they so determine. Such fourteen days is to be reckoned exclusive of the day when the notice is given to the Board. If the decision of the Board is unfavourable, six months must elapse from the date of the previous notice before any further steps can be taken for the withdrawal of the defective.

See, however, sect. 25 (2), p. 78, *post*, as to the powers of the Commissioners to discharge at any time any person detained in a "certified institution," or "certified home," or under guardianship.

(2) Subject to the foregoing provisions of this section, a defective who has been placed by his parent or guardian in an institution or under guardianship may be detained in the institution or under guardianship, and the case shall be reconsidered by the Board at like intervals and by the visitors, as if he had been ordered to be sent to the institution or

placed under guardianship, and the provisions of the last foregoing section shall apply accordingly.

Detention not under orders.—The effect of this sub-section seems to be to authorise the detention of a defective coming within the class mentioned in sect. 2 (1) (a), p. 25, *ante*, at the instance of his parent or guardian, on compliance with the necessary formalities under sect. 3, p. 31, *ante*, for a period of one year in the first instance, and thereafter upon the certificate of the Board of Control given after considering the special reports and other documents required by sect. 11, pp. 51—54, *ante*, in the cases of defectives who have been detained under orders.

It is to be noticed that the term "institution" does not include "certified house" or "approved home" (*see* definitions, sect. 71, p. 181, *post*). Nevertheless, it is provided by sect. 49 (2), p. 145, *post*, that, subject to the provisos thereto, any defective who may be placed in an institution may be placed in a certified house, and that all the provisions of the Act relating to institutions and the patients therein shall apply to certified houses and the patients therein; so that there may be lawful "detention" against the will of a defective in a "certified house."

As regards "approved homes," it is, however, expressly provided that defectives *ordered* to be sent to institutions (under sects. 6—9, pp. 35—50, *supra*) may not be received or detained therein (*see* sect. 50 (2), p. 148, *post*); and no power of detention is expressly conferred by the Act in regard to defectives placed in approved homes, unless also placed under guardianship at the instance of a parent or guardian, under sect. 3, p. 31, *ante*.

(3) The managers of any certified institution, or house, or any approved home may discharge any defective placed there by his parent or guardian on giving one month's notice to the board and to the parent or guardian of the defective if known.

Discharge of defectives.—The discharge of a defective from an institution under this section may necessitate further proceedings for his detention.

By sect. 41 (1) (g), p. 124, *post*, the Secretary of State may make regulations for the discharge of patients from institutions. Provisions for the discharge of defectives from guardianship will be regulated under sect. 41 (1) (1).

Supplemental.

13. Power to recover Expenses.—(1) Where an order that a defective be sent to an institution or be placed under guardianship has been made under this Act, the judicial authority which made the order or any other judicial authority, or, where the order is not made by a judicial authority, any judicial authority, may, on the application of the petitioner, or of the managers of the institution or the guardian, as the case may be, or of an officer authorised by the local authority, make an order requiring the defective, or any person liable to maintain him, to contribute such sum towards the expenses of his maintenance in the institution or of his guardianship, and any charges incidental thereto, including the cost of his conveyance to the institution, and in the event of his death in the institution his funeral expenses, as, having regard to the ability of the defective or person liable to maintain him, seems reasonable.

Contribution orders.—This section, except as regards subsect. (4), is only applicable to cases of defectives who are ordered to be detained under sects. 6 (3), 7 (1), 8 (1), or 9, pp. 36, 39, 41, 47, *supra*. It is not applicable in the case of any defective in or ordered to be sent to a "certified house" (*see* sect. 49 (2) (c), p. 147, *post*); nor can an order be made under this Act for the recovery of expenses of alleged defectives detained under an order of a Court pending the presentation of a petition under sect. 8 (1) (a) or 8 (4), or in a place of safety under sect. 15, p. 62, *post*, except where an alleged defective is detained in a place of safety which is a workhouse (*see* sect. 15 (3), p. 63, *post*).

The procedure on applications for contribution orders will be in accordance with the regulations made by the Secretary of State under sect. 20 (c), p. 71, *post*.

It is conceived that contribution orders will, if possible, be applied for and made at the actual time of the hearing of a petition or charge, and the making of an order for detention, but that course cannot, obviously, always be adopted.

The power to make such orders is conferred only on judicial authorities, as defined by sect. 19, p. 70, *post*, and neither the judge, nor the Recorder or Chairman at Quarter Sessions, could

make such an order, even if prepared to do so, unless he were a judicial authority.

Where a detention order is made by a Court of summary jurisdiction, under sect. 5 (1), p. 33, *ante*, there may be the disability to make a contribution order, but in many cases it will be competent for such Court to make such an order, and it may be good policy to do so forthwith, though it may be necessary to vary or revoke such order at a later date, if circumstances make such a course desirable (*see* sub-sect. (3), p. 60, *infra*).

A contribution order may clearly be retrospective, and there seems nothing to prevent an order being made after detention.

Variation of trusts for maintenance of child or young person.—It is provided by sect. 127 of the Children Act, 1908 (8 Edw. 7, c. 67), as follows:—(1) Where a child or young person is by an order of any Court made under this Act removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the child or young person, the Court may order the whole or any part of the sums so payable under the trust to be paid to the person to whose care the child or young person is committed, to be applied by that person for the benefit of the child or young person in such manner as, having regard to the terms of the trust, the Court may direct.

(2) An appeal shall lie from an order of a Court of summary jurisdiction under this section to quarter sessions.

Applications for orders.—The application for a contribution order will be made according to the circumstances of each case, either by the petitioner, or the managers of the institution, or the appointed guardian, or an officer of the local authority responsible for providing accommodation for the defective.

Persons liable to contribute.—An order may be made requiring the defective, or any person liable to maintain him, including, in the case of an illegitimate defective under twenty-one years of age, subject to the provisions of sect. 14, p. 61, *post*, the putative father, and any other person cohabiting with the mother, to contribute towards the expenses.

As regards the liability of a defective who has property, it is clearly intended that the same shall be applied towards his maintenance under a detention order, and in this connection it is to be observed that the provisions of sect. 50, and Part IV. of the Lunacy Act, 1890, as amended (*see* App., pp. 210, 228, *post*), apply with respect to the management and administration of the estate of a defective in an institution or certified house, or under guardianship

(see sect. 64, p. 170, *post*). There is, however, no provision in this Act similar to sect. 299 of the Lunacy Act, 1890 (see App., p. 294, *post*).

The liability of other persons to contribute to the maintenance of defectives will depend upon the circumstances in each case, and may give rise to very difficult questions as to authority or implied authority for the supply of necessaries.

As regards persons having the custody, charge, or care of children under sixteen there is, however, a statutory duty to provide adequate food, clothing, medical aid, and lodging, or to take steps to procure the same to be provided under the Acts relating to the relief of the poor (*conf.* Children Act, 1908 (8 Edw. 7, c. 67), s. 12); and though the provisions of the Poor Law Acts creating liability of parents, &c. to maintain their children when impotent and unable to work, are not applicable to parents of defectives under the present Act, it seems clear that the father or mother, as the case may be, may usually be ordered to contribute according to ability.

It seems very doubtful, having regard to the concluding words of the sub-section, whether the words "person liable" can be taken to include a corporate body, *e.g.*, a board of guardians, for the purposes of obtaining a contribution order. The question of payment where a defective is chargeable to a board of guardians, it would seem, must be a matter of agreement between the guardians and the local authority.

Charges recoverable under order.—It is left to the discretion of the judicial authority to fix the amount of the contribution order in each particular case. Regard is, however, to be paid to any special expenses incidental to the maintenance of the defective, including the cost of his conveyance to the institution if he is ordered to be sent to an institution. No mention is made as to the cost of conveyance to the home of the person appointed as guardian, where the defective is ordered to be placed under guardianship, but it seems to be the intention that any expenses reasonably incurred in connection with the defective after an order has been made are to be taken into account.

As to expenses which have been held to be recoverable as a common law debt due to the guardians in respect of the maintenance of a pauper in a poor law infirmary, *conf.* *Islington Guardians v. Bigginden* (1910), 79 L. J. K. B. 246. It is not, however, to be clearly inferred from the provisions of sect. 13, p. 57, *supra*, that the whole of the items held to be recoverable in *Bigginden's Case* may be taken into account in fixing the amount of the contribution order in respect of a defective.

It does not appear that the costs connected with the presentation of a petition or adjudication thereof are chargeable against the defective or any person liable to maintain him; but sect. 15 (3), p. 63, *post*, provides for the recovery of the expenses incurred in respect of a person who, as an alleged defective, is placed in a workhouse as a "place of safety" until a petition can be presented.

(2) Any such order may, on the application of the managers of the institution in which the defective is for the time being detained, or of the guardian, or of an officer authorised by the local authority, be enforced against any property of the defective or person liable to maintain him, if made by a judge of county courts, in the same way as if it were a judgment of the county court, and, if made by any other judicial authority, as if it were an order for the payment of a civil debt made by a court of summary jurisdiction.

Enforcement of orders.—As to the enforcement of County Court judgments, *see* County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 146, 161, and the County Court Rules, 1903, Ord. XXV.; and as to the removal of an order of a County Court into the High Court, *ibid.*, sect. 151.

As to orders for recovery of sums declared by statute to be civil debts, *see* Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 34, 35, and Summary Jurisdiction Rules, 1886, rules 19—28.

(3) An order made under this section may be varied or revoked by the judicial authority which made it, or any other judicial authority.

Judicial authority.—*See* definition, sect. 19, p. 70, *post*.

(4) Where a defective has been placed by his parent or guardian in an institution or under guardianship, any sum which the parent or guardian has agreed in writing to contribute towards the expenses of the maintenance or guardianship of the defective shall be recoverable summarily as a civil debt.

Agreements to contribute.—This sub-section does not relate to contribution orders made by judicial authorities, but only to

agreements in writing made by parents or guardians in respect of defectives placed by them in institutions, certified houses, or approved homes, or under guardianship under the provisions of sect. 3, p. 31, *ante*.

These agreements must be duly stamped.

Recovery of agreed contributions.—*See* Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 34, 35, and Summary Jurisdiction Rules, 1886, rr. 19—28, as to recovery of sums declared by statute to be civil debts.

14. Provision as to Contribution Orders.—The persons liable to maintain a defective under the age of twenty-one against whom an order to contribute towards his maintenance may be made under this Act shall include in the case of illegitimacy his putative father and, if the judicial authority having cognisance of the case thinks fit, a person other than his putative father cohabiting with his mother: Provided that, where a defective is an illegitimate, and an affiliation order for his maintenance has previously been made on the application of his mother under the enactments relating to bastardy, the judicial authority shall not (unless in view of the special circumstances of the case he thinks it desirable) make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the affiliation order to be made to the local authority or such other person as may be named in the order, to be applied towards the maintenance of the defective.

Maintenance of illegitimate defectives.—This provision is in similar terms to sect. 125 of the Children Act, 1908 (8 Edw. 7, c. 67), as far as regards the creation of a liability upon a putative father, or a person cohabiting with the mother, to maintain an illegitimate defective.

A contribution cannot, apparently, be required under this section after the defective has attained twenty-one years of age.

It would appear that the judicial authority may, if it thinks fit, make a contribution order against both the putative father and a person (other than the putative father) who is cohabiting with the mother of the defective.

Affiliation order on application of mother.—The principal provisions as to orders in bastardy referred to in the text are

sects. 3 to 5 of the Bastardy Act, 1872 (35 & 36 Vict. c. 65), under which the justices may make an affiliation order charging the putative father with the payment of a sum not exceeding five shillings per week for the maintenance and education of the child until it attains the age of thirteen or sixteen years as the order may direct.

15. Power to remove to place of safety pending presentation of Petition.—(1) If any officer of the local authority authorised in that behalf or any constable finds neglected, abandoned, or without visible means of support or cruelly treated any person whom he has reasonable cause to believe to be a defective, he may take such person to a place of safety, and such person may be there detained until a petition under this Act can be presented.

Officer of local authority authorised.—Under sect. 30 of the Act, it is made the duty of the county and county borough councils, subject to Regulations, to ascertain what persons within their area are defectives subject to be dealt with under the Act otherwise than under sect. 2 (1) (a), p. 25, *ante*, and under sect. 30, paragraph (g), p. 91, *post*, sufficient officers can be appointed to assist the local authorities in the performance of their duties under the Act. The officers so appointed as inspectors will be authorised for the purposes of sect. 15. To such officers also will be afforded the protection from proceedings conferred by sect. 63 of the Act (*see* p. 169, *post*).

Place of safety.—*See* definition, sect. 71, p. 179, *post*.

Petition under this Act.—*See* sects. 5, 6, pp. 33—38, *ante*.

A petition in the case of a person taken to a place of safety under this section will usually be made on behalf of the local authority by an officer authorised for the purpose.

(2) If it appears to a justice on information on oath laid by an officer or other person authorised by the local authority that there is reasonable cause to believe that a defective is neglected or cruelly treated in any place within the jurisdiction of the justice, the justice may issue a warrant authorising any constable named therein, accompanied by the medical officer of the local authority or any other duly

qualified medical practitioner named in the warrant, to search for such person, and, if it is found that he is neglected or cruelly treated, and is apparently defective, to take him to and place him in a place of safety until a petition can be presented under this Act, and any constable authorised by such warrant may enter, and if need be by force, any house, building, or other place specified in the warrant, and may remove such person therefrom.

Information upon oath.—The Act does not require that the information shall be in writing. It may be laid by a person not an officer of the local authority if such person is authorised. What is “reasonable cause to believe” within the sub-section appears to be a matter in regard to which all concerned must use their discretion. At any rate, the justice may issue a search warrant if he thinks fit. The warrant will authorise the constable to search for the supposed neglected or cruelly treated defective, and if the medical evidence supports the double allegation of neglect or cruel treatment and mental defectiveness, also to take him to a place of safety for detention until a petition can be presented under sects. 5, 6, pp. 33—38, *ante*. The warrant will also be a sufficient authority to the constable to enter by force any premises therein specified, search for, and remove the defective therefrom.

The petition will usually be presented to the judicial authority by an authorised officer of the local authority.

Place of safety.—*See* definition, sect. 71, p. 179, *post*.

(3) Where the place to which such a person is taken is a workhouse, the master shall receive him into the workhouse if there is suitable accommodation therein, and any expenses incurred in respect of him shall be defrayed by the local authority, but shall, if an order is eventually made, be recoverable from the defective or any person liable to maintain him as if they were part of the expenses of his maintenance.

Reception of defective into workhouse.—The term “place of safety” is defined to include “any workhouse.” For meaning of “workhouse,” *see* note to the expression “place of safety” in sect. 71, p. 179, *post*. No difficulty, it is conceived, will ordinarily be placed in the way of the admission of an alleged defective brought

to a workhouse under this section, whenever there is accommodation, inasmuch as the local authority is thereby made liable for any expenses incurred in respect of the patient.

Where a Court directs a petition to be presented against a person who appears to be a defective, such Court may also order him to be detained in a "place of safety" for such time as is required for the presentation of the petition and the adjudication thereof (sect. 8 (3), p. 45, *ante*). It is not clear whether the expenses of maintenance will in such case be payable by the local authority, but payment thereof seems to be contemplated, having regard to the provisions of sect. 47, proviso (b), p. 142, *post*.

In any case, the local authority will be duly notified of the reception of the alleged defective whose detention in the workhouse is authorised by sub-sects. (1), (2), p. 62, *supra*, only until a petition can be presented.

As to the offence of inducing or knowingly assisting a person in a place of safety to escape, *see* sect. 53, p. 155, *post*.

Recovery of expenses from defective, &c.—*See* sects. 13, 14, pp. 57—62, *ante*, as to the recovery of expenses from a defective or any person liable to maintain him.

16. Transfers from Institutions for Defectives to Institutions for Lunatics and vice versâ.—(1) Where the mental condition of a person detained in an institution for defectives becomes or is found to be such that he ought to be transferred to an institution for lunatics, the Board, or the managers of the institution for defectives with the consent of the Board, shall cause such steps to be taken as may be necessary for having a reception order under the Lunacy Acts, 1890 to 1911, made in respect of him and for his removal to an institution for lunatics: Provided that, where such person has been placed in the institution by his parent or guardian, the Board or managers, as the case may be, shall not cause such steps to be taken until they have given the parent or guardian, wherever practicable, an opportunity of taking them himself.

Institution for defectives.—*See* definition, sect. 71, p. 180, *post*; also sect. 49 (2), p. 145, *post*, and sect. 67 (2), p. 174, *post*.

Institution for lunatics.—*I.e.*, an asylum, hospital, or licensed house (Lunacy Act, 1890, s. 341; App., p. 308, *post*).

Reception order under the Lunacy Acts.—*See* Lunacy Act, 1890, ss. 28—38; App., pp. 200—204, *post*.

Parent or guardian.—*See* definition, sect. 71, p. 179, *post*; also provisions of sect. 3, p. 31, *ante*. The parent or guardian, as the case may be, is to be notified of the circumstances and informed of the steps to be taken to effect the certification of the defective as a lunatic, and his removal to an institution for lunatics.

Liability for maintenance of defective certified as lunatic.—It appears clear that the provisions of the Lunacy Acts as to the chargeability of lunatics under Part X. of the Lunacy Act, 1890 (*see* App., p. 283 *et seq.*, *post*), will apply as soon as a defective is transferred to an institution for lunatics.

Unless he is made a private patient, the responsibility for payment of expenses of maintenance will then depend entirely upon the discovery of the status of irremovability (*ibid.*, sect. 294) or of the last legal settlement (*ibid.*, sect. 289) of the lunatic, and except where the lunatic has no settlement, or none can be found, the union or parish of irremovability or last legal settlement will become liable instead of the county or county borough which is responsible for the same person while he is a defective (*see* sect. 43, p. 126, *post*).

As to the chargeability and settlement of pauper lunatics, *see* "Poor Law Settlement and Removal," by the author of this volume, 2nd ed., 1913, p. 221 *et seq.*, Stevens & Sons, Ltd., 119, Chancery Lane, W.C.

(2) Where the mental condition of a person detained in an institution for lunatics is found to be such that he ought to be transferred to an institution for defectives, the Board, or the managers of the institution for lunatics with the consent of the Board, may cause such steps to be taken as may be necessary for having an order that he be sent to an institution for defectives made under this Act in respect of him and for his removal to such institution.

Order when certified lunatic becomes a "defective."—It will be necessary for a petition to be presented and the several formalities required by sects. 5, 6, pp. 33—38, *ante*, to be observed in order to effect the transfer.

The sub-section does not contemplate the making of an order for placing under guardianship a defective who has been confined as a lunatic. That course may, however, be subsequently adopted

by the Board of Control upon consideration of the special reports of the visitors required by sect. 11 (2), (4), pp. 52, 53, *ante*.

The local authority who will become responsible for providing for the alleged defective must have an opportunity of being heard before an order is made under this sub-section (*see* sect. 43 (2), p. 130, *post*).

Responsibility for lunatics transferred to institutions.

—The local authority responsible for providing accommodation, maintenance, &c. for a defective who has been transferred from an institution for lunatics to an institution for defectives will, it is submitted, be the county council or county borough council having jurisdiction over the area comprising the last place of residence of the lunatic before his confinement as a lunatic, unless the lunatic has, or might have been adjudged chargeable to a poor law authority in some other jurisdiction (*see* sect. 43 (1), p. 126, *post*).

As to the right of appeal of a council aggrieved by a decision as to the place of residence of any person, *see* sect. 44 (3), p. 133, *post*.

As to the general powers and duties of local authorities under the Act, *see* sect. 30, and proviso (i) to such section, pp. 87, 91, *post*.

(3) The Board may, subject to the approval of the Secretary of State, make regulations for carrying this section into effect.

Provision as to regulations.—*See* sect. 68, p. 176, *post*, as to the laying of regulations made under this Act before Parliament, and the effect of the regulations so made.

17. Provisions as to Religious Persuasion.—(1) The judicial authority, Court, or Secretary of State, in determining the institution to which a defective is to be sent under an order, shall endeavour to ascertain the religious persuasion to which the defective belongs, and the order shall, where practicable, specify the religious persuasion to which he appears to belong, and an institution conducted in accordance with that persuasion shall, where practicable, be selected.

Defective sent to an institution.—This section provides only for the cases of defectives ordered to be sent to institutions, and, in effect, applies to defectives the provisions relating to children sent to certified schools under the Children Act, 1908 (8 Edw. 7, c. 67), s. 66. As regards children under sixteen who have been

committed to the care of a relative or some other fit person by order of a Court under sect. 21 of the Children Act, 1908 (8 Edw. 7, c. 67), it is provided that in determining the person to whose care the child is committed, "the Court shall endeavour to ascertain the religious persuasion of the child, and shall, if possible, select a person of the same religious persuasion, or a person who gives such undertaking as seems to the Court sufficient that the child shall be brought up in accordance with its own religious persuasion, and such religious persuasion shall be specified in the order."

See also Custody of Children Act, 1891 (54 Vict. c. 3), s. 4, as to the power of the Court to make an order as to the religious bringing-up of a child in the case of an application by the parent for its production or custody being refused by the Court.

As to children sent to institutions, it is also enacted by the Poor Law Certified Schools Act, 1862 (25 & 26 Vict. c. 43), s. 9, that "no child shall be sent under this Act to any school which is conducted on the principles of a religious denomination to which such child does not belong."

Provision is also made by the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 14 (applied as regards illegitimates, orphans, and deserted children by the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 23), for educating children in the religion to which they belong. *See also* the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 8, and the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 12 (*see* App., p. 328, *post*).

Provision as to the keeping of a "creed register" of inmates of every workhouse, and the attendance of inmates at services of their own religion, is made by the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), ss. 16—22.

Institution.—*See* definition, sect. 71, p. 180, *post*; *also* sects. 35—39, 67 (2), *post*. As to the application of these provisions to certified houses and the patients therein, *see* sect. 49 (2), p. 145, *post*.

Determination of religious persuasion.—Although parents have no duty in law to provide any kind of religious instruction for their children, it is very firmly established that a father has during his life the right to determine the religion in which his children are to be brought up (*conf. Hawksworth v. Hawksworth* (1871), 40 L. J. Ch. 534; *Re Agar-Ellis, Agar Ellis v. Lascelles* (1884), 53 L. J. Ch. 10; *Re Scanlan (Infants)* (1888), 57 L. J. Ch. 718). After the death of the father the Court presumed the father's intention that the religious training of his children should

be continued in his faith (*conf. Hawksworth v. Hawksworth (ubi sup.)*); *Skinner v. Orde* (1871), L. R. 4 P. C. 60; *Re Newbery* (1866), 35 L. J. Ch. 330). So, where, under the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), the mother becomes the legal guardian of a child, she is bound, in the absence of special circumstances, to bring up the child in the religious persuasion of the father, though of a different faith herself (*conf. Re Scanlan (Infants) (ubi sup.)*); *Re McGrath (Infants)* (1893), 62 L. J. Ch. 208).

If the father has, however, handed over the absolute custody and control of his child, including the right to direct its religious education, under a deed of separation, the Court will enforce such agreement if it is for the benefit of the child (*Condon v. Vollum* (1888), 57 L. T. 154). So, where in consideration of the circumstances the Court are of opinion that the parent has abandoned or forfeited his right to direct his child's religious persuasion, they will give such directions as appear to be for the child's benefit and happiness (*conf. Hill v. Hill* (1862), 31 L. J. Ch. 505; *Re Agar-Ellis, Agar-Ellis v. Lascelles (ubi sup.)*).

Under sect. 4 of the Custody of Children Act, 1891 (54 Vict. c. 3), the Court may inquire into the religious opinion of a child, and will even examine the child itself (*Reg. v. Gyngall* (1893), 62 L. J. Q. B. 559; *Re Newton (Infants)* (1896), 65 L. J. Ch. 641); though the Court will disregard the opinion of a child of very tender age (*Re Newbery (ubi sup.)*; *Hawksworth v. Hawksworth (ubi sup.)*).

(2) A minister of the religious persuasion specified in the order as that to which the defective appears to belong may visit the defective at the institution on such days, at such times, and on such conditions as may be fixed by the Board, for the purpose of affording religious assistance and also for the purpose of instructing him in the principles of his religion.

(3) Where a defective is sent to an institution which is not conducted in accordance with the religious persuasion to which the defective belongs, the defective shall not be compelled to receive religious instruction or religious ministrations which are not in accordance with his religious persuasion, but shall, as far as practicable, have facilities for receiving religious instruction and attending religious services conducted in accordance with his religious persuasion.

(4) Where an order is made for sending a defective to an institution which is not conducted in accordance with the religious persuasion to which he belongs, the nearest adult relative, or in the case of a child his guardian or person entitled to his custody, may apply to the Board to remove or send the defective to an institution conducted in accordance with the defective's religious persuasion, and the Board shall, on proof of the defective's religious persuasion, comply with the request of the applicant; Provided that the applicant must show to the satisfaction of the Board that the managers of the institution named by him are willing to receive the defective and that the institution is one suitable to the case.

Relative.—*See* definition, sect. 71, p. 179, *post*.

Guardian or person entitled to custody of child.—By sect. 71, p. 179, *post*, the expression "parent or guardian" in relation to a defective shall include any person who undertakes or performs towards the defective the duty of a parent or guardian. The person entitled to the custody of a child, other than a father, may be the mother acting alone or jointly with a person appointed by the father by deed or will, or a person or persons appointed by the mother by deed or will, or a person to whom the Court has given the custody (*conf.* Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27)).

Under the Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 1, as amended by sect. 1 of the Poor Law Act, 1899 (62 & 63 Vict. c. 37), a board of guardians have, in certain cases, power to adopt a child who is being maintained by such board. By a resolution to adopt a child under these Acts the guardians can assume control of the child until it reaches the age of eighteen years. Thereupon, until the child attains that age, the powers and rights of the parent become vested in the guardians, who can, consequently, make the application under this sub-section.

18. Provisions as to Visiting of Defectives.—The nearest adult relative or the guardian of a defective in an institution or under guardianship under this Act shall be entitled to visit the defective at such times and at such intervals (not exceeding six months) and on such conditions as may be prescribed, except where, owing to the character and ante-

cedents of the person proposing to visit the defective, the Board consider that such a visit would be contrary to the interests of the defective.

Relative or the guardian.—*See* definitions, sect. 71, p. 179, *post*.

Institution.—*See* definition, sect. 71, p. 180, *post*; also sects. 35—39, 67 (2), *post*; and as to the application of this provision to a patient in a “certified house,” *see* sect. 49 (2), p. 145, *post*.

Entitled to visit.—The section gives the person in question the right to visit the defective in accordance with the conditions prescribed by the regulations made by the Secretary of State under sect. 41 (1) (e), p. 124, *post*. The Board of Control may, however, veto the visit of the relative or guardian under the circumstances named in the section, though it would appear that the person so prevented from visiting should be duly informed of the decision of the Board.

19. Judicial Authorities.]—(1) Any judge of county courts, police or stipendiary magistrate, or specially appointed justice who is a judicial authority for the purposes of the Lunacy Acts, 1890 to 1911, shall be a judicial authority for the purposes of this Act, and the number of justices specially appointed to be judicial authorities under those Acts shall be such as may be considered necessary to exercise the powers conferred by this Act as well as by those Acts on a judicial authority.

Judicial authority under Lunacy Acts.—*See* definition in the Lunacy Act, 1890, s. 9 (App., p. 189, *post*).

By sect. 10 of the Act of 1890, provision is made for appointments of justices who are to exercise the powers conferred by the Lunacy Acts upon the judicial authorities. By sect. 24 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), certain amendments were made in regard to the said powers, and by sect. 25 of such Act the Lord Chancellor was enabled to empower the chairman of a board of guardians to sign orders for the reception of persons as pauper lunatics in institutions for lunatics. A chairman of a board of guardians so empowered did not, however, become a judicial authority for other purposes of the Lunacy Acts, and would not, it is submitted, be entitled to act as a judicial authority for the purposes of the present Act (*see* App., pp. 196, 198, *post*).

Powers of judicial authorities.—Under the Lunacy Acts such powers are in connection with reception orders on petition (Lunacy Act, 1890, ss. 4—8), and summary reception orders in respect of alleged lunatics not being paupers (*ibid.*, sect. 13), *see* App., pp. 185—188, 192, *post*.

(2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, costs, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

20. Regulations as to Procedure, Forms, &c.]—The Secretary of State may make regulations with respect to—

(a) the procedure on petitions under this Act;

See sects. 5, 6, 8 (1) (a), pp. 33, 35, 41, *ante*.

(b) the procedure on applications for orders to vary or revoke orders previously made under this Act;

See sects. 7, 13 (3), 16, 17 (4), pp. 39, 60, 64, 69, *ante*.

(c) the procedure on applications for orders for contributions towards the maintenance of a person in an institution or under guardianship;

See sects. 13, 14, pp. 57—62, *ante*.

(d) the procedure on the reconsideration by visitors of the cases of defectives on their attaining the age of twenty-one, and on appeals from the visitors to the Board;

See sect. 11, pp. 51—54, *ante*; *also* sect. 49 (2) (d), p. 145, *post*.

(e) the forms of petitions, statutory declarations, certificates, orders, and other documents required for the purposes of this Part of this Act.

See sects. 3, 5—9, 11, 12, 13—17, pp. 31, 33—50, 51—69, *ante*.

Provisions as to regulations.—As to the laying of regulations before Parliament, and the effect of the regulations made under the Act, *see* sect. 68, p. 176, *post*.

PART II.—CENTRAL AND LOCAL AUTHORITIES.

Central Authority.

21. Central Authority.]—The Board of Control hereinafter constituted shall, subject to the provisions of this Act, be charged with the general superintendence of matters relating to the supervision, protection, and control of defectives:

Provided that, save as otherwise expressly provided by this Act, nothing in this Act shall affect any power exercisable with respect to lunatics by the Lord Chancellor or the Commissioners in Lunacy, or the Judge or Masters in Lunacy, or by any visitors, Court, local authority or other persons, whether under the Lunacy Acts, 1890 to 1911, or otherwise.

Title of central authority.—The Royal Commission on the Care and Control of the Feeble-minded recommended that “there be one central authority for the general supervision and protection of mentally defective persons, and for the regulation of the provision made for their accommodation and maintenance, care, treatment, education, training and control; that such central authority be called ‘The Board of Control,’ and the members thereof be called Commissioners of the Board of Control” (*see* Report of the Commission, pp. 323, 325, Recommendations I., V.).

It will be seen that the effect of this section, together with sect. 65, p. 171, *post*, is to carry out the above recommendations.

Hereinafter constituted.—*See* sect. 22, *infra*.

General superintendence of supervision, &c. of defectives.—*I.e.*, subject to the regulations made by the Secretary of State (*see* sect. 25, pp. 76, 77, *post*).

Defectives.—*I.e.*, persons coming within one or other of the classes in sect. 1, *see* p. 20, *ante*.

Save as otherwise expressly provided by the Act.—*See* sects. 16 (2), p. 16, *ante*, 30 (1) (ii), (iii), 40, 65—67, pp. 92, 95, 120, 171—174, *post*.

22. Establishment of Commissioners.]—(1) There shall

be constituted a Board of Control consisting of not more than fifteen Commissioners, of whom not more than twelve shall be paid Commissioners, and of the paid Commissioners four shall be legal Commissioners (that is to say, practising barristers or solicitors of at least five years' standing) and four at least shall be medical Commissioners (that is to say, duly qualified medical practitioners of at least five years' standing) and at least one of the paid and one of the unpaid Commissioners shall be a woman.

The Commissioners.—Under this provision, three of the Commissioners of the Board of Control at least are to be unpaid Commissioners, one of whom is to be a woman. The Chairman must be one of the paid Commissioners (sub-sect. 7, *infra*). The present paid Commissioners in Lunacy are to become Commissioners of the Board of Control (sub-sect. 9, *infra*). See also sect. 65, p. 171, *post*, as to transfer of powers and duties of the Commissioners in Lunacy to the Board).

Legal Commissioners.—The section requires that four of the paid Commissioners shall, at the time of their appointment, be practising barristers or solicitors of at least five years' standing, but it can scarcely be meant that the persons so appointed shall continue to practise (compare the repealed provisions of the Lunacy Act, 1890, ss. 150, 151).

One of the woman Commissioners may be a medical practitioner.

(2) The Commissioners shall be appointed by His Majesty on the recommendation, as respects the legal Commissioners, of the Lord Chancellor, and, as respects the other Commissioners, of the Secretary of State; and in making such recommendation regard shall be had to the desirability of the inclusion amongst the Commissioners of persons specially qualified to hold inquiries amongst Welsh-speaking persons.

(3) The Secretary of State shall appoint one of the Commissioners to be chairman.

Chairman.—The chairman is to be a paid Commissioner, see sub-sect. (7), *infra*.

(4) The Board of Control so constituted shall be a body corporate by the name of "the Board of Control," with a

common seal and with power to hold land without licence in mortmain for the purposes of their powers and duties.

Without licence in mortmain.—This clause creates an exemption to the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1. By the Mortmain Act, 1891 (54 & 55 Vict. c. 73), s. 3, "land" in the Act of 1888 includes "tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land."

(5) If the Secretary of State so directs and subject to any regulations made by him, the Board shall appoint an administrative committee, and to such committee shall be entrusted such of the administrative powers and duties of the Board as are mentioned in the Schedule to this Act.

Regulations.—*See* sect. 68, p. 176, *post*, as to laying regulations made under this Act before Parliament, and the effect of the regulations so made.

Schedule.—*See* p. 184, *post*.

(6) Subject as aforesaid, any act or thing required or authorised by this Act to be done by the Board or the Commissioners may be done by any one or more of the Commissioners as the Secretary of State may by general or special order direct.

Acts of Board of Control.—By sect. 160 (3) of the Lunacy Act, 1890, "Any three Commissioners assembled at a meeting shall be a quorum, and shall constitute a board, except where by this Act five Commissioners are required to be present at any meeting," *e.g.*, under sects. 159, 161. These sections of the Lunacy Act are repealed by sect. 65 (3) of the present Act, *see* p. 173, *post*.

(7) There shall be paid to the Chairman and to such number, not exceeding eleven, of the Commissioners as the Secretary of State, with the consent of the Treasury, may determine, such salaries or other remuneration as the Secretary of State, with the like consent, may fix: Provided that, in the case of the Chairman, such salary shall not exceed

eighteen hundred pounds a year, and, in the case of the Commissioners other than the Chairman, such salary shall not exceed the sum of fifteen hundred pounds a year, but may begin at such lower sum as the Secretary of State with the consent of the Treasury may fix.

(8) The Chairman and paid Commissioners shall hold office during His Majesty's pleasure. The unpaid Commissioners shall hold office for such term as the Secretary of State may determine.

(9) The persons who immediately before the commencement of this Act hold office as paid Commissioners in Lunacy, shall, by virtue of their office, become as from the commencement of this Act paid Commissioners of the Board of Control, and shall, notwithstanding anything in this section, continue to hold their offices by the like tenure and be entitled to the like salary as if they continued to hold the same offices as they held before the commencement of this Act.

Paid Commissioners of the Board.—*See* sub-sect. (1), pp. 72, 73, *supra*.

Tenure and salary.—The Lunacy Act, 1890, ss. 150, 151 and 156, provided for these matters, and for the superannuation of the Commissioners in Lunacy. Such sections are repealed by sect. 65 (3), *see* p. 173, *post*.

23. Secretary, Inspectors, and Officers.—(1) The Board shall be assisted in the performance of their duties by a secretary and by such inspectors and other officers and servants as the Secretary of State, with the consent of the Treasury as to number, may determine. Such inspectors and other officers and servants shall include women as well as men.

Secretary, &c.—As to the transfer of the existing staff of the Commissioners in Lunacy to the Board of Control, *see* sect. 65, p. 171, *post*.

The secretary to the Board of Control need not be a barrister of at least seven years' standing as was the case with the secretary to the Commissioners in Lunacy under sect. 154 (5) of the Act of 1890.

(2) The secretary, inspectors, and other officers and servants shall be appointed by the Board, subject to the approval of the Secretary of State.

(3) There shall be paid to the secretary, inspectors, officers, and servants of the Board such salaries or remuneration as the Secretary of State, with the consent of the Treasury, may determine.

24. Disqualifications.—(1) A person shall not be qualified to be a Commissioner, or an inspector, secretary, officer, or servant of the Board, if he is directly or indirectly interested in any certified institution or house, or approved home under this Act, or in any house licensed under the Lunacy Acts, 1890 to 1911, and any Commissioner, inspector, secretary, or officer who becomes so interested shall be disqualified to hold office.

“**Certified institution, or house, or approved home.**”—*See* definitions, sect. 71, pp. 180, 181, *post*; also sects. 36—39, 49, 50, 67 (2), pp. 110—120, 144, 147, 174, *post*.

“**House licensed under the Lunacy Acts.**”—*See* Lunacy Act, 1890 (53 Vict. c. 5), ss. 210—229, App., pp. 263—269, *post*. By sect. 158 of the Lunacy Act, 1890, it was provided that (1) a person should not be qualified to be a Commissioner or secretary, or clerk of the Commissioners, if he was, *or within one year prior to his appointment had been interested in a licensed house*; and (2) if a Commissioner, secretary or clerk became interested in a licensed house, he should be disqualified to hold office. Such section is repealed by sect. 65 (3) of the present Act, p. 173, *post*.

(2) If any person holding any such office as aforesaid acts when he is disqualified under the provisions of this section, he shall be guilty of a misdemeanour.

Acts when . . . disqualified.—Under sect. 158 (3) of the Lunacy Act, 1890, the offence was not the “acting,” but the “continuing to act” when disqualified.

Misdemeanour.—*See* sect. 60, p. 167, *post*, as to the prosecution and punishment of offences under the Act declared to be misdemeanours.

25. General Powers and Duties of Commissioners.]—

(1) Subject to regulations made by the Secretary of State, the Board shall—

Regulations.—*See* sect. 68 as to the laying of regulations made under the Act before Parliament, and the effect of the regulations when made.

(a) exercise general supervision, protection, and control over defectives;

Exercise general supervision, &c.—*See* sect. 21, p. 72, *ante*.

(b) supervise the administration by local authorities of their powers and duties under this Act;

Administration by local authorities.—*See* sect. 30, pp. 87—91, *post*, as to the general powers and duties of local authorities.

(c) certify, approve, supervise, and inspect institutions, houses, and homes for defectives, and all arrangements made for the care, training, and control of defectives therein;

Certify, &c. institutions, &c.—*I.e.*, subject to the general regulations of the Secretary of State made under sect. 41, p. 123, *post*; *see also* sects. 36—39, 49, 50, pp. 110—120, 144, 147, *post*.

Inspections by Commissioners.—*See* sub-sect. (2), p. 78, *post*.

(d) visit, either through one or more Commissioners or through their inspectors, defectives in institutions and certified houses and approved homes, or under guardianship, or (with a view to their certification) elsewhere, and persons who have been placed under the care of any person as being defectives;

Visitation of defectives.—Each defective under guardianship is to be inspected at least twice in each year (*see* sub-sect. (2), p. 78, *infra*).

(e) provide and maintain institutions for defectives of dangerous or violent propensities;

Accommodation for dangerous, &c. defectives.—This sec-

tion requires the Board of Control to *provide* and maintain institutions for the classes of defectives therein mentioned; the establishment of such institutions by the Board is, however, optional (*see* sect. 35, p. 109, *post*).

- (f) to take such steps as may be necessary for ensuring suitable treatment of cases of mental deficiency;

Suitable treatment.—The Board are not limited under this paragraph to this duty as regards defectives within the meaning of the Act, as defined in sect. 1, p. 20, *ante*. *See also* sects. 7, 16, pp. 39, 64, *ante*.

- (g) make annual reports (to be presented to Parliament) and such special reports as the Secretary of State may from time to time require;
- (h) administer, in accordance with this Act, grants made out of money provided by Parliament under this Act.

Administration of grants.—*See* sects. 47, 48, pp. 141, 143, *post*, as to Treasury contributions.

(2) Without prejudice to their powers and duties under any regulations which the Secretary of State may make for further or more frequent inspection and visitation, it shall be the duty of the Board, through one or more Commissioners to inspect every certified institution, certified house, and approved home at least once in each year, and either through themselves or their inspectors to inspect every certified institution, certified house, and approved home one additional time in each year and every defective under guardianship, at least twice in every year, and any Commissioner shall have power to discharge at any time any person detained in a certified institution or certified house or under guardianship under this Act:

Provided that a Commissioner shall not exercise such power of discharge without the consent of the Secretary of State in the case of a person sent to such an institution by order of the Secretary of State from a prison, criminal

lunatic asylum, place of detention, reformatory or industrial school, or inebriate reformatory, so long as the term for which he was committed to the prison or other place from which he was transferred remains unexpired.

Inspection.—Each certified institution, &c. must be inspected once a year at least by a Commissioner of the Board. Defectives under guardianship, however, need not be inspected by the Commissioners, but must be inspected twice a year in every case either by a Commissioner or one of the inspectors of the Board.

Discharge.—The power of discharge is not exerciseable in the case of a person in an approved home, there being no power of detention in such homes (*see* sect. 50 (2), p. 148, *post*). Sect. 12, p. 54, *ante*, relating to duration of detention not under orders does not authorise detention in an approved home (*see* note, p. 56).

The proviso to this sub-section relates to cases of persons dealt with by order of the Secretary of State under sect. 9, p. 47, *ante*.

26. Expenses of Central Authorities.]—The salaries or other remuneration of the Commissioners and the officers of the Board, and any other expenses incurred by the Secretary of State or the Board in carrying this Act into effect, to such amount as may be sanctioned by the Treasury shall be defrayed out of moneys provided by Parliament.

Salaries and remuneration.—*See* maximum amount to be paid to Commissioners, sect. 22 (7), pp. 74—75, *ante*. “Other remuneration” appears to cover provision for travelling expenses.

Local Authorities.

27. Local Authorities.]—The local authority for the purposes of this Act shall, as respects a county, be the council of the county, and, as respects a county borough, be the council of the borough.

County.—*See* sect. 71, p. 183, *post*, under which the Scilly Islands are to be deemed a county, and the council thereof a county council for the purposes of the Act.

See also sect. 34, p. 108, *post*, as to Lancashire.

Local authorities under Lunacy Acts.—Under the Lunacy Acts, 1890—1911, the county councils and county borough councils,

together with the councils of the several non-county boroughs mentioned in Schedule IV. of the Lunacy Act, 1890 (*see* App., p. 311, *post*), were constituted the local authorities for the purposes of those Acts (*see ibid.*, sect. 240), but several of such non-county boroughs have now ceased to be local authorities under the provisions of sect. 246 of the Act of 1890 (App., p. 275, *post*).

City of London.—Under the Lunacy Acts the common council of the City of London is the local authority for that area (*ibid.*, sect. 240); but under the Local Government Act, 1888 (51 & 52 Vict. c. 41), the expression county does not include the county of a city or the county of a town (sect. 100), and the metropolis forms an administrative county (*ibid.*, sect. 40), and includes the City of London (*ibid.*, sect. 100). The common council of the City of London is not, therefore, a local authority for the purposes of the Mental Deficiency Act.

28. Committees for the Care of Defectives.]—(1) Every local authority shall constitute a committee for the purposes of this Act, hereinafter called the committee for the care of the mentally defective, consisting of such members of the council appointed by the council as the council may determine, and of such persons, not being members of the council, but being poor law guardians or other persons having special knowledge and experience with respect to the care, control, and treatment of defectives, appointed by the council as the council may determine, and of the persons so appointed some shall be women, and of the whole committee the majority shall be members of the council:

Provided that, where a local authority has appointed one or more visiting committees or asylums committees under the Lunacy Acts, 1890 to 1911, then, if the council so determine—

- (a) the members of such committee or committees shall, with the addition of at least two women, act also as the committee for the care of the mentally defective; or
- (b) the members of such committee or committees shall be the members of the council appointed by the

council to be members of the committee for the care of the mentally defective.

Constitution of committees for mentally defective.—Subject to the proviso to this section, or to any arrangements made by any order for joint action under sect. 29 (1), p. 85, *post*, or an order of the Secretary of State under sect. 66, p. 173, *post*, a committee for the care of the mentally defective must be appointed by each local authority consisting of members of the council of such authority, and subject to the determination of the council, of poor law guardians or other persons of experience, of whom some are to be women, provided that the majority of the members of the committee must be members of the council.

Visiting committees or asylums committees under the Lunacy Acts.—The provisions in regard to the constitution, election, &c. of such committees are contained in the Lunacy Act, 1890 (53 Vict. c. 5), ss. 169—176 (*see App.*, pp. 247—250, *post*).

Under paragraph (a) of the proviso, the whole of the members of the existing committees, together with at least two women, may be appointed as the committee for the care of the mentally defective.

Under paragraph (b) the members of the visiting committees or asylums committees under the Lunacy Acts will be the members of the council appointed to be members of the committee for the care of the mentally defective under the first part of the section.

(2) All matters relating to the exercise by the local authority of their powers under this Act (except the power of raising a rate or borrowing money) shall stand referred to the committee for the care of the mentally defective, and the local authority before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the committee with respect to the matter in question. The local authority may also delegate to the committee, with or without any restrictions as they think fit, any of their powers under this Act, except the power of raising a rate or borrowing money.

Exception of powers of raising rates or borrowing.—These powers are conferred on the local authorities alone, as to which *see* sect. 33, p. 104, *post*. *See*, however, sect. 29 (pp. 85, 86, *post*) as to the power of the Secretary of State, with the concurrence of the Local Government Board, by order to constitute joint com-

mittees or joint boards for the joint exercise and performance of all or any of the powers under this Act of local authorities.

With the above exceptions the local authority may delegate any of their powers under the Act to the committee for the care of the mentally defective, and such delegation may or may not be restricted as the council of the local authority may determine.

Any matter in respect of the exercise of powers which the local authority can, but do not delegate, to the committee for the care of the mentally defective, is made a matter for consideration and report to the local authority by such committee, and the local authority must pay attention to the report of the committee before exercising their power under the Act in regard to the subject-matter of such report, except in cases of urgency.

(3) A person shall be disqualified for being a member of the committee for the care of the mentally defective who by reason of holding an office or place of profit, or having any share or interest in a contract or employment, is disqualified for being a member of the council appointing the committee, but no such disqualification shall apply to a person by reason only of his holding office in a school or college aided, provided, or maintained by the council.

There are other disqualifications for being a member of a local authority under the Corrupt Practices Acts, the Bankruptcy Acts, sect. 2 of the Forfeiture Act, 1870, and sect. 39 of the Municipal Corporations Act, 1882.

Disqualification for being a member of committee.—The disqualification attached to a member of the committee for the care of the mentally defective by this sub-section applies to persons appointed as members of the committee from outside the council under sub-sect. 1, p. 80, *supra*, as regards whom the following provisions apply:—

By sect. 12 (1) of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), “a person shall be disqualified for being elected and for being a councillor, if and while he (a) is an elective auditor, or a revising assessor, or holds any office or place of profit other than that of mayor or sheriff, in the gift or disposal of the council” . . . ; “or (c) has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council.”

The above provision as to the disqualification of elective auditors

applies only in county boroughs, inasmuch as the accounts of county councils are now audited by the district auditors appointed by the Local Government Board (*conf.* Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 71).

The provision for remuneration of borough auditors is contained in sect. 246 of the Public Health Act, 1875.

Revision assessors are no longer appointed (*conf.* County Electors Act, 1888 (51 Vict. c. 10), s. 4).

A coroner may not be a member of the council in whose jurisdiction he acts (Local Government Act, 1888, s. 5), nor may the clerk or other officers of the council. A person who holds a paid office under a distress committee holds a paid office under the council appointing him, and is therefore disqualified for being a member (*Crump v. Lewis* (1908), 77 L. J. K. B. 478). A member of a county council appointed returning officer will not, however, be disqualified for being a member, unless he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment (County Council (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 6).

By sect. 146 of the Army Act (44 & 45 Vict. c. 58), as amended by the Army (Annual) Acts, 1889 and 1891, an officer of the regular forces on the active list, within the meaning of the Royal Warrant for regulating the pay and promotion of the regular forces, shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom: Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council.

Many cases have been decided upon the question of interest in bargains or contracts, and they will be found to be fully dealt with in the text-books upon the Local Government Act, 1888. It must, however, be remembered that the interest in the contract continues throughout the existence of the contract itself, and may often remain after the contract has terminated (*Rex v. Rowlands* (1903), 75 L. J. K. B. 501). Other important cases to which reference may be made are: *Norton v. Taylor*, [1906] A. C. 378; 75 L. J. P. C. 79; *Miles v. McIlwraith* (1883), 8 A. C. 120; 52 L. J. P. C. 17; *Cox v. Truscott* (1905), 92 L. T. 650; 69 J. P. 174; *Tomkins v. Joliffe* (1887), 51 J. P. 247; *Le Feuvre v. Lankester* (1854), 23 L. J. Q. B. 254; *Greville-Smith v. Tomlin* (1911), 80 L. J. K. B. 774; *O'Carroll v. Hastings*, [1905] 2 Ir. R. 590.

Non-disqualifying interest.—The provision in sect. 12 (1)

of the Municipal Corporations Act, 1882 (*supra*), as to disqualification by interest in a contract, is modified by sect. 12 (2) of that Act, as amended by the Municipal Corporations Amendment Act, 1906 (6 Edw. 7, c. 12), as follows:—"But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in (a) any lease, sale, or purchase of land, or any agreement for the same; or (b) any agreement for the loan of money, or any security for the payment of money only; or (c) any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or (d) any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or (e) any railway company, or any company incorporated by Act of Parliament, or Royal Charter, or under the Companies Act, 1862, or any society registered under the Industrial and Provident Societies Acts, 1893 and 1895."

Further, by sect. 5 of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63): "No person shall be disqualified for being elected, or for being a member of a county council, by reason only of his having any share or interest in any contract with such county council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges: Provided always that no such share or interest in any contract shall exceed the amount of fifty pounds in any one year."

Leases or sales of land.—By sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), the expression "land" includes messuages, tenements and hereditaments, houses and buildings of any tenure. A right of way is an incorporeal hereditament.

The above exceptions as to leases or sales of lands and loans of money in the Act of 1882 are similar to those contained in the Public Health Act, 1875 (38 & 39 Vict. c. 55), Schedule II., Rule 64 (*repealed*). In *Reg. v. Gaskarth* (1880), 49 L. J. Q. B. 509, it was *held* under the statute of 1875 that a member of a sanitary authority was not disqualified by reason of a lease to him by the board of a sewage farm containing covenants on the part of the board to supply, and on his part to use on the demised premises the sewage of the district. In *Nell v. Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499, it was also *held* that the letting of a building for the purposes of a polling station for one day at an election is within the similar exceptions in the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 12 (*ubi supra*).

29. *Joint Action.*]—(1) Where on such application as is hereinafter mentioned it appears to the Secretary of State that two or more local authorities should join for the purpose of the exercise and performance of any of their powers and duties under this Act, the Secretary of State, with the concurrence of the Local Government Board, shall have power by order to make such provisions as appear to him necessary or expedient, by the constitution of a joint committee or joint board or otherwise, for the joint exercise and performance of all or any of the powers under this Act of such local authorities; and any such order may provide how, and in what proportions, and out of what funds or rates, the expenses incurred in the joint exercise and performance of such powers are to be defrayed, and may contain such incidental, consequential, and supplemental provisions (including provisions adapting any of the provisions of this Act to the case of any committee or board so constituted) as may be necessary for the purposes of the order.

Application hereinafter mentioned.—*See* sub-sect. (2), *infra*.

Two or more . . . should join.—*I.e.*, two or more county councils, or two or more borough councils, or one or more county councils, with one or more borough councils.

Powers and duties under the Act.—*See* sect. 30, p. 87, *post*, as to the general powers and duties of local authorities; *also* sect. 33, p. 104, *post*, expenses and borrowing; sect. 38, p. 113, *post*, power to establish or contribute to institutions, &c.; sect. 39, p. 119, *post*, power to take on lease or grant the use of premises as institutions; and sect. 43, p. 126, *post*, responsibility for providing accommodation, &c. for defectives.

(2) An order under this section for the joint exercise and performance of all or any of the powers under this Act of two or more local authorities may be made on the application of one or more of such authorities, but, unless all such authorities agree to the making of such order, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

(3) Any such order shall remain in operation for the period (if any) named therein, or, if no period is so named, until it is determined by mutual agreement between the local authorities concerned with the consent of the Secretary of State: Provided that any such order may be revoked or varied by an order made on a like application and subject to the like provisions as the original order.

(4) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of Provisional Orders by the Local Government Board), shall, with the necessary modifications, apply for the purposes of this Act as if they were herein re-enacted and in terms made applicable thereto.

Local Government Board Provisional Orders.—The following are the sections of the Public Health Act, 1875, applied by sub-sect. (4), *supra*:—

Sect. 297. *As to Provisional Orders.*—With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made:—

- (1) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:
- (2) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:
- (3) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:
- (4) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates

to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:

- (5) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed, altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament:
- (6) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:
- (7) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:
- (8) Every Act confirming any such provisional order shall be deemed to be a public general Act.

Sect. 298. *Costs of Provisional Orders.*—The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

30. *General Powers and Duties of Local Authorities.*—The local authority are hereby empowered, and it shall be their duty, subject to the provisions of this Act and to regulations made by the Secretary of State—

Subject to the provisions of the Act.—*See* especially the provisions (*infra*), and sects. 31, 33, and 47, pp. 99, 104, 141, *post*.

Regulations.—*See* sect. 68, p. 176, *post*, as to the provisions for laying regulations before Parliament, and the effect of the regulations made under this Act.

Duties of local authorities.—As regards the succeeding paragraphs (a) to (h), it is the imperative duty of the local authority

to carry out the provisions of (a) and (h). The provisions of (e) and (f) are in terms permissive, and the duties as regards (b), (c), (d) and (g) depend upon the sufficiency of the parliamentary grants (proviso (i), *infra*), which it will be the duty of the Board of Control to administer (*see* sect. 25 (1) (h), p. 78, *ante*).

As to the power of the Secretary of State to act in case of the default of a local authority in regard to any of its duties under the Act, *see* sect. 32, p. 101, *post*.

- (a) to ascertain what persons within their area are defectives subject to be dealt with under this Act otherwise than under paragraph (a) of sub-section one of section two of this Act;

Ascertain what persons are defectives.—*See* proviso (iv), p. 97, *post*, and sect. 31, as to the duty of the local education authorities as to ascertaining the defective children between seven and sixteen years of age; *also* sect. 2 (2), p. 29, *ante*, as to the notification by the local education authorities to the local authorities of defective children over seven years of age.

It is not made the duty of the local authorities to ascertain what persons may be dealt with at the instance of a parent or guardian under sects. 2 (1) (a) and 3, pp. 25, 31, *ante*; nor have the local authorities any duties as respects defective children whose names and addresses have not been notified to them by the local education authorities (*ubi infra*, proviso (iv)).

- (b) to provide suitable supervision for such persons, or if such supervision affords insufficient protection, to take steps for securing that they shall be dealt with by being sent to institutions or placed under guardianship in accordance with this Act;

Provide suitable supervision.—The duty of the local authority under this paragraph is subject to proviso (i), p. 91, *infra*.

It seems difficult to suggest how far a local authority can carry out this duty, short of taking steps for the presentation of a petition under sect. 5, except by satisfying themselves from time to time that a defective is under suitable supervision by being properly provided for by the parent or some responsible person or organization. The Board of Control exercises general supervision, pro-

tection and control over defectives under the regulations (*see* sect. 25 (1) (a), p. 77, *ante*).

Mode of dealing with defectives.—It would appear that the only method by which the local authority can secure that an alleged defective shall be dealt with is by application by petition under sect. 5, p. 33, *ante*, excepting that in some instances it may first be necessary to authorise an officer to remove the person to a place of safety under sect. 15, p. 62, *ante*.

(c) to provide suitable and sufficient accommodation for such persons when sent to certified institutions by orders under this Act, and for their maintenance therein, and for the conveyance of such persons to and from such institutions;

Provision of accommodation.—The duty of the local authority under this paragraph is subject to proviso (i), p. 91, *infra*. It is only in regard to defectives *ordered* to be sent to *certified* institutions that this duty is laid upon the local authority.

The provisions as to orders in regard to defectives are contained in sects. 6—9, pp. 35—50, *ante*.

Certified institutions do not include “certified houses” (*see* sect. 49 (2) (b), p. 145, *post*), or “approved homes” (*see* sect. 50 (2), p. 148, *post*). But any hospital, institution, or licensed house which at the commencement of this Act is registered under the Idiots Act, 1886 (hereby repealed), becomes without further certification a certified institution, though this is subject to certain qualifications (*see* sect. 67 (2), p. 174, *post*).

As to the definitions of “certified institutions,” “certified house” and “approved home,” *see* sect. 71 (1), pp. 180, 181, *post*.

Certification and provision of institutions.—It will be seen on reference to sect. 38, p. 113, *post*, that a local authority, or two or more local authorities combined, may, subject to approval by the Secretary of State, establish or contribute to the establishment of certified institutions. A local authority may also contract for the reception and maintenance of its defectives in any certified institutions (sect. 38 (2)). *See also* the provisions for the transfer of premises to a local authority for use as a certified institution (sect. 39); certification of institutions (sect. 36); and approval of premises provided by a board of guardians (sect. 37).

Maintenance and conveyance.—*See* sects. 43, 44, pp. 126, 131, *post*, as to ascertainment of the local authority responsible for

providing accommodation for a defective who is ordered to be sent to a certified institution, and the duty of the council of such authority as regards the conveyance to and reception and maintenance of the defective in an institution.

- (d) to make provision for the guardianship of such persons when placed under guardianship by orders under this Act;

Provision for guardianship.—The duty of the local authority under this paragraph is subject to proviso (i), *infra*. When a defective is ordered to be placed under guardianship under any of the provisions in sects. 6, 7, 8 or 9, pp. 35—50, *ante*, the responsibility for making provision for the guardianship of the defective will rest with the local authority ascertained to be responsible and specified in the order (*see* sects. 43, 44, pp. 126, 131, *post*).

- (e) if they think fit, to maintain in an institution or approved home or contribute towards the expenses of maintenance in an institution or approved home or the expenses of guardianship of any defectives other than aforesaid;

Maintain or contribute towards expenses of defectives other than aforesaid.—Under this paragraph a local authority is enabled to render assistance to a voluntary organization which is maintaining a defective, or to a parent or other person liable to maintain a defective, in a case which has been dealt with at the instance of a parent or guardian under sect. 3, p. 31, *ante*.

It must not be overlooked that such assistance cannot be given in a case when a defective is being maintained in a "certified house" (*see* sect. 49 (2), proviso (b), p. 145, *post*); but there is no such prohibition in regard to a defective who is being maintained in a "State institution" (*see* definition, sect. 71, p. 180, *post*).

- (f) if they think fit, to provide for the burial of persons dying in an institution or when placed under guardianship in accordance with this Act;

Power of local authority to provide for burial.—It is necessary to note the significance of the term "persons" in this section, but especially in this paragraph. The term includes not only defectives, but alleged defectives dying in an institution or while placed under guardianship either at the instance of a parent

or guardian under sect. 3, p. 31, *ante*, or by an order under either of the sects. 6, 7, 8 or 9, pp. 35—50, *ante*. There is, however, no power to provide for the burial of persons dying in a “certified house” or an “approved home.”

- (g) to appoint or employ sufficient officers and other persons to assist them in the performance of their duties under this Act;

Appoint or employ officers, &c.—The duty of the local authority under this paragraph is subject to proviso (i), *infra*.

- (h) to make to the Board annual reports and such other reports as the Board may require:

Provided that—

- (i) nothing in this Act shall be construed as imposing any obligation on a local authority to perform the duties mentioned in paragraphs (b), (c), (d), and (g) aforesaid where the contribution out of moneys provided by Parliament under this Act towards the cost on income account of performing such duties is less than one-half of the net amount (as approved by the Board) of such cost;

Contributions from Treasury.—The duties set forth in paragraphs (b), (c), (d) and (g) become obligatory when the grant is sufficient for the purposes of their performance.

There is no obligation upon, but on the other hand, there is nothing to prevent a local authority from taking upon itself the duties mentioned in paragraphs (b), (c), (d) and (g) where the contribution from the State grant is insufficient to make such duties compulsory, subject, however, to the proviso to sect. 33 (1), p. 104, *post*, limiting the amount of the expenses which may be incurred by a local authority for purposes other than the fulfilment of their obligations under the Act.

“Cost on income account.”—As respects an institution provided by a local authority, this term includes expenditure out of income by the authority by way of interest on or repayment of capital raised, or by way of rent or other similar payment for the purposes of the provision of the institution (*see* sect. 71 (2), p. 183, *post*).

“One-half of the net amount . . . of such cost.”—The Board of Control are to signify their approval of the figures as to the net amount of the cost on income account, such net amount being ascertained after making allowance for sums contributed under orders made under sects. 13, 14, pp. 57—62, *ante*, or by agreement.

- (ii) nothing in this Act shall affect the powers and duties of poor law authorities under the Acts relating to the relief of the poor, with respect to any defectives who may be dealt with under those Acts; nor the right of poor law authorities to receive the same grant for a defective who has been, or may be, sent to an institution, that they would have received if the Idiots Act, 1886, had not been repealed; nor shall local authorities under this Act have any duties with respect to defectives who for the time being are being provided for by such authorities as aforesaid, except to such extent as may be prescribed by regulations made by the Secretary of State with the concurrence of the Local Government Board;

Powers and duties of poor law authorities.—These authorities are the “boards of guardians” and other bodies included in the definition of that term (*see* sect. 71, p. 182, notes).

It is a matter of great difficulty to foretell the ultimate effect of this proviso. Obviously, under the concluding sentences, the Secretary of State, with the concurrence of the Local Government Board, may prescribe certain duties with respect to defectives who, for the time being, are provided for by the poor law authorities. These regulations, when made, will have effect as if enacted in the Act (*see* sect. 68, p. , *post*), but it seems improbable that they will be so framed as to create anything like dual control or overlapping in the administration. It is clear that under the Act poor law authorities have no powers or duties in regard to persons who are “defectives” within the meaning of the Act, when such persons are subject to be dealt with under either of the paragraphs in sect. 2 (1) (b), p. 26, *ante*, unless application is made for relief, or relief is being actually given in some form or another. Nor is there any power vested in poor law authorities to detain defective persons other than idiots or imbeciles, or persons properly certified for detention under

the Lunacy Acts, as shown at p. 95, *infra*, excepting where a board of guardians have exercised their powers of adoption of a child under the Poor Law Act, 1889, as amended by the Poor Law Act, 1899 (*see* sect. 17 (4), note, p. 69, *ante*). It would seem, therefore, that after relief has ceased, a person who had up to that time been maintainable by the board of guardians would thereafter, if a defective, become maintainable by the local authority when such authority had become responsible for providing for "defectives" within their area under the foregoing provisions. Upon this point reference may be made to the case of *Southwark Union v. London County Council* (1910), 79 L. J. K. B. 826, where it was held that the guardians were not the "parent" of a non-chargeable child within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, s. 9.

Defectives who may be dealt with under the poor law.—The term "defectives" as used in the above proviso clearly extends to a wider general class than that defined in sect. 1 of the Act, for the poor law authorities are required to relieve destitution in any form in which it comes before them, and, in consequence, persons in all stages of physical and mental decay become chargeable either as indoor or outdoor paupers, or as pauper lunatics detained in workhouses or asylums under the provisions of the Lunacy Acts.

It was set forth in a return ordered by the House of Commons, and prepared by the Local Government Board from figures supplied by the boards of guardians in England and Wales, that on July 20th, 1912, there were chargeable no less than 7,476 outdoor, and 24,348 indoor mentally defective persons of all ages, other than pauper lunatics. Of this large number 2,340 were children, in regard to most of whom the local education authorities will at least have the duty of ascertaining and notifying particulars to the local authorities, (*ubi infra*, proviso (iv), and sect. 31, p. 99, *post*); but having regard to this proviso (ii), it is apparent that the local authorities can have no power of dealing with any of the children chargeable to boards of guardians in respect of whom they may have received notification, except to provide for any of such children as may be committed to their charge by means of some contractual arrangement with the guardians. Again, the duties of a poor law authority consist in providing adequate necessary relief and maintenance for the children who become chargeable to the union, and those duties cannot be discharged in regard to a defective child who would otherwise come within the Act by means of a mere notification to the local authority that the child has become chargeable, and apparently answers the description of a mentally defective person

to whom the Act applies. The poor law authority will still be chargeable with the relief and maintenance of such child, and the responsibility for such chargeability is apparently intended to remain with the guardians, whether the relief is for the time being administered under the regulations for outdoor relief, or boarding out, or is being given in an institution belonging to a board of guardians (*see* definition, sect. 71, p. 182, *post*), or some other authority or voluntary organization.

Poor law idiots and imbeciles.—So far as the metropolis is concerned, both children and adults of these classes are usually maintained in the institutions of the Metropolitan Asylums Board, which, for the purposes of the present Act, is within the meaning of the term "board of guardians" (*see* sect. 71, note, p. 182, *post*); and is, undoubtedly, a poor law authority within the meaning of the Act.

Within and without the metropolis, however, boards of guardians may make other provision for their idiotic and imbecile paupers, apart from the ordinary workhouse, by placing such persons in certified schools, or other institutions, under the powers conferred upon guardians by various statutes (*conf.* Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43); Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 23; Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), s. 13).

Further, under the Idiots Act, 1886 (49 & 50 Vict. c. 25), which is repealed by the Mental Deficiency Act, but the provisions of which may yet be required for the sake of reference, guardians were enabled to send children and adults who had been certified as idiots or imbeciles from birth or an early age to institutions established for the reception of such classes, whether maintained out of the rates or by voluntary contributions.

It is submitted that similar grants to those which were receivable by boards of guardians under the repealed statute will be payable under the terms of the proviso at present under notice, during the chargeability to boards of guardians of persons who are defectives within the meaning of sect. 1 (a), (b) (*see* pp. 21, 22, *ante*), and who might, but for their being paupers, be dealt with as defectives under this Act.

The poor law authorities in some cases, also, contribute the expenses incurred in respect of these children, who are taught at classes or schools provided under the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32) (*see* sect. 9 of that Act, which is set out in the Appendix, p. 327, *post*).

The Mental Deficiency Act does not interfere with the powers and duties of guardians with respect to any children who are defectives and are, for the time being, taught in such schools or classes at the expense of the guardians, or who are otherwise dealt with under the above-mentioned Acts.

Pauper lunatics in workhouses and institutions for lunatics.—Boards of guardians are not local authorities under the Lunacy Acts, 1890—1911, but their officers have certain duties in regard to alleged lunatics and certified lunatics for whom accommodation is required. They are, moreover, responsible for the expenses of maintenance of pauper lunatics and the preliminary expenses attendant upon the removal and certification of pauper lunatics, as well as the necessary expenses attending the removal, discharge or burial of pauper lunatics in institutions for lunatics, excepting in the case of a lunatic having no legal settlement or status of irremovability, and where an order of adjudication has been obtained upon a county or county borough under sect. 290 of the Lunacy Act, 1890.

The whole of the provisions as to the expenses of pauper lunatics are contained in Part X. of the Lunacy Act, 1890, which is set out in the Appendix, pp. 283 *et seq.*, *post*. That Act also contains various provisions (*conf.* sects. 20, 21, 24—26, 80) under which lunatics may be received and detained in workhouses; further, by sect. 81 of the Act, the guardians of the union to which a workhouse belongs may make an order for the discharge of any lunatic detained therein.

The powers and duties of the guardians as regards lunatics in workhouses are therefore, apparently, not affected by the new Act; but the responsibility of providing for the future maintenance of any pauper lunatic who may, while chargeable to a board of guardians in an institution for lunatics, be deemed a proper person for removal to an institution for defectives (*conf.* sect. 16 (2), p. 65, *ante*) will rest with the local authority. On the other hand, the union of settlement or irremovability, if there is any such union, will become chargeable with the expenses of maintenance of a person who, having been detained in an institution for defectives at the charge of the local authority, is transferred to an institution for lunatics under the provisions of sect. 16 (1), p. 64, *ante*.

- (iii) nothing in this Act shall affect the powers and duties of local authorities under the Lunacy Acts, 1890 to 1911, with respect to any defectives who may be dealt with under those Acts, nor shall

local authorities under this Act have any duties or powers with respect to defectives who for the time being are, or who might be, provided for by such authorities as aforesaid except to such extent as may be prescribed by regulations made by the Secretary of State with the concurrence of the Lord Chancellor;

Local authorities under the Lunacy Acts.—These are the county and county borough councils with the addition originally of the councils of certain boroughs named in the Fourth Schedule to the Lunacy Act, 1890, as amended by the Lunacy Act, 1891 (*see* App., p. 311, *post*), and in the case of the City of London, the common council (*ibid.* sect. 240). But a large number of the borough councils specified in the above schedule have, in accordance with the provisions of sect. 246 of the Lunacy Act, 1890, now ceased to be separate local authorities under the Lunacy Acts, so that, at the present time, there are practically the same local authorities under those Acts as under the Mental Deficiency Act (*see* sect. 27, p. 79, *ante*), with, however, the important exception of the common council of the City of London.

Defectives who may be dealt with under the Lunacy Acts.—By sect. 341 of the Lunacy Act, 1890 (53 Vict. c. 5), the term "lunatic" means "an idiot or person of unsound mind." Under the provisions of the Lunacy Acts powers are conferred upon the local authorities in regard to the establishment or provision of asylums for persons who have been certified as lunatics, and there are various consequential powers and duties in regard to the institutions for lunatics so established or provided, and the management thereof, as well as with regard to the patients received and maintained therein.

The above powers and duties, moreover, are not entirely confined to pauper lunatics, and large numbers of private patients are in fact maintained in lunatic asylums belonging to the local authorities. Nevertheless, the inmates of either class are only such persons as have been certified as insane under the provisions of the Lunacy Acts.

The effect of proviso (iii) of sect. 30, therefore, appears to be that while a person is a certified lunatic, or is a person who might be so certified, he is not to be dealt with as a defective, even though he is apparently a person who is a defective within sect. 1 of the

Act, and would, but for proviso (iii), be subject to be dealt with under the Act.

The proviso does not, however, affect the powers of transfer in suitable cases, conferred by sect. 16 (2), p. 65, *ante*.

The whole question seems to resolve itself into that of the incidence of liability for the maintenance of the "defective" lunatic. In most cases the local authorities under the Lunacy Acts and under the new Act will be the same, and apart from some difference in the amount of the parliamentary grants for defectives and for lunatics, it can scarcely affect the local authority in whichever way the person is dealt with, unless he is or might, if a certified lunatic, be chargeable to the union of his settlement or irremovability, and not to the local authority. (*See* the provisions of Part X. of the Lunacy Act, 1890, as to expenses of pauper lunatics, App., pp. 283 *et seq.*, *post*.)

Duties and powers prescribed by regulations.—*See* sect. 68, p. 176, *post*, as to the laying of regulations before Parliament, and the effect of regulations made under the Act.

- (iv) nothing in this Act shall affect the duties or powers of local education authorities under the Education Acts; and the duty of ascertaining what children over the age of seven and under the age of sixteen (hereinafter referred to as defective children) are defectives shall rest with the local education authority as hereinafter provided and not with the local authority under this Act; and such last-mentioned authorities shall have no duties as respects defective children, except those whose names and addresses have been notified to them by the local education authority under the provisions of this Act.

Local education authorities.—By sect. 5 of the Education Act, 1902 (2 Edw. 7, c. 42), the local education authorities—*i.e.*, the county councils and county borough councils, the council of every borough for the time being subject to the Municipal Corporations Act, 1882, with a population of over 10,000, and the council of every urban district with a population of over 20,000 (*ibid.*, sect. 1)—were given the powers and duties of the school boards and school attendance committees under the Elementary Education Acts, 1870—1900,

and under any other Acts (including local Acts), and school boards and school attendance committees were abolished. There were thus transferred to the local education authorities, besides the ordinary duties as to the provision and maintenance of schools, appointment of officers and teachers, and the enforcement of the law as to school attendance and employment of children, the permissive power, to which reference has already been made (*see* Introduction, p. 18, *ante*), to ascertain the defective children within their area, and to provide for the education of such children in special schools or classes under the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), the provisions of which are set out in the Appendix, pp. 321 *et seq.*, *post*.

New duty of ascertaining defective children.—The Mental Deficiency Act has now made it compulsory upon the local education authorities to ascertain what children within their area are defective children within the meaning of sect. 1, p. 20, *ante*, and further, to ascertain which of such defective children are non-educable, and to notify to the local authorities the names and addresses of defective children of the classes named in sect. 2 (2), p. 29, *ante* (*see* sect. 31 and notes thereto). As already stated in the Introduction, however, it is still a matter of choice with the local education authorities whether they will deal with educable mentally defective children.

Limitation of duties of local authority.—Inasmuch as the local authority have no *duties* as respects defective children within the meaning of the Act unless the names and addresses of such children have been notified to them under the provisions of the Act, it seems almost certain that a number of such "defectives" who are non-educable, as well as some who are educable, will still remain without special provision by either authority. It is, however, to be expected that most of the latter will be provided for by their parents or guardians, and it may be pointed out that whether educable or non-educable, they may be placed in institutions or under guardianship under sect. 2 (1) (a), p. 25, *ante*, or even under sect. 2 (1) (b) (i), p. 26, *ante*, if the circumstances are within that paragraph, and a petition is presented and an order made under sects. 5, 6, pp. 33—38, *ante*.

Under sect. 30, proviso (iv), however, the local authority have no duty to provide accommodation or guardianship unless the name and address of the child has been notified to them by the local authority, and it seems difficult to suggest how the expenses are to be met, unless there are sufficient funds available from persons liable to contribute, or the State provides the whole cost.

31. Duties of Local Education Authorities.]—(1) The duties of a local education authority shall include a duty to make arrangements, subject to the approval of the Board of Education,—

Duty to make arrangements.—Under sect. 30, proviso (iv), p. 97, *supra*, the duty of ascertaining what children over the age of seven and under the age of sixteen are defectives is made to rest with the local education authority, and not with the local authority. The present section provides for that duty being done by the local education authority, and so removes the option of carrying out the provisions of sect. 1 of the Elementary Education (Defective and Epileptic Children) Act, 1889 (*see App.*, p. 321, *post*), so far as regards the children within their area who are defective children within the meaning of the present Act and non-educable.

As to the existing optional power of local education authorities for making special provision for the education of defective children, *see* Introduction, p. 18, *ante*.

- (a) for ascertaining what children within their area are defective children within the meaning of this Act;

Defective children within . . . this Act.—The local education authority are to ascertain all the children, without restriction as to age or circumstances, living within their area who belong to one of the classes of defectives as defined in sect. 1, p. 20, *ante*.

- (b) for ascertaining which of such children are incapable by reason of mental defect of receiving benefit or further benefit from instruction in special schools or classes;

Defective children incapable of benefit from special instruction.—It is the further duty of the local education authority to ascertain, subject to the decision of the Board of Education in cases of doubt (*vide infra*), which of the children who have been ascertained under paragraph (a) to be defectives within the Act are non-educable.

- (c) for notifying to the local authority under this Act, the names and addresses of defective children with respect to whom it is the duty of the local educa-

tion authority to give notice under the provisions hereinbefore contained.

In case of doubt as to whether a child is or is not capable of receiving such benefit as aforesaid, or whether the retention of a child in a special school or class would be detrimental to the interests of the other children, the matter shall be determined by the Board of Education.

Notifying to the local authority.—*I.e.*, the county council or the county borough council as the case may be. The duty of giving notice, for which provision is made by sect. 2 (2), p. 29, *ante*, is subject to the regulations of the Board of Education, and is confined to notifying the names and addresses of any children over the age of seven and under the age of sixteen, within the area, who have been ascertained to be defectives within the meaning of the Act, and who come within the provisions of paragraph (a) or (b) of sect. 2 (2), *see pp.* 29—30, *ante*.

Retention detrimental to interests of other children.— Besides the non-educable class, there may be (a) defective children within the area of the local authority whose presence in a special school or class is inadvisable for the sake of the other defective children therein; or (b) defective children in respect of whom the Board of Education certify that there are special circumstances rendering it desirable that they should be dealt with under the Act by way of supervision or guardianship.

In regard to children in class (a), the Board of Education have to determine the question only in cases of doubt (*ubi sup.*); but those in class (b) have to be certified by the Board of Education (sect. 2 (2) (a), p. 29, *ante*).

Such cases must be notified to the local authority, and will then be subject to be dealt with under sect. 2 (1) (b) (v), p. 27, *ante*, by being sent to or placed in an institution for defectives, or placed under guardianship, but may in some cases be dealt with *by way of supervision or guardianship* (*see sect.* 2 (2) (a), note, p. 30, *ante*).

(2) The provisions of section one of the Elementary Education (Defective and Epileptic Children) Act, 1899, shall apply with the necessary modifications for the purposes of this section.

Statute of 1899.—The provisions of this enactment are set out in the Appendix, p. 321 *et seq.*, *post*.

32. Power of Secretary of State to act *in default*.]—

(1) If the Board report to the Secretary of State that a local authority have made default in the performance of any of their duties under this Act, the Secretary of State may, after holding a local inquiry in any case where he deems it desirable to do so, and on being satisfied that such default has taken place, by order require the local authority to do such acts and things for remedying the default as he may direct, and any such order may be enforced by mandamus.

Board.—*I.e.*, the Board of Control.

Local authority.—*See* sect. 27, p. 79, *ante*, as to the local authorities generally, and sect. 34, p. 108, *post*, as regards Lancashire.

It seems safe to assume that, for the purposes of this section, default by two or more local authorities in respect of whom an order for joint action has been made under sect. 29, p. 85, *ante*, or default by either of such authorities, may be made the ground of a report by the Board of Control calling for a local inquiry under this section.

Default in performance of duties under this Act.—*See* sect. 30, p. 87, *ante*, for general powers and duties of local authorities; sect. 28, p. 80, *ante*, duty in regard to the constitution of a committee for the care of the mentally defective; sects. 43, 44, pp. 126, 131, *post*, as to their responsibility for the maintenance of persons ordered to be sent to certified institutions or placed under guardianship; also sect. 33 (1), p. 104, *post*, as to payment of expenses, and sect. 33 (4), p. 107, *post*, as to the keeping of separate accounts by the council of a county borough, of their receipts and expenditure under the Act.

Other rights and methods of proceedings for requiring a local authority to perform their duties under the Act are not prejudiced by the provisions of sub-sect. (1), (*see* sub-sect. (3), p. 102, *infra*).

Power of Secretary of State.—The section contemplates the making out of a good *primâ facie* case of default before a local inquiry is held, and the Secretary of State is not bound to hold a local inquiry unless he deems it desirable (*see also* sub-sect. (3), p. 102, *infra*).

“By order require the local authority.”—Where two or more local authorities are found to be in joint default, the order of the Secretary of State will, it is presumed, be addressed to the joint

committee or joint board, and also to each of the local authorities concerned.

Order may be enforced by *mandamus*.—Under the general law, the want of any other specific or effectual remedy by process of law is essential to the grant of a writ of *mandamus* (see Short and Mellor's "Crown Office Practice," 2nd ed., p. 210). The above provision, however, seems to make procedure by *mandamus* available as the proper if not the only remedy for failure on the part of a local authority to carry out the terms of an order made under the section.

(2) Any expenses incurred by or on behalf of the Secretary of State under any such order or in respect of any such default, or in respect of any such inquiry, shall, if the Secretary of State so directs, be expenses of the local authority, and the treasurer or other proper officer of the local authority shall pay the amount of such expenses to the Secretary of State within two months after demand, and in default of payment the amount thereof shall be recoverable as a debt due to the Crown.

Any expenses incurred.—This provision appears to enable the Secretary of State to order a local authority, against whom the Board of Control have made report of a default within the meaning of sub-sect. (1), *supra*, to pay any expenses incurred by him, whether a case of default has or has not, upon local inquiry, been made out to his satisfaction. The amount so ordered to be paid may include expenses incurred before, during and after a local inquiry, and also any expenses incurred by the Secretary of State in carrying the order for remedying a default into effect.

Expenses of the local authority.—See sect. 33, p. 104, *post*, as to the fund out of which the expenses of a local authority are to be defrayed.

Recoverable as a debt due to the Crown.—*I.e.*, recoverable by the ordinary procedure by way of information by the Attorney-General, or, if necessary, by a writ of immediate extent (see G. S. Robertson's "Civil Proceedings by and against the Crown," 1908, Stevens & Sons, Limited).

(3) An order of the Secretary of State shall be conclusive in respect of any default, amount of expenses, and any other matter therein stated or appearing; but nothing in this provision shall prejudice or affect the right or power of the

Secretary of State or any other authority or person to take any other proceedings for requiring a local authority to perform their duties under this Act.

Order of Secretary of State conclusive.—The Court before whom any proceedings may be taken to enforce an order to remedy a default, or to pay any expenses stated in such order to have been incurred by the Secretary of State under sub-sect. (1), cannot go behind such order; but must have regard to the contents thereof without requiring further proof of any of the matters therein stated or appearing.

Nothing shall prejudice the right . . . to take other proceedings.—As regards the right or power of the Secretary of State to take other proceedings for requiring a local authority to perform their duties under the Act, it seems clear, from the terms of sub-sect. (1), that there may be proceedings by *mandamus* without a report of the Board of Control, and local inquiry and consequential order, inasmuch as, under that sub-section, a local inquiry is only to be held in any case where the Secretary of State deems it desirable to do so, after a report of the Board of Control alleging a default.

So, also, it would appear, *mandamus* would lie at the instance of the Board of Control against a local authority in respect of a neglect on the part of such authority to perform any duties which the Board might legally require of a local authority under the Act, *e.g.*, the making of annual reports and such other reports as the Board may require (*see* sect. 30 (h), p. 91, *ante*).

It would also be open to a local authority to enforce any of the provisions of an order for joint action, made under sect. 29, p. 85, *ante*, against any other local authority which had neglected or refused or failed to carry out any of its duties under such order.

So, too, it would seem that an authority or a private individual might take the necessary proceedings for compelling a local authority to carry out an order in respect of which such local authority had made default in regard to any of its duties under the Act.

The above instances, necessarily, are not exhaustive of the subject, inasmuch as the sub-section merely enacts the reservation of the rights to take proceedings, which might otherwise be deemed to be merged in the procedure enacted in the first sub-section.

Duties under this Act.—*See* sect. 30, p. 87, *ante*, as to the general powers and duties of local authorities; sect. 28, as to their duty in regard to the constitution of a committee for the care of

the mentally defective; sects. 43, 44, pp. 126—137, *post*, as to responsibility for the maintenance of persons ordered to be sent to certified institutions, or to be placed under guardianship; *also* sect. 33 (1), *infra*, as to payment of expenses from the rates, and 33 (4), p. 107, *post*, as to the keeping of separate accounts of their receipts and expenditure under the Act by the council of a county borough.

33. Expenses and Borrowing by Local Authorities.]—

(1) The expenses of a local authority under this Act shall be defrayed, in the case of a county council out of the county fund, and in the case of a county borough council out of the borough fund or borough rate, or, if no borough rate is levied, out of a separate rate to be made, assessed, and levied in like manner as the borough rate:

Expenses of a local authority under this Act.—These expenses will usually fall under one of the three following heads, viz.:—(1) Those which are incurred by a local authority in the performance of their duties, and in respect of which grants will be receivable from the State contribution, for which provision is made in sect. 47, p. 141, *post*; (2) those incurred under an order of the Secretary of State, or by order of a Court or judicial authority, in the cases of persons who are sent to certified institutions or placed under guardianship, and which will be repaid under paragraphs (a) and (b) of the proviso to sect. 47, p. 142, *post*; and (3) those incurred by a local authority in the exercise of powers under the Act for purposes other than the fulfilment of their obligations under the Act (*see* proviso, p. 105, *infra*, and note thereto).

County fund.—By sect. 68 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), it is provided as follows:—(1) All receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made, in the first instance, out of that fund.

By sub-sect. (9) of the same section, it is also provided that county contributions may be made retrospective in order to raise money for the payment of costs which are incurred, or have become payable at any time within six months before the demand of the contribution.

The expression “expenses” in the 1888 Act includes costs and charges, and the expression “costs” includes charges and expenses (*ibid.* s. 100).

Borough fund or borough rate . . . or separate rate.—As to payments to and application of the borough fund, *see* the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 139, 140, and Schedule V.

Sect. 144 of the same Act provides for the making and assessing of a borough rate if the borough fund is insufficient for the purposes to which it is applicable under that Act, or otherwise by law; and such rate may be made retrospective, in order to raise money for the payment of charges and expenses which have been incurred, or have become payable at any time within six months before the making of the rate (*ibid.* sub-sect. (3)). As to the collection and levying of borough rates, *see ibid.* sects. 145—148.

It appears to be intended that, as regards a county borough, a separate rate should be levied for the purposes of the Mental Deficiency Act where the borough fund would be sufficient for all other purposes, but would be insufficient for the purposes of that Act.

Provided that the expenses incurred by a local authority in the exercise of their powers under this Act for purposes other than the fulfilment of their obligations under this Act shall not in any one year exceed an amount equal to that which would be produced by a rate of one halfpenny in the pound on the property liable to be assessed for the purpose as assessed for the time being for the purposes of that rate.

Fulfilment of obligations under the Act.—The expenses created by the fulfilment of obligations of local authorities under the Act are chiefly in respect of those duties which are thereby made imperative in accordance with sect. 30, p. 87, *ante*, but it is conceived that law costs and other incidental expenditure may be included under the same head. Under sect. 30 the local authorities also have powers which they may exercise if they think fit (*see* paragraphs (e), (f)). It appears to be chiefly in regard to the exercise of their powers under those paragraphs, or under paragraphs (b), (c), (d) and (g), in cases where although no obligation is imposed (*see* sect. 30, proviso), the local authority decide to carry out the provisions contained in such paragraphs, that their expenses must be limited as set forth in the proviso to sect. 33 (1), *supra*.

Property liable to be assessed for the purpose.—As to the general exemption of the Crown from rateability, and the various statutory exemptions from rating, total or partial, *see* the Author's "Law of Rating," 1913, Stevens & Sons, Ltd.

As assessed for the time being.—The maximum amount to be expended in any one year is to be calculated upon the assessable value of the property in the current valuation lists.

(2) A local authority may borrow for the purposes of this Act in the case of a county council, as for the purposes of the Local Government Act, 1888, and in the case of a county borough council, as for the purposes of the Public Health Acts; but in the application of section sixty-nine of the Local Government Act, 1888, to money borrowed by a county council under this Act a period not exceeding sixty years shall be substituted for a period not exceeding thirty years as the maximum period within which money borrowed is to be repaid, and the money borrowed by a county borough council shall be borrowed on the security of the fund or rate out of which the expenses of the council under this Act are payable.

Provisions as to borrowing by county council.—The borrowing powers of a county council for the purposes of the Local Government Act, 1888 (51 & 52 Vict. c. 41), are provided by sect. 69 thereof. As regards the county borough councils, sects. 233—239 and Schedule IV. (Forms H. and I.) of the Public Health Act, 1875 (38 & 39 Vict. c. 55), are applied for these purposes.

Maximum period for borrowing.—The period of sixty years herein made the maximum within which money borrowed for the purposes of this Act is to be repaid in the case of a county council, is the same period as that already provided in the Public Health Act, 1875 (sect. 234 (4)), and applied by the present Act to county borough councils.

Security to be provided by county borough.—By sect. 233 of the Public Health Act, 1875, an urban authority might borrow or re-borrow on the security of any fund, or all or any rates or rate out of which they are authorized to defray expenses incurred by them in the execution of that Act. The present Act requires the security to be on the particular fund or rate out of which the expenses incurred under the Act are defrayed (*see* sub-sect. (1), *supra*). There is a similar provision as regards the security for loans raised by county borough councils for the purposes of the Education Acts (Education Act, 1902 (2 Edw. 7, c. 42), s. 19 (1)).

(3) Money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of section sixty-nine of the Local Government Act, 1888, or as part of the debt of a county borough for the purposes of the limitation on borrowing under subsections (2) and (3) of section two hundred and thirty-four of the Public Health Act, 1875.

Removal of limitations on borrowing powers.—Similar provisions to those herein contained were enacted in regard to loans raised by or transferred to county councils and county borough councils under the Education Act, 1902 (2 Edw. 7, c. 42), s. 19 (2), Schedule II. (3).

Total debt of county.—By sect. 69 (2) of the Local Government Act, 1888, it is provided that “where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed, will exceed the amount of one-tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.”

Debt of county borough.—By sect. 234 of the Public Health Act, 1875, the exercise of the powers of borrowing conferred by that Act shall be subject to the following regulations, namely, “(1) . . . ; (2) the sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed; (3) when the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board.”

(4) Separate accounts shall be kept by the council of a county borough of their receipts and expenditure under this Act.

Separate accounts shall be kept.—The section does not provide, as in the case of the Education Act, 1902, s. 18 (3), that

the separate accounts so kept shall be made up and audited in like manner and subject to the same provisions as the accounts of a county council, which are, under sect. 71 of the Local Government Act, 1888, audited by the district auditors appointed by the Local Government Board.

The keeping of separate accounts is, however, requisite for the purposes of administering the grants made out of money provided by Parliament under sect. 47, p. 141, *post*, which duty will be, subject to the regulations made by the Secretary of State, in the hands of the Board of Control (*see* sect. 25 (1) (h), p. 78, *ante*).

34. *Special Provisions as to Lancashire.*—The Lancashire Asylums Board shall, as respects the county of Lancaster and the county boroughs represented on the said Board, be the local authority for the purposes of this Act for that county and those county boroughs, and the provisions of the Lancashire County (Lunatic Asylums and other Powers) Act, 1891, as to expenses, borrowing, accounts, and audit shall apply accordingly in substitution for the provisions as to the like matters contained in this Act.

Constitution of Lancashire Asylums Board.—The Lancashire Asylums Board, which was established and incorporated under the Act mentioned in the text, and is still in force, except as amended by the Lancashire County (Lunatic Asylums) Act, 1902 (2 Edw. 7, c. lvi), in regard to the basis of the contributions to be made by the constituent authorities, and other minor particulars, is composed of representatives of the Lancashire County Council and of each of the county borough councils in Lancashire.

The Board is under the same obligation to provide asylum accommodation as a local authority under the Lunacy Act, 1890 (53 Vict. c. 5), and has for that purpose (subject to the provisions of the Act) all the powers conferred on local authorities and visiting committees under Part IX. of that Act (*see* App., p. 272 *et seq.*, *post*). It is competent to the Board to delegate any of such powers to a visiting committee, but nothing in Part IX. of the Lunacy Act is to be construed so as to require the approval or confirmation by the county council of any act or proceeding of the Board or of a visiting committee.

Subject to the provisions of the Act, all acts and things authorised or required by the Lunacy Act, 1890, to be done by, to, or with a local authority may be done by, to, or with the Board, as if the

Board were the local authority of the entire county. Various other provisions of the Lunacy Act, 1890, are applied, and while any newly constituted county borough may join, there is also power to the county boroughs to withdraw upon carrying out the formalities specified in the Act.

It is of interest to note that a Board very similar to the above in its constitution and powers and duties, was established for the West Riding of Yorkshire by the West Riding of Yorkshire Asylums Act, 1912 (2 & 3 Geo. 5, c. ci), but such Board has not been made the local authority for the purposes of the present Act.

PART III.—CERTIFICATION AND PROVISION OF INSTITUTIONS, &c.

35. State Institutions.]—(1) The Board, subject to the approval of the Secretary of State, may establish and maintain institutions for defectives of dangerous or violent propensities (in this Act referred to as State institutions), and for that purpose the Secretary of State may cause to be transferred to the Board the whole or any part of any building vested in the Prison Commissioners or otherwise under the control of the Secretary of State, or may, with the approval of the Treasury, authorise the Board under this Act either to acquire any land or erect or acquire any building.

The Board may establish and maintain . . . State institutions.—By sect. 25 (1) (e), p. 77, *ante*, it is made the *duty* of the Board of Control to *provide* and maintain institutions for defectives of dangerous or violent propensities, but under that section it would seem to be sufficient that such Board should provide and maintain the necessary accommodation in a certified institution having accommodation available for the purpose. Under the present section, however, power is given to establish and maintain State institutions for defectives of the above-mentioned class.

The Board of Control are neither empowered nor required to provide, or establish, or maintain institutions for any other class of defectives (*see* definition of "State institution," sect. 71, p. 180, *post*).

Inasmuch as the expressions "institution" and "institution for defectives" mean a State institution *or* certified institution, the provisions for dealing with defectives in sects. 3, 6—12, pp. 31, 35—56, *ante*, and the supplemental provisions of sects. 13—18,

pp. 57—70, *ante*, will be applicable to the reception of dangerous or violent defectives in either class of institutions, and even such persons in respect of whom there is no lack of means may be received and maintained in State institutions or certified institutions.

Authority to Board of Control to acquire land, &c.—*See* sect. 22 (4), p. 73, *ante*, as to the power of the Board to hold land without licence in mortmain for the purposes of their powers and duties.

Sect. 39, p. 119, *post*, authorises the public authorities therein named to lease or grant the use of premises vested in them only for the purposes of their being used as a “certified institution.” It is submitted, however, that there is nothing in the Act to prevent the sale of any such premises for the purpose of sect. 35.

(2) For the purposes of this Act, the Board shall be deemed to be the managers of State institutions.

“Managers” of State institutions.—The term “managers,” which is not defined by the Act, though used in connection with the certification of institutions and various other matters, means, it is submitted, the authority having the general control, *e.g.*, the board of guardians having control of a workhouse or other poor law institution, or a joint committee of a combination of unions (*see* definition of board of guardians, sect. 71, p. 182, *post*), or any other authority in whom any premises, which may be or are utilised for the purposes of the Act, are vested. In this connection, it is interesting to note the various institutions of the Metropolitan Asylums Board that are under the general administrative control of bodies of “managers”; but, it is submitted, the Board of Control alone are “managers” within the meaning of the present Act.

36. Certification of Institutions.—The Board may, upon the application of managers of premises intended for the reception, control, care, and treatment of defectives, if satisfied of the fitness of the premises and of the persons proposing to maintain them for such purposes, grant a certificate to the managers to receive defectives therein, and a certificate so granted shall continue in force for the period for which it is granted or until revoked or resigned under this Act, and an institution so certified is in this Act referred to as a certified institution.

“Managers.”—*See* note to sect. 35 (2), *supra*.

Premises intended for . . . defectives.—The premises, it is submitted, need not be intended *solely* for “defectives” within the meaning of the Act (*see* sect. 1, p. 20, *ante*). For the provision as to “certified houses” and “approved homes,” *see* sects. 49 and 50, pp. 144, 147, *post*, respectively.

Grant a certificate to receive defectives.—Such grant will constitute the premises, during the life of the certificate, a “certified institution” within the meaning of the Act.

The regulations of the Secretary of State will provide as to the granting, transfer, renewal, revocation, and resignation of such certificates (*see* sect. 41 (1) (a), p. 123, *post*).

“**Certified institution.**”—*See* definition, sect. 71, p. 180, *post*.

37. Approval of Premises provided by Boards of Guardians.—(1) On the application of the local authority for any area comprising the whole or any part of a poor law union, the Board may, subject to the consent of the Local Government Board, if satisfied of the special fitness for the detention, care, and training of defectives of any buildings or other premises provided by the board of guardians of that union, either alone or in conjunction with any other board of guardians, approve the premises for the reception of defectives, and thereupon this Act shall apply as if the premises so approved were a certified institution and the guardians were the managers thereof, and, so long as any such premises continue to be so approved, it shall be lawful for the board of guardians in their capacity of managers, subject to the approval of the Local Government Board, to enter into agreements with any local authority as to the reception and maintenance therein of defectives ordered to be sent thereto under this Act, and to receive such defectives accordingly.

Area of a poor law union.—The term “poor law union,” as used in the present connection, means “any parish or union of parishes for which there is a separate board of guardians” (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 16 (2)).

Board of guardians of a poor law union means “a board of guardians elected under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and the Acts amending the same, and shall

include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834" (Interpretation Act, 1889 (52 & 53 Vict. c. 62), s. 16 (1)); and, by sect. 71, p. 182, *post*, is defined to include the Metropolitan Asylums Board (the constitution of which Board is explained in the note to that section), and any joint committee of a combination of unions constituted by order of the Local Government Board.

Special fitness for the detention, care, and training of defectives.—Under sect. 36 the Board of Control are required, for the purposes of premises intended for the reception, control, care and treatment of defectives, to be satisfied of the fitness of those premises for such purposes, in order that they may be certified institutions. Detention of defectives under the Act is authorised in certified institutions by sects. 10—12, pp. 50—56, *ante*, and necessarily signifies authority to control the persons detained. The Poor Law Authorities have no general power of detention under the Acts relating to the relief of the poor, and the Board of Control, before approving the buildings or other premises of a board of guardians, have to be satisfied of the special fitness of the buildings or other premises provided by the guardians in respect of which the local authority make their application, for the detention, care, and training of defectives.

Subject to the consent of the Local Government Board.—This consent is necessary as regards the proposed use of the premises or buildings of guardians for the reception and maintenance of defectives under the Act, inasmuch as the institutions provided by such boards are intended primarily for those who require poor relief, and are managed subject to the regulations of the Local Government Board as the central poor law authority (*see* sub-sect. (2), p. 113, *infra*).

Guardians in their capacity as managers.—*See* note to sect. 35 (1), as to the meaning of the term "managers." Under the regulations of the Local Government Board, boards of guardians, as such, have power, subject to the approval of such Board, to enter into agreements for the reception and maintenance in their institutions of inmates belonging to other boards of guardians (Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 14; Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 22); but no power has hitherto been given for poor law authorities to contract to receive and maintain persons other than those in receipt of relief, excepting, perhaps, some of the chronic lunatics who may be received in workhouses, by arrangement

between the visitors of an asylum and a board of guardians, subject to the necessary consents, and to the regulations (*see Lunacy Act, 1890, s. 26; App., p. 199, post*).

Contracts with the guardians must be made under the seal of the board. They are exempt from stamp duty under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 86.

(2) Any defective ordered to be sent to any such premises under this Act shall not be deemed to be in receipt of poor law relief by reason that the premises are provided by a board of guardians.

Defective ordered to be sent.—*I.e.*, a defective within the meaning of the Act (*see sect. 1, p. 20, ante*), in respect of whom an order has been made under sects. 5—9 (*see pp. 33—50, ante*). It is submitted that the exemption in this section cannot be applied to the case of a defective placed in such an institution by his parent or guardian under sect. 3, p. 31, *ante*. Nor does it apply to an alleged defective who is taken to an institution provided by guardians as a place of safety under sects. 8 (3) or 15, pp. 45, 62, *ante*.

38. Power of Local Authorities to Establish or Contribute to Institutions.—(1) A local authority may, subject to the approval of the Secretary of State,—

- (a) undertake or combine with any other local authority in undertaking, or contribute such sums of money upon such conditions as they may think fit towards, the establishment, building, alteration, enlargement, rebuilding, or management of institutions certified or intended to be certified under this Act or the purchase of any land required for the use of a certified institution or for the site of an institution intended to be certified under this Act; and
- (b) contract with the managers of any certified institution for the reception and maintenance in the institution of persons for whose reception and maintenance the local authority are by this Act required or authorised to make provision.

Local authority.—*See sect. 27, p. 79, ante*, as to the local authorities generally; and sect. 34, p. 108, *ante*, as regards Lancashire.

Subject to the approval of the Secretary of State.—*I.e.*, after the formalities prescribed by the regulations have been complied with.

Power to establish or contribute to institutions.—Excepting where proviso (i) of sect. 30 applies (*see* p. 91, *ante*), the local authorities have the duty of providing suitable and sufficient accommodation for defectives subject to be dealt with under the Act otherwise than under sect. 2 (1) (a), p. 25, *ante*, when sent to certified institutions by orders under sects. 6, 7, 8 or 9 (*see* pp. 35—50, *ante*).

Under paragraph (a) of this sub-section the local authorities may either singly, or acting in combination with other local authorities under the Act, provide the necessary accommodation in and undertake the management of certified institutions, or purchase land or sites of their own, the purchase of land or sites being undertaken in accordance with the provisions applied by sub-sect. (3), p. 115, *infra*, or they may contribute towards the expenses incurred for such purposes by other parties. *See also* sect. 29, p. 85, *ante*, as to joint exercise of their powers and duties under the Act by two or more authorities.

Certified institution.—*See* definition, sect. 71, p. 180, *post*, and sect. 36, p. 110, *ante*, as to certification of institutions; *see also* sect. 67 (2), p. 174, *post*, as to hospitals, institutions, or licensed houses which were registered under the Idiots Act, 1886.

Power to contract for reception, &c. of defectives.—Under paragraph (b) the local authorities can enter into agreements with the managers of certified institutions, or with boards of guardians whose buildings or other premises have been approved, under sect. 37 (1), p. 111, *ante*, for the reception and maintenance of defectives. The local authority have no such power in regard to certified houses (*see* sect. 49 (2), proviso (c), p. 147, *post*).

Limitation as to expenditure.—As to the maximum amount of the expenses which may be incurred in any one year by a local authority in the exercise of their powers under the Act for purposes other than the fulfilment of their obligations under the Act, *see* sect. 33 (1), proviso, p. 105, *ante*.

(2) Where plans of any proposed alteration, enlargement, rebuilding or building have been approved by the Secretary of State for the purposes of this section, they shall be carried out without any modifications (except such as the Secretary of State may approve), and no building or site which has

been provided by a council or to which they have contributed under this section shall, without the consent of the Secretary of State, be used for any purpose other than that for which it has been approved.

Where plans have been approved.—The regulations of the Secretary of State will provide for the formalities to be adopted in order to obtain the necessary approval to plans or modifications of plans.

As to the mode of obtaining approval to agreements, contracts, or plans under the Lunacy Acts, *see* Lunacy Act, 1890, s. 272; App., p. 285, *post*. By sect. 254 (2) of that Act, as amended by sect. 16 of the Lunacy Act, 1891, it is provided that “plans and contracts for the purchase of lands and buildings, and for the erection, restoration and enlargement of buildings agreed upon by a visiting committee shall not be carried into effect until approved by a Secretary of State.” (*See* App., p. 278, *post*.)

No building or site provided or contributed to by a council.—The use of the words “no building or site which has been provided by a council, or to which they have contributed under this section,” does not seem to fully meet the object of the latter part of the sub-section, which appears to be to prevent the use for any other purpose than that for which it has been approved, without the consent of the Secretary of State, of any premises or land where the local authority have incurred expenditure under sub-sect. (1), p. 113, *supra*, and where they have therefore had to obtain the approval of the Secretary of State before incurring such expenditure.

The word “council” clearly means “local authority,” but in paragraph (a) of sub-sect. (1) occur the words “land required for the use of a certified institution,” as distinguished from land required “for the site of an institution intended to be certified.” The prohibition in sub-sect. (2) seems to be directed only against the use of land acquired for a site, in respect of which a local authority have incurred expenditure, for other purposes without the consent of the Secretary of State; whereas land required *for the use of a certified institution* may apparently be used for other purposes without such consent, even although the approval of the Secretary of State is necessary to enable the local authority to purchase or contribute to the purchase of the same.

(3) Land may be acquired by a local authority for the purposes of this Act in the case of the council of a county

under and in accordance with the Local Government Act, 1888, and in the case of the council of a county borough as for the purposes of the Public Health Acts.

Acquisition of land by county councils.—The Local Government Act, 1888, provides as follows:—

Sect. 65. *Power to acquire Lands.*—(1) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be exercised through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect and furnish halls, buildings, and offices as they may from time to time require, whether within or without their county.

[NOTE.—The concluding words of the sub-section enable the county council to go outside the county boundaries. For the purposes of the Lunacy Acts, the London County Council in particular have availed themselves of this power. *See also* Public Health Act, 1875, s. 175, p. 117, *post.*]

(2) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

[NOTE.—The above-mentioned sections are set out in the next note. It is to be observed that by sect. 64 (3) of the Local Government Act, 1888, the consent of the Local Government Board is required to the alienation of land by a county council, and the consent of the Local Government Board is required to the selling or letting of lands by a local authority under the Public Health Act, 1875, ss. 175, 177.]

(3) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

[NOTE.—By sect. 64 (3) of this Act, the consent of the Local Government Board is required to the alienation of any land or buildings vested in a county council.]

Acquisition of land by county borough councils.—For the purposes of the acquisition of land by a county borough council

the following provisions of the Public Health Act, 1875, are applied:—

175. *Power to purchase Lands.*—Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease, sell or exchange any lands, whether situated within or without their district; they may also buy up any water-mill, dam or weir which interferes with the proper drainage of or the supply of water to their district.

Any lands acquired by a local authority in pursuance of any powers in this Act contained, and not required for the purpose for which they were acquired, shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards the discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

[NOTE.—By sect. 4 of this Act “land” includes “messuages, building lands, easements and hereditaments of any tenure.” See also Interpretation Act, 1889, s. 3 (cited in the note to sect. 39, p. 120, *post*).]

176. *Regulations as to purchase of Land.*—With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say)—

(1) The Lands Clauses Consolidation Acts, 1845, 1860 and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:

(2) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are 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 lands that they require; and shall further

Serve a notice in the month of December on every owner

or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

- (3) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees and occupiers of lands who have assented, dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires:
- (4) On the receipt of such petition, and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees and occupiers thereof:
- (5) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

Provided that the notices by this section required to be given in the months of November and December may be given in the months of

September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

177. *Power to let Lands.*—Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

178. *Provision for Lands belonging to the Duchy of Lancaster.*—The Chancellor and council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors in right of the said duchy, or any right, interest or easement in, through, over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase-money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

39. *Transfer of Premises for use as Institutions.*]—Where any premises vested in the Prison Commissioners, any board of guardians, or other public authority are no longer required for the purposes for which they were provided, and the Board of Control are satisfied as to the fitness of the premises for the reception of defectives, the Prison Commissioners, the board of guardians, or other authority may, with the consent of the Secretary of State, the Local Government Board, or other Department of the Government concerned, lease or grant the use of the premises to any local

authority under this Act, or other person, for the purpose of their being used as a certified institution.

Premises.—The word “premises” as here used refers only to buildings. Under the Public Health Acts the term includes messuages, buildings, lands, easements and hereditaments of any tenure, and it is provided by sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), that in every Act passed after the year 1850, unless the contrary intention appears, the expression “land” shall include “messuages, tenements and hereditaments, houses and buildings of any tenure.”

Board of guardians.—See definition in note to sect. 37 (1), p. 111, *ante*.

Fitness of premises for reception of defectives.—Compare with sect. 36, p. 110, *ante*, as to the requirements therein in regard to institutions intended to be certified under that section.

With the consent.—The consent of the Government department concerned as the central authority in regard to any building intended to be transferred must be obtained before the lease or grant is made.

Lease or grant, the use of.—It is to be observed that this section does not provide for the *sale* of premises which are no longer required by public authorities for the purposes of their being used as a certified institution, but there appears to be power under the existing law to enable any public authority to convey such premises upon obtaining the consent of the Government department concerned as the central authority (*conf.* Local Government Act, 1888, s. 65; Public Health Act, 1875, s. 175, cited in the note to sect. 38 (3), p. 117, *ante*; the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 141; also the Parish Property, &c. Act, 1842 (5 & 6 Vict. c. 18), s. 3; Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 22; Prison Act, 1877 (40 & 41 Vict. c. 21), s. 34).

40. Visitors of Institutions.]—(1) The persons appointed under the Lunacy Acts, 1890 to 1911, to act as visitors of licensed houses, with the addition of one or more women appointed in like manner as such visitors, shall be the visitors of institutions for defectives under this Act, and the number of persons appointed to be visitors of licensed houses under those Acts shall be such as may be considered necessary to

perform the duties of visitors of institutions for defectives under this Act as well as the duties of visitors of licensed houses under those Acts, and their duties under this Act shall be taken into consideration in determining the remuneration, if any, of the visitors and clerks to visitors.

Visitors of licensed houses under the Lunacy Acts.—The provisions under which visitors of licensed houses are appointed for the purposes of the Lunacy Acts are contained in sects. 177, 180 of the Lunacy Act, 1890 (*see App.*, pp. 250, 252, *post*).

It is to be observed that under sect. 177 (1) “the justices of every county and quarter sessions borough not within the immediate jurisdiction of the Commissioners (in Lunacy) shall, whether there is a licensed house within the county or borough or not, annually appoint three or more justices, and also one medical practitioner or more, to act as visitors of licensed houses within the county or borough and otherwise for the purposes of this Act,” but by sect. 180, “a visitor . . . shall not be appointed by the justices of a borough without the consent in writing of the recorder of the borough.”

The appointment of visitors in counties or boroughs where there are no licensed houses is requisite for the purposes of visitation, upon the request in writing of the Commissioners in Lunacy, of any single patient detained in an unlicensed house in such county or borough (*see Lunacy Act, 1890, s. 199 (2), p. 258, post*).

The Commissioners in Lunacy exercise the licensing jurisdiction under the Lunacy Acts as regards the places mentioned in Schedule III. of the Act of 1890 (*see App.*, p. 311, *post*), which are deemed to be within their immediate jurisdiction (*ibid.*, sect. 208 (1), *App.*, p. 263, *post*).

Visitors of institutions for defectives.—The section provides that the persons appointed under sects. 177, 180 of the Lunacy Acts are to be visitors of institutions for defectives under this Act, and the number is not limited as regards the maximum. *See* sect. 71, p. 180, *post*, for definition of “institutions for defectives.” The women visitors are not required to have any special qualification (*see note to sub-sect. (3), p. 123, post*, as to the functions of visitors).

Remuneration of the visitors.—*See note to sub-sect. (2), p. 122, post.*

(2) In all places where no persons are so appointed to act as visitors of licensed houses a sufficient number of persons,

possessing the like qualifications as such visitors, with the addition of one or more women, shall be appointed in like manner as such visitors to act as visitors of institutions for defectives, and a clerk to such visitors shall be appointed in like manner as in the case of the clerk to the visitors appointed under the Lunacy Acts, 1890 to 1911, and the expenses of visitors so appointed, including the remuneration, if any, of any visitors and clerks to visitors, shall be defrayed in like manner as the expenses of visitors under the Lunacy Acts, 1890 to 1911.

Places where no persons are appointed as visitors.—*I.e.*, places within the immediate jurisdiction of the Lunacy Commissioners (*see* note to sub-sect. (1), p. 121, *supra*).

Qualifications of visitors.—By sect. 177 (1) of the Lunacy Act, 1890, three or more justices, and also one medical practitioner, being persons not disqualified under sub-sects. (3), (4), are to be appointed as visitors (*see* App., p. 250, *post*).

With the addition of one or more women.—The Act does not require any particular qualification for women visitors.

Shall be appointed in like manner.—*See* note to sub-sect. (1) as to appointments as visitors of licensed houses under the Lunacy Acts.

A clerk . . . shall be appointed.—*See* Lunacy Act, 1890, sect. 178, as to the appointment of a person to act as clerk to the visitors, and sect. 180 as to the necessary consent in writing of the recorder of the borough in the case of the appointment of a clerk by the justices of the borough (App., pp. 251, 252, *post*).

Expenses of visitors . . . including remuneration.—*See* Lunacy Act, 1890, s. 182, as to the payment of expenses of visitors of licensed houses; *also* sect. 177 (12) as to the remuneration of a visitor being a medical practitioner, and sect. 178 (5) as to the remuneration of the clerk to the visitors (App., pp. 251, 252, *post*).

(3) The visitors of institutions for defectives shall perform such functions as are assigned to them by this Act and such further functions in connection with the visitation of institutions and of the patients therein, and of defectives under guardianship, and with respect to the discharge of such defectives and their after care and otherwise, as may

be assigned to them by regulations of the Secretary of State under this Act.

Institutions for defectives.—*See* definition, sect. 71, p. 180, *post*.

Functions assigned to visitors by the Act.—*See* sect. 11 (2), (3), (4), pp. 52, 53, *ante*, and sect. 63, p. 169, *post*. The further functions of such visitors assigned to them by the regulations will, it is submitted, be similar to those prescribed for the visitors appointed for the purposes of the Lunacy Acts (*see* Lunacy Act, 1890, ss. 179, 181, 191—196, 199, App., pp. 251, 252, 255—259, *post*).

Discharge of defectives.—*See* sect. 11 (3), p. 53, *ante*, as to the power of visitors to discharge a defective whose case has been reconsidered under the proviso to sect. 11 (2).

Regulations under this Act.—*See* sect. 20 (d), (e), p. 71, *ante*, and sect. 41, *infra*, as to the purposes for which regulations may be made by the Secretary of State. *See also* sect. 68, p. 176, *post*, as to the laying of regulations before Parliament, and the effect of regulations made under this Act.

41. Regulations as to Management of Institutions for Defectives, &c.]—(1) The Secretary of State may make regulations as to—

See sect. 68, p. 176, *post*, as to the laying of regulations before Parliament, and their effect when made under the Act.

(a) the granting, transfer, renewal, revocation, and re-signation of certificates for institutions;

See sects. 36, p. 110, *ante*, 49 (1), p. 144, *post*.

(b) the management of institutions;

See sect. 25 (1) (c), p. 77, *ante*.

(c) the classification and treatment of patients in institutions, their instruction, and their employment in suitable occupations, and the reports to be made as to their mental condition and otherwise in respect of them;

See sect. 25 (1) (f), p. 78, *ante*.

(d) the inspection of institutions and the visitation of patients therein by the Board and inspectors and other persons;

See sect. 25 (1) (d), (2), pp. 77, 78, *ante*.

(e) the notification to the Board of the admission of a patient to an institution;

See sects. 3 (2), p. 32, *ante*, 43 (1), p. 126, *post*.

(f) the transfer of patients from one certified institution to another, and from a State institution to a certified institution, and, in cases appropriate to State institutions, from a certified institution to a State institution;

See sects. 25 (1) (f), p. 78, *ante*, 43 (3), p. 130, *post*.

(g) the discharge of patients from institutions;

See sects. 11 (3), 12 (3), 25 (2), pp. 53, 56, 78, *ante*.

(h) the absence of patients from institutions under licence or temporarily without licence;

See sect. 42, p. 125, *post*.

(i) the notifications to be made by the managers in the event of the outbreak of an infectious disease in an institution and in the event of the death of a patient in an institution or absent therefrom under licence;

(j) the conveyance of persons to and from institutions;

See sects. 3, 6—9, 15, 16 (1), 17 (4), pp. 31, 35—50, 62, 64, 69, *ante*.

(k) the burial of persons dying in institutions;

See Lunacy Act, 1890, ss. 258, 259 (App., p. 279, *post*).

(l) the powers and duties of persons appointed guardians of defectives under this Act; the reports to be made

by such guardians as to defectives under their guardianship; the visitation of such defectives; and their discharge from guardianship;

See sects. 3, 5—8, 11 (3), 18, 25 (1) (d), (2), 40, pp. 31, 33—47, 53, 69, 77, 78, 120.

(m) the granting, renewal, and revocation of approval of homes for defectives;

See sect. 50, p. 147, *post*.

(n) the holding of inquiries and any other matter necessary or proper for the carrying into effect of the provisions of this Act with respect to institutions, and the inmates thereof, and to guardianship;

(o) the application, as respects any matters to be dealt with by regulations, of any of the provisions of the Lunacy Acts, 1890 to 1911, dealing with the like matters, subject to the necessary modifications and adaptations;

Many of the recommendations of the Royal Commission on the Care and Control of the Feeble-minded took the form of adapting provisions of the Lunacy Acts.

(p) the study of improved methods of treating mental deficiency.

(2) The regulations made under this section shall make applicable as respects institutions and the patients therein the provisions of sections forty, forty-one, forty-two, forty-seven, and fifty-three of the Lunacy Act, 1890:

Provided that nothing in this subsection shall be construed as restricting any power of the Secretary of State under subsection (1) of this section.

See App., pp. 206—209, 212, *post*, for the above-mentioned sections of the Lunacy Act, 1890.

42. *Apprehension of Defectives Escaping.*]—If a patient in an institution or absent from an institution under licence or without a licence escapes, he may be apprehended without

warrant by any constable or by the managers of the institution or any person authorised by them in writing, and brought back to the institution.

Patient in an institution.—*I.e.*, a defective who is for the time being lawfully detained as a patient. The section is applicable to patients in certified houses (*see* sect. 49 (2), p. 145, *post*). A defective cannot lawfully be detained in an approved home if he is a person who has been ordered to be sent to an institution for defectives under an order made under sects. 6, 7, 8 or 9, pp. 35—50, *ante* (*see* sect. 50 (2), p. 148, *post*).

Absent . . . under licence or without a licence.—The absence of patients under licence or temporarily without licence must conform with the regulations of the Secretary of State made under sect. 41 (1) (h), p. 124, *ante*.

May be apprehended without warrant.—There is no such limitation of time for the apprehension of an escaping defective as is fixed for the recapture of a lunatic under sect. 85 of the Lunacy Act, 1890, *viz.*, “at any time within fourteen days” (*see* App., p. 221, *post*). On the other hand, there are no such provisions in the present Act as to the apprehension of defectives escaping into Scotland or Ireland, or from Scotland or Ireland, as in sects. 86—89 of the Lunacy Act, 1890 (*see* App., pp. 221—223, *post*).

As to the powers, protection and privileges of persons effecting arrests, *see* the provisions of sect. 62, p. 168, *post*.

Offence of assisting or inducing a patient to escape.—*See* sect. 53, p. 155, *post*.

43. Ascertainment of Local Authority responsible for providing Accommodation, &c.]—(1) Where a person is ordered to be sent to a certified institution or to be placed under guardianship, the local authority responsible for providing accommodation for that person or making provision for his guardianship, as the case may be, shall be the council of the county or county borough in which he resided (to be specified in the order), and the duties of that council shall include, in the case of a person ordered to be sent to a certified institution, the duty to provide for his conveyance to, and reception and maintenance in, such an institution.

Responsibility of local authorities for maintenance of defectives under orders.—In the preamble to the Recommen-

dations in the Report of the Royal Commission on the Care and Control of the Feeble-minded, the Commissioners stated that it was not intended that the maintenance at public expense of the mentally defective . . . should be extended to those who either at their own cost or at that of their relatives or friends could be otherwise suitably and sufficiently provided for. The provisions of sects. 43 and 44 are of the greatest importance to the local authorities under the Act, inasmuch as there will be determined thereunder not only the question of primary responsibility for providing for persons ordered to be sent to certified institutions, or to be placed under guardianship under either of sects. 6, 7, 8 or 9, pp. 35—50, *ante*, but also the question of future liability for any expenses which may be incurred on behalf of the person who has been so dealt with, without prejudice, however, to the provisions of the Act as to the recovery of expenses from the defective, or any person liable to maintain him (*see* sects. 13, 14, pp. 57, 61, *ante*).

In the cases of pauper lunatics, as has already been pointed out (*see* sect. 30 (ii), note, *ante*, p. 95), although the local authorities under the Lunacy Acts have to provide the accommodation, the liability for expenses of maintenance is primarily upon the unions from which they were sent (*see* Lunacy Act, 1890, s. 286; App., p. 290, *post*), and justices' orders for the maintenance of lunatics may be made upon such unions (*ibid.* sect. 287); but the ultimate liability for such maintenance is fixed upon the union of irremovability (*ibid.* sect. 294), or of the last legal settlement (*ibid.* sect. 289), or, if no status of irremovability or legal settlement exists, such liability is fixed upon the local authority within whose area the lunatic is found (*ibid.* sect. 290).

Under the Mental Deficiency Act the responsibility for providing accommodation, and of paying the expenses of defectives dealt with under orders, as above mentioned, are both cast upon the local authority for the area in which the defective resided, but it may become necessary to determine the matter by reference to the place of settlement of the defective (*see* sect. 44 (4), p. 135, *post*).

Where a person is ordered.—Sects. 43 and 44 only apply to cases of defectives detained under orders. They do not apply to those defectives who have been dealt with at the instance of a parent or guardian under sect. 3, p. 31, *ante*, or to defectives in certified houses (*see* sect. 49 (2), proviso (b), p. 145, *post*), or in approved homes (*see* sect. 50 (2), p. 148, *post*).

Certified institution.—*See* definition, sect. 71, p. 180, *post*; also sects. 36, 37 (1), 38 (1), 39, and 67, as to institutions which may

be certified, and premises which, upon approval by the Board of Control, may be used as if they were certified institutions.

Local authority responsible.—*See* sect. 30, proviso (1), p. 91, *ante*, as to exemption of local authorities from, *inter alia*, the duty to provide accommodation, &c. where the parliamentary grant is insufficient. No provision appears to be made by the Act for the accommodation of defectives, other than those of dangerous or violent propensities (*see* sect. 25 (1) (e), p. 77, *post*), where the local authority, who would otherwise be responsible for such accommodation, is exempted from this duty. It is apprehended that in such cases the poor law authorities must be called upon to deal with the case if there is destitution, though no order can be made under the Act fixing the responsibility for so doing upon any poor law authority.

The local authority named in the order will be responsible for providing for the defective, unless they are successful in getting the liability transferred to another local authority under sect. 44 (3), p. 133, *post*.

County or county borough in which he resided.—Where an order is made that a person be sent to a certified institution or placed under guardianship by a judicial authority under sects. 6 or 7, pp. 35, 39, *ante*, or by a Court—in the case of a child who has not been found guilty of an offence, but has otherwise been found liable to be sent to an industrial school (*see* sect. 8 (1), p. 40, *ante*—the judicial authority or Court, as the case may be, must have regard to the place of residence of the person whose case is under notice. *See*, however, sect. 44 (1), p. 131, *post*, as to orders made in respect of persons found guilty of offences, and sect. 44 (2), p. 132, *post*, as to orders made by the Secretary of State. *See also* sect. 44 (3), p. 133, *post*, as to appeals against decisions as to the place of residence.

The word “resided,” as used in this section, is not defined in the Act, but, having regard to the application, by sect. 44 (4), p. 135, *post*, of the law of settlement of poor persons in receipt of parish relief, in cases of doubt, it would appear that the construction put by the Court upon such word must be adopted for the purposes of the present Act (*conf. Blackwell v. England* (1858), 27 L. J. Q. B. 124). In that case Coleridge, J., said, in the course of his judgment (*see* p. 126 of the report):—“The sense in which the words ‘residence and occupation,’ in all cases, are to be construed varies with the object that the Act of Parliament has in view. Under the Poor Law Acts ‘residence’ means where the pauper sleeps.” Erle, J., said:—“If the matter were worth inquiring into, it would be found

that a technical meaning was first given to the word when the freeholders of a tithing were responsible for the conduct of all persons residing within it. It was, therefore, necessary to ascertain whether a person within it was a guest or a commorant. So is the origin of fixing a district with the maintenance of paupers. The question was, whether the pauper came there with the intention of becoming a *resiant*, or merely with the intention of proceeding on. If they did not look after him he became a *resiant*, and hence 'residence' came to mean the place where he slept. This is a narrow construction for the purpose of the poor law."

In *Reg. v. St. Leonard, Shoreditch* (1866), 35 L. J. M. C. 48, however, the word "residence" was given a somewhat more extended meaning, where a poor person had lived for more than three years in lodgings in a parish, and then from want was compelled to give up her lodgings, and wandered, houseless, about the parish. She slept one night on a doorstep in the parish, and for the next twenty-one days wandered about, chiefly in the parish, and went at night to sleep at a refuge for the houseless poor out of the parish, returning in the day time to the parish. She then became chargeable, and the question arose whether she had continued to reside in the parish where she formerly had lodgings. The Court decided in the affirmative, Cockburn, C. J., in giving judgment, saying:—"It is not necessary that the residence should be in a house or place appropriated for the purpose of residence. There are people who are obliged to seek a necessary shelter in the open air. Such people have no other habitation, and sleep how they best can, and the parish of such habitation is then their place of residence." Blackburn, J., agreed, and said:—"Where a person sleeps is a matter affording an important element in determining where a pauper resides; but it is by no means conclusive of the point."

The above cases have been quoted with the purpose of giving a general indication of that which appears to have been the intention of the Legislature in regard to the determination of the area where a defective "resided," but, having regard to the great variety of circumstances which must arise respecting individuals, further reference to the decisions of the Courts may be required for elucidation of the subject. The whole subject will be found to be fully treated in the author's volume on "Poor Law Settlement and Removal," 2nd edition (1913), Stevens & Sons, Limited.

It should, however, be here noticed that no particular length of residence is made the criterion of responsibility under this Act, excepting in cases of doubt (*see* sect. 44 (4), p. 135, *post*). Moreover, although the word "resided" is used also in sect. 44 (1), (2),

the word "resides" is used in sect. 44 (4), and the expression "was resident" in sect. 44 (3), though, in all cases, apparently with exactly the same meaning.

(2) An order that a person be sent to an institution or placed under guardianship shall not, where a council will by virtue of this Act become responsible for providing for the conveyance, reception and maintenance of that person in an institution, or making provision for his guardianship, as the case may be, be made unless that council have been given an opportunity of being heard, or, if the order is made by the Secretary of State, of making representations to him, and, if room is available in an institution, suitable for the defective, provided by the responsible authority, an order shall not, without the consent of that authority, be made for sending the defective to any other institution.

Responsible local authority to be informed.—The subsection requires that the local authority who appear to be responsible for providing for the person in respect of whom it is intended to make an order shall be placed in a position to raise objections to the making of the order, so far as it will fix the responsibility upon such authority. As regards the procedure in cases under sect. 8 (1), p. 40, *ante*, provision is made for the police authority to communicate with the local authority (*see* sect. 8 (4), p. 45, *ante*). As regards applications for orders by petitions (sect. 6), applications for orders to vary orders previously made (sect. 7), and orders by the Secretary of State (sect. 9), notice must be given in accordance with the regulations made by the Secretary of State under sect. 20, p. 71, *ante*.

Council aggrieved may appeal.—*See* sect. 44 (3), p. 133, *post*, as to the right of a local authority to appeal against a decision as to the place of residence of any person, and as to the liability of the council named in the original order, until an order made transferring the liability to another council comes into force.

(3) The council responsible under this section for the maintenance of a person in a certified institution shall continue responsible for his maintenance in the event of his transfer to another such institution, and shall be responsible for his conveyance on his transfer from the one institution

to the other; and the council responsible under this section for making provision for the guardianship of a person placed under guardianship shall, in the event of his being sent to a certified institution under an order varying the original order, be responsible for his conveyance to, and his reception and maintenance in, such an institution.

Council responsible in the event of transfer.—Subject to the provisions giving a local authority power to appeal against a decision as to the place of residence (*see* sect. 44 (3), p. 133, *post*), where an order has been made fixing the responsibility for providing for a person upon a local authority, such responsibility will remain with that local authority while the person continues to remain subject to such order, or to any order varying the same and providing for the continued detention of the person in a certified institution or under guardianship under the provisions of sect. 7, p. 39, *ante*.

44. Determination of Residence.—(1) Where the order is made in respect of a person found guilty of an offence, that person shall for the purposes of the provisions of the last preceding section be presumed to have resided in the place where the offence was or was alleged to have been committed, unless it is proved that he resided in some other place:

Provided that, where the order is made by a court of assize or quarter sessions, the Court shall remit to a court of summary jurisdiction for the place where the person is committed for trial the determination of his place of residence.

Person found guilty of an offence.—This sub-section refers to cases of convicted persons or persons deemed to have been found guilty of offences who have been sent to certified institutions or placed under guardianship by orders of the Courts under sect. 8 (1), p. 40, *ante*.

The provision as to presumption of residence appears, however, to be inapplicable to the cases of persons whose place of abode is known, or are proved to the satisfaction of the Court making the order, or of the Court which deals with an application of an aggrieved council, under sub-sect. (3), p. 133, *infra*, to be in a

county or county borough, as the case may be, other than that in which the offence was or was alleged to have been committed.

Resided in some other place.—*See* note under sect. 43 (1), p. 128, *ante*, “county or county borough in which he resided,” as to the meaning of the word “resided”; *also* sub-sect. (4), p. 135, *post*, as to the construction of the expression “place of residence” in cases of doubt as to where a person resides.

The liability of the council named in an order will, if there is an appeal, continue until another order transferring the liability to some other council comes into force (*see* sub-sect. (3), p. 133, *infra*).

Determination of “place of residence” by Court of summary jurisdiction.—Under sect. 8, p. 40, *ante*, the order for sending a person to a certified institution or placing him under guardianship may be made by the Court in which he is convicted; but neither a Court of Assize or a Court of Quarter Sessions is to determine the question of responsibility for providing for the defective. *See* sub-sect. (5), p. 137, *post*, as to the power of the Lord Chancellor to make rules for the procedure of Courts of summary jurisdiction under this section.

(2) Where the order is made by the Secretary of State, then—

Order made by the Secretary of State.—*I.e.*, under sect. 9, p. 47, *ante*, which provides for the procedure by which defectives undergoing imprisonment or detention may be transferred by order of the Secretary of State, *inter alia*, to certified institutions, or to guardianship.

The order will specify the local authority responsible for providing for the defective, consideration having first been given to the representations of the local authority concerned (*see* sect. 43 (2), p. 130, *ante*); but if such local authority are aggrieved by the decision as to the place of residence they may, within three months, apply to a petty sessional Court under sub-sect. (3), p. 133, *infra*. Nevertheless, such local authority will be liable for providing for the defective until an order transferring the liability to another council is made and comes into force (*ibid.*).

(a) if the order is in respect of a person in a prison, inebriate reformatory, criminal lunatic asylum, or place of detention, that person shall, for the pur-

poses of the provisions of the last foregoing section, be presumed to have resided in the place where the offence was or was alleged to have been committed, unless it is proved that he resided in some other place;

- (b) if the order is in respect of a person in a reformatory or industrial school, that person shall, for the purposes of the provisions of the last foregoing section, be deemed to have resided in the place (if any) determined to have been his place of residence for the purposes of his committal to the reformatory or industrial school.

Shall . . . be presumed to have resided.—As regards orders in the cases mentioned in paragraph (a), the presumption of residence appears to be inapplicable in cases of persons whose place of abode where the offence was or was alleged to have been committed is known, or is shown to be elsewhere, to the satisfaction of the Secretary of State on the representation of the local authority made to him under sect. 43 (2), p. 130, *ante*, or is proved to be elsewhere to the satisfaction of the Court dealing with an application of an aggrieved council under sub-sect. (3), *infra*.

As respects orders in the cases mentioned in paragraph (b), the same principle appears to apply as in cases under paragraph (a).

Person detained in a reformatory or industrial school.—For the purposes of determining the authority who have the duty to provide for persons sent to reformatories or industrial schools, it is enacted by sect. 74 (3) of the Children Act, 1908 (8 Edw. 7, c. 67), that “a youthful offender or child shall be presumed to reside in the place where the offence was committed, or the circumstances which rendered him liable to be sent to a certified school (*i.e.*, certified reformatory school or certified industrial school) occurred, unless it is proved that he resided in some other place.” By sect. 74 (4) of the same Act, the determination of the place of residence must be decided by a Court of summary jurisdiction, and the Court of Assize or Quarter Sessions making a detention order must remit the question to the justices for that purpose.

- (3) Where a council are aggrieved by a decision as to the place of residence of any person, they may, within three months after the making of the order, apply to a petty

sessional court acting in and for such place as may be prescribed, and that Court, on proof to its satisfaction that the person in respect of whom the order was made was resident in the area of some other council, and after giving such other council an opportunity of being heard, may transfer the liability to that other council, and may order that other council to repay the first-mentioned council any expenses incurred by them in respect of the person in question, and an appeal shall lie from the decision of the Court to a court of quarter sessions; but nothing in this provision shall affect the liability of the first-mentioned council under the original order until an order made transferring the liability to another council comes into force.

Where a council are aggrieved by a decision.—*I.e.*, if an order is made fixing the responsibility for providing for a defective upon a local authority, either without such authority having been given an opportunity of being heard or making representations as provided by sect. 43 (2), p. 130, *ante*, or contrary to the contentions or representations of such local authority before the judicial authority, or Court, or Secretary of State, as the case may be.

As to the place of residence.—*See* note to sect. 43 (1), p. 126, *ante*, on "county or county borough in which he resided"; *also* sub-sect. (4), p. 135, *post*, as to the construction of the expression "place of residence" in the case of doubt as to where a person resides.

May within three months . . . apply.—*I.e.*, within three calendar months of the date upon which an order was made the aggrieved council may apply to a petty sessional Court to transfer the liability under such order to some other council.

Court acting for such place as may be prescribed.—*See* sub-sect. (5), p. 137, *post*, for power of the Lord Chancellor to make rules for prescribing anything which under this section is to be prescribed, and generally as to the procedure of Courts of summary jurisdiction under this section.

On proof . . . that the person . . . was resident in the area of some other council.—Note the use of the expression "was resident" instead of the word "resided," as used in sects. 43 (1), 44 (1), (2), or the word "resides," as used in sect. 44 (4), both with apparently the same meaning. The onus will be upon the council seeking to get the liability transferred to prove to the

satisfaction of the Court that the defective was resident in some other area. Reasonable notice of the date fixed for hearing the application must be given to the council to whom it is sought to get the liability for providing for the defective transferred, and the evidence and arguments on behalf of the latter council against the application must be heard if tendered to the Court.

Transfer the liability . . . and order . . . to repay.—The aggrieved council, having been ordered to provide for a defective, will usually have incurred some expenses in respect of their duties toward the defective pending the decision of the petty sessional Court, or, if there is an appeal against that decision, pending the determination of the appeal. The amount of such expenses, including, in the case of a person ordered to be sent to a certified institution, the cost of conveyance to and reception and maintenance in an institution (*see* sect. 43 (1), p. 126, *ante*), will be included in the order transferring the liability.

An appeal shall lie from the decision.—Either party, if aggrieved by the decision of the petty sessional Court upon an application made under this section, may appeal to Quarter Sessions,

(4) In the case of doubt as to where a person resides the expression "place of residence" in this section shall be construed as the county or county borough (as the case may be) in which the person would, if he were a pauper, be deemed to have acquired a settlement within the meaning of the law relating to the relief of the poor.

In the case of doubt.—*I.e.*, when the judicial authority or Court who have to determine the place of residence of the defective is not satisfied on the evidence before it that he resides, or is resident, or has resided, within the area of any local authority.

No particular period of residence is made the criterion for fixing the responsibility for providing for the defective, however, but in the majority of cases there should not be any doubt about the matter.

Where a person resides.—It is submitted that the word "resides" in this section has the same effect as the word "resided" in sects. 43 (1) and 44 (1), (2), and as the expression "was resident" in sect. 44 (4). As to the meaning of the word "resided," *see* the note to sect. 43 (1), on "county or county borough in which he resided."

"Place of residence."—The expression is used in sub-sect. (1),

proviso, p. 131, and in sub-sect. (3), p. 133, *supra*. It is submitted that the expression, as applied to a defective in respect of whom an order is being made, means the place where he "resides" or "was resident," or "resided," within the meaning of those words.

If he were a pauper.—*I.e.*, a poor person chargeable to a board of guardians under the Acts relating to the relief of the poor. Under sect. 18 of the Lunacy Act, 1890 (53 Vict. c. 5) (*see App.*, p. 194, *post*), provision is made as to what lunatics are to be deemed paupers, and the word "pauper" is defined in sect. 341 of that Act as meaning "a person wholly or partly chargeable to a union, county or borough."

"Would . . . be deemed to have acquired a settlement."
—This application of the law of settlement of the poor to the cases of defectives who have been ordered to be sent to a certified institution, or to be placed under guardianship, and whose "place of residence" is in doubt, may often be attended with difficulty.

Under the law relating to the relief of the poor, any person residing in England or Wales can acquire a right of settlement in certain conditions, but many instances occur where natives of other parts of the British Isles, or of foreign countries, become chargeable without having acquired any such right. Certain of the Poor Removal Acts contain provisions for the removal of natives of Scotland, Ireland, the Channel Islands, or the Isle of Man, to the places of their birth; and the Aliens Act, 1905 (5 Edw. 7, c. 13), empowers the expulsion of aliens who have been convicted of crimes or have been in receipt of parochial relief, &c., or who have entered the United Kingdom after having been sentenced in a foreign country for certain crimes.

The course to be taken as to fixing the responsibility for the maintenance of defectives whose place of residence is in doubt, and who have no settlement in England, is by no means clear, and the only mode of dealing with the question of chargeability in such cases would appear to be for the judicial authority or Court, as the case may be, to refuse to make any order under the Act in respect of the defective, and to leave him to be dealt with by the poor law authorities.

But apart from such cases of natives of other parts of the British islands and of foreigners, the question of ascertaining the place of settlement of a defective may not always be easy, inasmuch as there are several different methods of acquiring a settlement under the poor law, each of which, except the simple fact of birth in a parish, is dependent upon the happening of a variety of circumstances, in some cases depending upon circumstances connected with the

husband or wife or parent of the person whose settlement is in question.

A child of any age, who is a native of England, can acquire a settlement under the poor law (*conf. Hackney Union v. Kingston-upon-Hull* (1912), 81 L. J. K. B. 739; *Fulham Union v. Woolwich Union* (1907), 76 L. J. K. B. 739). A married woman, who is a native, and who has been deserted by her husband, and who has thereafter resided in any one parish for a term of three years without relief or interruption, may, under some circumstances, be deemed to have acquired a settlement in that parish (*conf. Paddington Guardians v. St. Matthew, Bethnal Green*, [1913] 1 K. B. 508). Children under sixteen years of age and a married woman are, however, capable of deriving settlements from their parents or husbands (*conf. Divided Parishes and Poor Law Amendment Act, 1876* (39 & 40 Vict. c. 61), s. 35).

It must be remembered that a person may possibly be at one time, in the course of acquiring more than one settlement, in the same place at the same time, or in different places at the same time. He may, moreover, have acquired several distinct settlements at different times, but under the poor law a chargeable person is "deemed to have acquired a settlement" in the parish in which he last acquired a settlement before becoming chargeable, and the local authority to be made responsible for the maintenance of a defective is therefore the county or borough comprising the parish of such last-acquired settlement.

The law of settlement is, however, so complicated that the author, having recently published a volume on the subject (*see "Poor Law Settlement and Removal,"* 2nd edition (1913), Stevens & Sons, Limited), has deemed it inadvisable to attempt to deal further with the details of the matter in these notes.

(5) The power of the Lord Chancellor to make rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall extend to making rules for prescribing anything which under this section is to be prescribed, and generally to the procedure of courts of summary jurisdiction under this section.

Power of the Lord Chancellor to make rules.—The provisions of the Summary Jurisdiction Act, 1879, mentioned in the text, are as follows:—

Sect. 29.—(1) The Lord High Chancellor of Great Britain may from time to time make, and when made, rescind, alter, and add

to, rules in relation to the following matters, or any of them, that is to say—

- (a) The giving security under this Act; and
- (b) The forms to be used under the Summary Jurisdiction Acts, or any of them, including the forms of any recognizance mentioned in this Act; and
- (c) The costs and charges payable under distress warrants issued by a Court of summary jurisdiction; and
- (d) Adapting to the provisions of this Act and of the Summary Jurisdiction Act, 1848, the procedure before Courts of summary jurisdiction under any Act passed before the Summary Jurisdiction Act, 1848; and
- (e) Regulating the form of the account to be rendered by clerks of Courts of summary jurisdiction of fines, fees, and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account; and
- (f) Any other matter in relation to which rules are authorised or required to be made under or for the purpose of carrying into effect this Act.

(2) The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other Act.

(3) Any rule purporting to be made in pursuance of this section shall be laid before both Houses of Parliament as soon as may be after it is made, if Parliament be then sitting, or, if not then sitting, within one month after the commencement of the then next Session of Parliament, and shall be judicially noticed.

By sect. 12 of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), it is provided that “a form authorised by any rules for the time being in force in pursuance of this section shall be of the same effect as if it was contained in the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), or in any other Act to which the form is made applicable.”

“**Prescribed.**”—This term is used in sub-sect. (3), p. 133, *ante*, as regards the petty sessional Courts to which applications are to be made under that sub-section.

45. Superannuation of Officers.]—(1) The Asylums Officers' Superannuation Act, 1909, shall apply to the officers of certified institutions provided by local authorities, with the substitution of references to the managers of such

institutions for references to visiting committees of asylums, and with such other adaptations and modifications as the Secretary of State may by order prescribe, and in particular such modifications may include the alteration of—

- (a) the periods of service entitling to superannuation allowances;
- (b) the scale of superannuation allowances and gratuities;
- (c) the scale of contributions:

Provided that nothing in this section shall authorise the Secretary of State to prescribe by order any modifications of the Asylums Officers' Superannuation Act, 1909, which would have the effect of increasing the amount of any superannuation allowance which could be granted to, or of reducing the amount of any contribution made by, any officer or servant under that Act.

Certified institutions provided by local authorities.—*See* sect. 71, p. 180, *post*, as to definition of certified institution. Having regard to the provisions of sect. 46, *post*, as to certified institutions not provided by local authorities, it would appear that the term “provided” in this connection means undertaken or established and managed by a single local authority, or by local authorities who have been combined for the purpose under sect. 38 (1) (a) (*see* p. 113, *ante*). So, also, where premises have been transferred to a local authority under sect. 39, p. 119, *ante*, and are used as certified institutions. Such premises, it is submitted, are to be regarded as “provided” by the local authority.

Provision is made for superannuation contributions and allowances by and to the officers and servants of the board of guardians of every poor law union under the Poor Law Officers' Superannuation Acts, 1896 and 1897, as amended, in regard to the established officers and servants of the imbecile asylums of the Metropolitan Asylums Board, by sects. 17 (1) and 20 of the Asylum Officers' Superannuation Act, 1909 (*see* App., pp. 319, 320, *post*).

Officers.—The Asylum Officers' Superannuation Act, 1909 (9 Edw. 7, c. 48), which is set out at length in the Appendix, p. 312 *et seq.*, *post*, provides for the established *officers and servants* employed in public asylums for the insane. In the present Act the term “officers” is alone used, but it is submitted that such term is intended to include all those persons who are regularly

employed in certified institutions, and who can be classified in accordance with the applied provisions of the Act of 1909.

Managers of such institutions.—The Act contains no definition of the term “managers,” but, it is submitted, the managers of a certified institution provided by a local authority are the persons *ejusdem generis* with the asylums committee or the visiting committee of an asylum belonging to a local authority (*conf.* Lunacy Act, 1890 (53 Vict. c. 5), ss. 169—176; App., pp. 247—250, *post*). See sect. 28, p. 80, *ante*, as to appointment of “committees for the care of the mentally defective,” and as to the matters which are to stand referred to such committee. Under the Elementary Education Acts the term “managers” includes all persons who have the management of any elementary school, whether the legal interest in the schoolhouse is or is not vested in them (*conf.* Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3).

(2) Before an order is made by the Secretary of State under this section, the draft thereof shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and, if either of those Houses, before the expiration of those thirty days, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereunder, without prejudice to the making of any new draft order.

46. Scheme for the Payment of Superannuation Allowances or Gratuities to Officers.—(1) The managers or owner of any certified institution not provided by a local authority, or of a certified house or an approved home, may establish, or join with the managers or owners of one or more such institutions, houses, or homes in establishing, a scheme for the payment of superannuation allowances and gratuities to officers thereof who become incapable of discharging the duties of their office by reason of permanent infirmity of mind or body, or old age, upon their resigning or otherwise ceasing to hold their offices.

Managers or owner of “non-provided” certified institution.—See note to sect. 45 as to the meaning of “managers.” The certification of institutions is provided for by sect. 36, p. 110, *ante*,

and the Act applies to premises belonging to a board of guardians which have been approved for the reception of defectives under sect. 37 (1), "as if the premises so approved were a certified institution" (*ibid.*), *see* p. 111, *ante*. *See also* sect. 67, p. 174, *post*, as to hospitals, &c. which at the commencement of this Act are registered under the Idiots Act, 1886, hereby repealed.

For definitions of "certified institution," "certified house," and "approved home," *see* sect. 71, pp. 180, 181, *post*.

Schemes for superannuation.—As regards the officers of a certified institution, of which the "board of guardians of a poor law union" (*see* definition, sect. 71, p. 182, *post*) are the "managers," the provisions of the Poor Law Officers' Superannuation Acts, 1896 and 1897, will apply, excepting in the cases of such officers and servants to whom the provisions of the Asylums Officers' Superannuation Act, 1909, are by sect. 20 of that Act (*see App.*, p. 320, *post*) made applicable.

Officers.—*See* note to sect. 45, p. 139, *ante*.

(2) The expenses incurred under any such scheme shall be treated as part of the expenses of management.

Expenses of management.—The effect of this provision seems to be to remove any doubt as to the ability of the managers to include superannuation expenses in computing the general expenses of an institution, or the cost of maintenance of a defective in respect of whose maintenance it is intended to apply for a contribution order under sect. 13, p. 57, *ante*.

47. Contributions by the Treasury.—There shall be paid out of money provided by Parliament such sums on such conditions as the Secretary of State may, with the approval of the Treasury, recommend towards the expenses of any persons detained in certified institutions or placed under guardianship, including the expenses of removal in the case of any such person ordered to be transferred from one such institution to another and towards other expenses incurred by local authorities under this Act:

Provided that, unless Parliament otherwise determines, the aggregate amount so paid in any financial year shall not exceed one hundred and fifty thousand pounds, but for the purpose of this limitation there shall be excluded all sums

paid towards the expenses of persons sent to such institutions or placed under guardianship—

- (a) by order of the Secretary of State;
- (b) by order of a Court or judicial authority after having been found guilty of an offence, or having been ordered or found liable to be ordered to be sent to an industrial school.

Treasury contributions.—It will be the duty of the Board of Control, subject to regulations made by the Secretary of State, to administer, in accordance with the Act, the grants made from time to time out of money provided by Parliament under this section and sect. 48 (*see* sect. 25 (1) (h), p. 78, *ante*).

The grants to be made under sect. 47 will only be paid in respect of persons detained in certified institutions (*see* sects. 36, 37, 39, 71) or placed under guardianship, and other expenses incurred by local authorities under the Act.

No part of the money provided by Parliament under the Act is applicable towards the expenses of defectives in certified houses (*see* sect. 49 (2), proviso (a), p. 146, *post*), notwithstanding the provisions of sub-sect. (2) of sect. 49; but as regards defectives in respect of whom local authorities are responsible, and who have been sent to approved homes (*see* sect. 50, p. 147, *post*), it seems arguable that the expenses of maintenance in such homes may be properly regarded as "other expenses of local authorities under this Act," at any rate, in so far as such expenses are not repaid to the local authority from any other source.

Expenses of persons detained, &c.—It would seem that the "expenses of persons" detained in certified institutions or placed under guardianship, mentioned in sect. 47, comprise all the matters mentioned in sect. 13 (1), p. 57, *ante*, which includes the cost of conveyance to an institution. The expenses of transferring patients from one certified institution to another in accordance with the regulations made under sect. 41 (1) (f), p. 124, *ante*, may be reckoned in calculating the amount of the grant payable to a local authority.

Sect. 30, proviso (i), p. 91, *ante*, places a limitation upon the obligations of a local authority in regard to the performance of certain of the general duties enumerated in such section, such limitation being ascertained with reference to the amount of the grant which would be received by the local authority under the section now under notice. It is to be observed, however, that over

and above the sum of £150,000 mentioned in the section, grants will be made in respect of sums paid by the local authorities towards the expenses of persons ordered to be sent to certified institutions or to be placed under guardianship under the circumstances set forth in paragraphs (a), (b) of the proviso. Consequently, the whole of the £150,000 will be applicable to the expenses of local authorities in connection with defectives who are dealt with by judicial authorities upon presentation of petitions under sect. 6, and to the other expenses mentioned in the first part of sect. 47 (*see* p. 141, *ante*). The local rates will have to bear a share of the burden in respect of the new classes of persons who are brought within the Act, including a share of the expenses of maintenance of defectives of the criminal and quasi-criminal classes, but one-half of the cost will be borne by the State, after taking into account sums recovered under contribution orders made under sects. 13, 14 (pp. 57—61, *ante*).

48. *Treasury Contributions towards Expenses of Societies assisting Defectives.*—Where a society has undertaken the duty of assisting or supervising defectives whilst not in institutions under this Act, there may be paid to the society out of money provided by Parliament towards the expenses of the society in connexion with such persons such sums and on such conditions as the Secretary of State, with the approval of the Treasury, may recommend.

Society assisting or supervising defectives.—It would appear that payments under this section will be made by the Board of Control to assist voluntary societies of the above description in carrying out the duties of after-care or supervision of defectives within the meaning of the Act in whose cases it has become unnecessary that they should be any longer detained in institutions or under guardianship (*see* sects. 11 (2), (3), (4) (a), and 12 (1), pp. 52—55, *ante*).

Whilst not in institutions.—Having regard to the definition of the term “institution” in sect. 71, p. 180, *post*, there appears to be no reason why a society which has undertaken the duty of assisting or supervising defectives whilst not in institutions, and who are the “managers of any premises” approved under sect. 50, p. 147, *post*, and being “approved homes” within the definition in sect. 71, p. 181, *post*, should not be aided by a grant, made under sect. 48, towards the expenses in connection with defectives received therein for the purpose of assistance or supervision.

No part of the money provided by Parliament under this Act may, however, be applied towards the expenses of defectives in certified houses (*see* sect. 49 (2), p. 145, *post*).

Administration of grants.—The Board of Control have the duty of administering grants under this section, subject to regulations made by the Secretary of State, and in accordance with the recommendations made by him as approved by the Treasury (*conf.* sect. 25 (1) (h), p. 78, *ante*).

49. Provisions as to Certified Houses.]—(1) A person desirous of receiving defectives at his house for private profit may apply to the Board for a certificate, and the Board, if satisfied of the fitness of the premises and of the applicant, may, if they think fit, on payment by the applicant of the prescribed fee, grant a certificate to the applicant, subject to such conditions as they may impose, and a certificate so granted shall continue in force for the period for which it is granted or until revoked or resigned under this Act, and a house in respect of which such a certificate is in force is in this Act referred to as a certified house, and the person to whom such a certificate is granted is referred to as the owner of such house.

Certified houses.—The expression “certified house” is separately defined in the interpretation clause (*see* sect. 71, p. 181, *post*), but the meaning given in that section is merely descriptive, for, if the certificate required by sect. 49 is not in force, the premises cannot legally be used for the reception of defectives.

In view of the subsequent provision of this section (*see* subsect. (2), proviso (b)), that the local authorities shall have no powers or duties in regard to certified houses, it is interesting to note the provisions as to the restriction on the granting of new licences in sect. 207 (6) of the Lunacy Act, 1890, whereby it is enacted as follows:—“Save as in this section provided, no new licence shall be granted to any person for a house for the reception of lunatics, and no house in respect of which there is, at the passing of this Act, an existing licence, shall be licensed for a greater number of lunatics than the number authorised by the existing licence (*see* App., p. 263, *post*).

Board, if satisfied of fitness . . . may grant a certificate.
—The requirements for certification of a house by the Board of

Control under this section, except as regards the payment of a fee, and the imposition of conditions upon the applicant, are similar to the requirements for the certification of an institution under sect. 36 (*see* p. 110, *ante*).

The granting, transfer, renewal, revocation, and resignation of certificates is made subject to the regulations of the Secretary of State (*see* sect. 41 (1), p. 123, *ante*, and sub-sect. (2), *infra*).

Prescribed fee.—*I.e.*, prescribed by the regulations (*see* sect. 71, p. 179, *post*).

Certificate . . . "in force."—The certificate will be "in force" for the purpose of detaining any defective who may be lawfully sent to or placed in an institution (*see* sub-sect. (2), *infra*).

As to the offence of detaining a defective or exercising powers conferred by the Act, after knowledge that those powers have expired, *see* sect. 51 (3), p. 152, *post*.

Owner of such house.—For references to "owners" of certified houses, *see* sects. 46 (1), p. 140, *ante*, 51 (3), 56 (1) (d), 62, 71 (1), pp. 152, 160, 168, 181, *post*.

Protection of officers for purposes of conveyance or arrest.—*See* the provisions of sect. 62, p. 168, *post*, protecting the owner or any authorised officer of a certified house in regard to the exercise of powers of conveyance, apprehension or arrest of defectives.

(2) Any defective who may be ordered to be sent to, or may be placed in, an institution under this Act may be ordered to be sent to, or may be placed in, a certified house, and all the provisions of this Act relating to institutions and the patients therein shall apply to certified houses and patients therein:

Any defective who may be ordered.—As to defectives who may be "ordered to be sent to" institutions, *see* sect. 2 (1) (b), p. 26, *ante*; and as to defectives who "may be placed in" institutions, *see* sect. 2 (1) (a), p. 25, *ante*. *See* the restrictions as regards the powers of local authorities under proviso (b), p. 146, *infra*.

Provisions relating to institutions and patients therein.—The principal provisions of the Act, which are hereby made applicable to defectives, subject to the provisos (*infra*), are as follows:—

Sect. 2, circumstances rendering defectives subject to be dealt with (p. 25, *ante*).

Sect. 3, power to deal with defectives at instance of parent or guardian, p. 31, *ante*.

Sects. 5 and 6, presentation and hearing of petitions, pp. 33, 35, *ante*.

Sect. 7, variation of orders, p. 39, *ante*.

Sect. 8, procedure before Courts, except as regards persons guilty of offences, p. 40, *ante*.

Sect. 9, procedure in case of defective undergoing detention, p. 47, *ante*.

Sects. 10—12, effect and duration of orders, pp. 50—54, *ante*.

Sect. 16, transfers from and to institutions, p. 64, *ante*.

Sect. 17, provisions as to religious persuasion, p. 66, *ante*.

Sect. 18, provisions as to visiting, p. 69, *ante*.

Sect. 40, visitors of institutions, p. 120, *ante*.

Sect. 41, regulations, p. 123, *ante*.

Sect. 42, apprehension of defectives escaping, p. 125, *ante*.

Sects. 51—63, offences, legal proceedings, &c., pp. 149—155, *post*.

Sect. 64, administration of property, p. 170, *post*.

Sect. 69, liability to removal, p. 176, *post*.

Sect. 70, provision against disfranchisement, p. 178, *post*.

Provided that—

(a) no part of the money provided by Parliament under this Act shall be applied towards the expenses of defectives in certified houses; and

Money provided by Parliament.—See sects. 47, 48, pp. 141, 143, *ante*.

(b) a local authority shall have no power or duty to contribute towards the expenses of defectives ordered to be sent to, or placed in, a certified house or to provide for their conveyance to, and reception and maintenance in, a certified house; and

Local authority.—See definition, sect. 27, p. 79, *ante*; also sects. 29 and 34, pp. 85, 108, *ante*.

No power or duty to contribute . . . or to provide.—As to the general powers and duties of local authorities under the Act, see sect. 30, p. 87, *ante*, and notes thereto.

Defectives ordered to be sent to or placed in institutions.—The provisions in regard to the detention of defectives under orders are contained in sects. 4—9, pp. 32—50, *ante*.

- (c) the provisions of this Act with respect to the recovery from defectives or the persons liable to maintain them of contributions towards the expenses of their maintenance shall not apply in the case of defectives in, or ordered to be sent to, certified houses; and

Provisions with respect to recovery of contributions.—*See* sects. 13, 14, pp. 57, 61, *ante*. The restriction hereby enacted refers to defectives who are “placed in” certified houses under sect. 3, p. 31, *ante*, as well as to defectives who are ordered to be sent to certified houses under sects. 4—9, pp. 32—50, *ante*. Sub-sect. (4) of sect. 13, p. 60, *ante*, will not, therefore, apply so as to enable the summary recovery thereunder of sums owing under agreements in writing made by a parent or guardian.

- (d) a special report under section eleven of this Act as to the mental and bodily condition of a defective detained in a certified house shall not be made by the medical officer of the house or by any medical practitioner directly or indirectly interested in the house.

Special report as to condition of a defective.—The special report to which reference is herein made is that provided for by sect. 11 (2), p. 52, *ante*, and described in sect. 11 (4) (b), p. 54, *ante*.

50. Provisions as to Approved Homes.—(1) The managers of any premises wherein defectives are received and supported wholly or partly by voluntary contributions or by applying the excess of payments of some patients for or towards the support of other patients, and any person desirous of receiving defectives in his house for private profit, may apply to the Board to approve the premises or house, and the Board, if satisfied of the fitness of the same and of the applicant, may, if they think fit, on payment by the applicant of such fee (if any) as may be prescribed, grant their approval subject to such conditions as to inspection, the making of reports, and otherwise as they may think fit, and

any such approval shall continue valid for the period for which it is granted or until withdrawn under this Act, and any premises or house so approved are in this Act referred to as an approved home.

Approved homes.—This section provides for the approval of premises or a house by the Board of Control for the reception of persons who are defectives within the meaning of the Act (*see* sect. 1, p. 20, *ante*), and who could be placed in institutions or under guardianship under sect. 3, p. 31, *ante*, or who have been discharged from detention under an order, or from detention not under an order (*see* sects. 11, 12, pp. 51—56, *ante*).

The expression “approved home” is defined in sect. 71 (*see* p. 181, *post*), as meaning any premises in which defectives are “received and supported” under one or other of the conditions named in such section (*see also* sect. 67 (2), proviso (b), p. 174, *post*).

There appears no reason why the managers of an approved home, who are a society for the assistance or supervision of defectives not in institutions within the terms of sect. 48, p. 143, *ante*, should not participate in the State grants in aid under that section.

Board, if satisfied of fitness . . . may . . . grant their approval.—The requirements for approval by the Board of Control under this section, except as regards the payment of a fee, and the imposition of conditions upon the applicant, are similar to the requirements for certification of an institution under sect. 36 (*see* p. 110, *ante*).

The granting, renewal, and revocation of approval of homes is made subject to the regulations of the Secretary of State (*see* sect. 41 (1) (m), p. 125, *ante*).

Prescribed fee.—*I.e.*, prescribed by the regulations (*see* sect. 71, p. 179, *post*).

Approval shall continue valid.—The approval will be valid only for the purpose of receiving defectives who may be placed there either at the instance of a parent or guardian under sect. 3, p. 31, *ante*, or for assistance, or supervision, or care upon their discharge from detention under sects. 11 or 12, pp. 51—56, *ante*.

(2) It shall not be lawful to receive or detain in an approved home any person ordered to be sent to an institution for defectives under an order of the judicial authority, or a court, or a Secretary of State under this Act.

It shall not be lawful to receive or detain.—As already

stated (*see* note to sect. 12 (2), p. 56, *ante*), no power appears to be given by the Act to *detain* a defective in an approved home against his will. The above sub-section makes it clear that a defective ordered to be sent to an institution under any of the provisions in sects. 4—9, pp. 32—50, *ante*, may not even be received in an approved home, nor will his detention in such a home be lawful while he is subject to an order made under any of the aforesaid provisions of the Act.

No provision is made by sect. 62 (*see* p. 168, *post*), for the protection of managers, owners, or officers of approved homes for the purpose of conveyance of defectives thereto or for the purpose of apprehending defectives escaping therefrom; nor does it appear that the provisions of sect. 42 (*see* p. 125, *ante*) as regards the apprehension of defectives escaping would be applicable to a defective escaping from an approved home.

PART IV.

GENERAL (*a*).

Offences, Legal Proceedings, &c.

51. *Offences with respect to the Reception and Detention of Defectives.*—(1) It shall not be lawful for a person without the consent of the Board to undertake the care and control of more than one person who is a defective, or who is placed under his care as being a defective elsewhere than in an institution, a certified house, or an approved home, and, if any person contravenes this provision, he shall be guilty of a misdemeanour.

“It shall not be lawful for a person . . . to undertake.”—These words appear to connote the legal disability of any person to undertake the care and control of more than one defective otherwise than in an institution, &c., excepting only in the case of a parent having two or more children, or of a husband having a wife and a child, who are “defectives” within the meaning of the Act (*see* sect. 1, p. 20, *ante*). In regard to such cases of husbands and

(*a*) *Note.*—The provisions of the Lunacy Act, 1890 (*see* App., pp. 299—302), viz., sect. 325 (1), as to who may take proceedings for offences against that Act, and sects. 317 (3), 325 (2), 328 requiring an order of the Commissioners, or visitors, or the consent of the Attorney-General, or a direction by the Secretary of State, are not applied to the present Act.

parents, as their care and custody arise from natural duty, it is submitted the expression "undertakes" does not apply (*conf. Reg. v. Rundle* (1855), 24 L. J. M. C. 129).

The prohibition, however, is in futurity, and does not seem to affect the legality of any undertaking made before the commencement of the Act, *i.e.*, April 1st, 1914. The prohibition will extend to any other person than a husband or parent who after that date undertakes, without the consent of the Board of Control, the care and control of more than one defective, whether as a guardian appointed by the parent, or otherwise, and whether for hire or reward, or otherwise, elsewhere than in an institution, certified house, or approved home, or except where sub-sect. (4) of this section is applicable (*see* p. 153, *infra*).

As regards the poor law authorities, sect. 30, proviso (ii), p. 92, *ante*, enacts that "nothing in this Act shall affect the powers and duties of poor law authorities under the Acts relating to the relief of the poor, with respect to any defectives who may be dealt with under those Acts." Such Acts empower boards of guardians to deal with adults or children who are idiots or imbeciles; but they have no power to undertake the "control" of "feeble-minded persons" or "moral imbeciles" as defined in sect. 1, pp. 23, 24, *ante*. It would, therefore, seem that the consent of the Board of Control must be obtained to enable a board of guardians to legally undertake the "care and control" of more than one defective of either of the two last-mentioned classes. It would also appear that the provisions of the Act for placing "defectives" under guardianship (*see* pp. 35—40, *ante*) are sufficiently elastic to enable them to be applied to poor law cases under proper conditions, and, if the Board of Control consent, to permit of the persons in charge of suitable poor law institutions to be constituted the guardians of such defectives.

Care and control.—Whether a person has undertaken the care and control of more than one person who is a defective, or is placed under his care as being a defective, will be a question of fact in each case. In regard to infant defectives, it would probably be sufficient to show that the alleged offender undertook their nursing and maintenance, and as regards children, an undertaking of control would probably be presumed if an undertaking to receive and maintain should be proved. So, with reference to idiots or other helpless defectives. But whether control had been assumed in the cases of feeble-minded persons or moral imbeciles would be likely to raise greater difficulty, and the question whether an offence had been committed would have to be judged by all the surrounding circumstances. Evidence of forceful detention of persons of the

last-named classes in a house occupied by the alleged offender would, doubtless, be held sufficient proof of an undertaking of the care and control of such persons.

In *Reg. v. Porter* (1864), 33 L. J. M. C. 126, a man who had voluntarily taken upon himself the care of his lunatic brother in his own private house was held to be a person having the care and charge of a lunatic within sect. 9 of the Lunacy Act, 1853 (16 & 17 Vict. c. 96). So, also, in *Reg. v. Smith* (1880), 44 J. P. 314, where two brothers of a lunatic took a house, and their mother and lunatic sister lived with them, but the brothers did not receive any payment for or on account of any special charge of their sister, it was held that they were persons having the care or charge, or concerned or taking part in the custody, care, or treatment of a lunatic within the above-mentioned enactment.

As being a defective.—The use of these words appears to imply a reference to the power to take *alleged* defectives to places of safety (*see* sect. 15, p. 62, *ante*), so that a person cannot, without the previous consent of the Board of Control, without contravening sect. 51, receive under his care and control more than one defective or alleged defective, even temporarily, for safety, elsewhere than in an institution, a certified house, or an approved home.

In an institution, a certified house, or an approved home.—*See* definitions, sect. 71, pp. 180, 181, *post*.

Prosecution and punishment.—As to the prosecution and punishment of an offence under this Act declared to be a misdemeanour, *see* sect. 60 (1), p. 167, *post*.

(2) Where a person undertakes the care and control of any person who is a defective or is placed under his care as being a defective elsewhere than in an institution, a certified house, or an approved home, he shall, within forty-eight hours after the reception of such person, give notice thereof in the prescribed form to the local authority and to the Board, and, if he fails to do so, he shall be guilty of an offence under this Act.

Undertakes the care and control of any person.—Compare the provisions of sect. 316 of the Lunacy Act, 1890, App., p. 299, *post*. Under this sub-section it will be the duty of the occupier of a place of safety (*see* sect. 71, p. 179, *post*), not being an institution, a certified house, or an approved home, to give the

notices hereby required. An offence under this section will have been committed upon failure of the person undertaking the care and control to give both the required notices within the time specified.

After the reception of such person.—These words must mean the reception of such defective or alleged defective *into* premises, not being an institution, a certified house, or an approved home, within the meaning of the Act (*see* sect. 71, pp. 180, 181, *post*). It is possible that in many cases the person undertaking the care and control of a defective may receive him many hours before the actual reception upon the premises, *e.g.*, where a long journey intervenes.

Shall within forty-eight hours give notice.—Sect. 26 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which relates to the service or giving of notices, authorised to be served or given by post, does not apply; but there seems no reason why the post should not be utilised for the purpose of sending notices under sect. 51 (2), p. 151, *supra*, provided care is taken that the notice shall arrive at its proper destination within the specified time.

Prescribed form of notice.—Prescribed means prescribed by regulations made under this Act (*see* sect. 71, p. 179, *post*).

The local authority.—The section does not specify to which local authority the notice must be given where the person has been received from the area of one authority into the area of another authority; but it is submitted that in such a case it is the local authority having jurisdiction over the area containing the premises into which the person is received, to whom the notice must be given.

Procedure and punishment.—*See* sect. 60 (2), p. 168, *post*.

(3) If any manager of any institution for defectives, or the owner of a certified house, or the guardian of a defective, detains a patient or exercises any of the powers conferred upon him by this Act after he has knowledge that those powers have expired, he shall be guilty of a misdemeanour.

Detention of patients.—Compare the provisions of sects. 38 (7), 76, 222, 231 (10), and 237 (4) of the Lunacy Act, 1890 (App., pp. 204, 219, 266, 270, 272, *post*).

The Act gives no express power to detain a "defective" in an approved home, and, except where he is detained under guardianship and the guardian places him in premises or a house which is an approved home (*see* sect. 50 (1), p. 147, *ante*), a defective

cannot be lawfully detained in an approved home. Further, by sect. 50 (2), p. 148, *ante*, a person ordered to be sent to an institution for defectives under sects. 6, 7, or 8 of the Act cannot lawfully be received or detained in an approved home.

An alleged defective may, however, under sect. 15 (2), p. 62, *ante*, be received and detained temporarily in an approved home which is a place of safety within the meaning of the Act (*see* sect. 71, p. 179, *post*).

Defectives may be detained in institutions under orders made under sects. 6 (3), 7 (1), 8 (1), (3), (4), and 9, *see* pp. 36—47, *ante*. As to the duration of detention under orders, *see* sects. 10, 11, pp. 50, 51, *ante*; and duration of detention not under orders, sect. 12, p. 54, *ante*.

Any manager of any institution.—*I.e.*, any person who is one of, or is appointed by, the managers or the body of persons appointing the managers to exercise the powers of the Act in regard to defectives.

Owner of certified house.—*See* sect. 50 (1), p. 147, *ante*, as to the person referred to in the Act as the "owner" of a certified house.

Guardian of a defective.—*I.e.*, a person in whose guardianship a defective has been placed under either of the provisions of sects. 3—9, pp. 31—50, *ante*.

After knowledge that powers have expired.—As to the duration of detention under orders, *see* sect. 11, p. 51, *ante*, and as to duration of detention not under orders, *see* sect. 12, p. 54, *ante*. It is submitted that knowledge of the expiration of powers will, until the contrary is proved, be assumed against any person having the care or control of a defective where the period of detention has expired or has not been renewed, or the certificate in regard to an institution or house has expired or been revoked, or the approval of a home has ceased to be valid by expiration of the period for which it was granted, or by withdrawal.

Prosecution and punishment.—*See* sect. 60 (1), p. 167, *post*.

(4) Nothing in this section shall apply to or affect any person who under the Lunacy Acts, 1890 to 1911, or the Elementary Education (Defective and Epileptic Children) Act, 1899, as amended by any subsequent enactment, receives or detains any person in accordance with those Acts, not-

withstanding that the person so received and detained is a defective within the meaning of this Act.

This provision is rendered necessary by reason of the retention of the powers and duties of poor law authorities, local authorities, and local education authorities, under sect. 30, provisoes (ii—iv), pp. 92—98, *ante*; and also because a large number of persons who have been certified as lunatics, &c., and received and detained as such, are undoubtedly “defectives” within the meaning of sect. 1 of the present Act (*see* pp. 20—25, *ante*).

52. Offence of supplying Intoxicants contrary to Warning.]—If any person, having been warned by a person appointed to be guardian of a defective under this Act, or by a person under whose charge a patient absent from an institution or from a certified house has been placed, not to supply intoxicants to or for the use of the person under his guardianship or charge, knowingly supplies any intoxicants to or for the use of that person, he shall be guilty of an offence under this Act:

Provided that a person shall not be guilty of the offence of supplying intoxicants in contravention of the warning if the person giving the warning refuses, when required so to do, to produce the authority under which he acts.

Warning by appointed guardian.—By sect. 10 (2), p. 51, *ante*, a person upon whom the powers of guardian have been conferred in respect of a defective by order under the Act, is also given power to warn persons against supplying intoxicants to the defective or for the use of the defective.

The present section confers this power, in addition, on “a person under whose charge a patient absent from an institution or from a certified house has been placed.”

There is no reference to patients *in* institutions, certified houses, or approved homes within the Act; but, as regards those in institutions or certified houses, the Regulations may provide against the wrongful supply of intoxicants to or for the use of the defectives therein, and the penalty for breach of the Regulations (*see* sect. 59, p. 166, *post*).

Knowingly supplies . . . to or for the use of.—The latter words would cover the supply of intoxicants by means of a third

party where the person supplying the intoxicants has received warning not to do so.

Production of authority by person giving warning.—It is not very clear whether it is intended that the authority under which he acts *must*, on request of the party warned, be produced by the guardian or person having charge of the patient. The statute uses the phrase “refuses, when required to do so,” and it may be that only a verbal statement is at the moment possible. Inability to produce documentary authority would not, it is submitted, be construed as a “refusal to produce” in such a case.

Intoxicants.—See definition, sect. 71, p. 179, *post*.

Prosecution and punishment.—See sect. 60 (2), p. 168, *post*.

53. Offences in relation to Institutions, &c.]—If any person secretes a patient in any institution or certified house or approved home or induces or knowingly assists a patient in an institution or a certified house, or a person allowed out from such an institution or house either on licence or without a licence, or a person in a place of safety or under guardianship under this Act, to escape or to break any conditions of his guardianship or licence, he shall be guilty of an offence under this Act.

Secretes a patient in an institution, &c.—The offence of secreting a patient in an institution, &c. was added to the Mental Deficiency Bill by the Standing Committee of the House of Commons. It is not an offence to secrete a patient outside an institution, &c. (as under the Lunacy Act, 1890, s. 323, App., p. 301, *post*). Power of search, under a justices’ warrant, is, however, given by sect. 15 (2), p. 62, *ante*, where there is reasonable cause to believe that a defective is neglected or cruelly treated, and by sect. 55, any person who illtreats or wilfully neglects a defective is guilty of a misdemeanour. See also sect. 54 (2) as to wilful obstruction of a person authorised by the Secretary of State.

Knowingly assists to escape.—Compare this section with sect. 323 of the Lunacy Act, 1890. Under such section the offence is punishable only in the case of a manager, officer, or servant. On the other hand, it is thereunder an offence to “permit, or assist, or connive at an *attempted* escape of a patient.” (See App., p. 301, *post*.)

Conditions of guardianship or licence.—These conditions will be such as are provided for by the regulations of the Secretary of State, made under sect. 41 (1) (h), see p. 124, *ante*.

Prosecution and punishment.—*See* sect. 60 (2), p. 168, *post*.

54. Obstruction.—(1) Any person who obstructs any Commissioner or inspector or visitor or any officer or other person appointed or employed by a local authority in the exercise of the powers conferred by or under this Act, shall be guilty of a misdemeanour.

Obstructs.—Note the omission of the word “wilfully,” which appears in sub-sect. (2); also the difference in the classes of offence under the respective sub-sections. Under sect. 321 (1) of the Lunacy Act, 1890, App., p. 300, *post*, it is also a misdemeanour to “obstruct” any Commissioner or Chancery or other visitor, in the exercise of his statutory powers, but the punishment could only be by infliction of a penalty. *See also* sects. 195 and 200 of the Lunacy Act, 1890, App., pp. 257, 259, *post*.

Officer or other person.—The present Act includes “any officer or other person *appointed* or employed by a local authority.” It is therefore submitted that obstruction of a member of the committee for the care of the mentally defective, appointed under sect. 28, p. 80, *ante*, constitutes an offence under sect. 52 (1).

The obstruction may apparently be by hindrance, *e.g.*, leaving doors, entrances, or exits, barred or locked; or delaying the preparation of inmates for inspection or examination.

Prosecution and punishment.—*See* sect. 60 (1), p. 167, *post*.

(2) Any person who wilfully obstructs any other person authorised under this Act by an order in writing under the hand of the Secretary of State to visit and examine any person alleged to be a defective, or to inspect or inquire into the state of any institution, certified house, approved home, prison, or place wherein any person represented to be a defective is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person authorised under this Act by any order of the Board to make any visit and examination or inquiry in the execution of such order, shall be guilty of an offence under this Act.

Wilfully obstructs . . . person authorised.—The offence constituted by the sub-section is that of “wilful obstruction” of

a person authorised under the Act by written order signed by the Secretary of State, or by *any order* of the Board of Control, for the purposes respectively named in the sub-section. Sect. 321 (2) of the Lunacy Act, 1890 (App., p. 300, *post*), is in very similar terms, but the offence thereunder is punishable by penalty only.

“Wilfully” means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it (*Reg. v. Senior*, [1899] 1 Q. B. 283, at p. 290, *per* Lord Russell, C. J.; *see also In re Young, &c.* (1886), 31 Ch. D. 168, at p. 174, *per* Bowen, L. J.

Prosecution and punishment.—*See* sect. 60 (2), p. 168, *post*.

55. Illtreatment.]—If any manager, officer, nurse, attendant, servant, or other person employed in an institution or certified house, or approved home, or any person having charge of a defective, whether by reason of any contract, or of any tie of relationship, or marriage, or otherwise, illtreats or wilfully neglects the defective, he shall be guilty of a misdemeanour.

“Other person employed in.”—The opinion has been expressed upon similar words in sect. 324 of the Lunacy Act, 1890, *see* App., p. 301, *post*, that they include only persons *ejusdem generis* with manager, officer, nurse, or attendant, and not persons, *e.g.*, painters, employed by contractors on work in an asylum (*conf. Reg. v. Tunncliffe* (cited in Heywood & Massey’s “Lunacy Practice,” 4th edition, p. 482)).

The section is similar in terms to sect. 322 of the Lunacy Act, 1890, except as regards the maximum penalty which may be inflicted upon summary conviction for an offence.

See sect. 71, p. 180, *post*, for definition of “institution,” “certified house,” and “approved home.” *See also* sects. 36—39, pp. 110—120, *ante*, and sect. 67, p. 174, *post*.

Person having charge of a defective.—*See* the note under “care and control,” p. 150, *ante*. In *Buchanan v. Hardy* (1887), 56 L. J. M. C. 42, it was held that the parents of a lunatic, who resided with them under their care, were persons “having the care or charge” of a lunatic within the meaning of sect. 9 of the Lunacy Act, 1853 (16 & 17 Vict. c. 96); and by sect. 38 (2) of the Children Act, 1908 (8 Edw. 7, c. 67), Part II., Prevention of Cruelty to Children and Young Persons, “any person to whose charge a child or young person is committed by any person

who has the custody of the child or young person shall be presumed to have charge of the young person."

Illtreats.—The better opinion seems to be that the offence of illtreatment may be committed without physical violence, *e.g.*, by wilfully terrifying a person of weak intellect.

Wilfully neglects.—In *Reg. v. Hill* (1886), 50 J. P. 137, it was held that it was "wilful neglect" on the part of an attendant to have allowed a lunatic with suicidal tendencies to be at large and unwatched for half an hour, during which time the lunatic hanged himself.

An offence of wilful neglect will also have been committed when there has been an omission to supply necessaries to a defective by a person who is bound by duty or contract to support the defective (*conf. Rex v. Friend* (1802), R. & R. 20; *Reg. v. Instan* (1893), 62 L. J. M. C. 86), or to apply to the proper authorities for assistance, where such person has not the means to supply necessaries for the defective (*conf. Reg. v. Mabbett* (1852), 5 Cox, C. C. 339; *Reg. v. Senior* (1899), 68 L. J. Q. B. 175; *see also* Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (1)).

Prosecution and punishment.—*See* sect. 60 (1), p. 167, *post*.

56. Protection of Defectives from acts of Sexual Immorality, Procuration, &c.]—(1) Any person—

The concluding words of this sub-section prevent the punishment of a person charged who proves that he did not know, *and* had no reason to suspect, that the woman or girl was a defective within the meaning of the Act (*see* sect. 1, p. 20, *ante*). In every case the prosecution must prove that the woman or girl is such a defective.

- (a) who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any woman or girl under care or treatment in an institution or certified house or approved home, or whilst placed out on licence therefrom or under guardianship under this Act; or

Unlawful.—It has been held in Scotland that carnal knowledge of a girl under sixteen by any one not her husband is unlawful carnal knowledge within the meaning of sect. 2 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69): *conf. H. M. Advocate v. Watson* (1885), 13 Ct. of Sess. Cas. 6.

Carnal knowledge.—This term was defined by sect. 63 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), as follows:—“Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.”

A similar interpretation was given to the term “carnal knowledge,” as used in sect. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), in the case of *Reg. v. Marsden* (1891), 60 L. J. M. C. 171.

Inasmuch as the attempt is, equally with the full offence, made a misdemeanour under sect. 56 (1) (a), the distinction, if any exists, between the common law meaning of the words “carnal knowledge” and that above given, will be of little importance in prosecutions under the Mental Deficiency Act.

Placed out on licence or under guardianship.—By sect. 41 (1) (h), *see* p. 124, *ante*, the Secretary of State may make regulations for the absence of patients from institutions *under* licence or temporarily without licence.

See sects. 3, 5—9, pp. 31, 33—50, *ante*, as to placing under guardianship.

No offence is provided for under sect. 56 (1) (a), in the case of a defective absent from an institution, certified house, or approved home, without licence.

- (b) who procures, or attempts to procure, any woman or girl who is a defective to have unlawful carnal connection, whether within or without the King's dominions, with any person or persons; or

Procures or attempts to procure.—The offence under this section is the procuration or attempt to procure for the purpose which would lead to an offence under paragraph (a), *supra*.

By sect. 2 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), “any person who procures or attempts to procure *any girl or woman under twenty-one years of age not being a common prostitute, or of known immoral character*, to have unlawful carnal connection, either within or without the Queen's dominions, with any *other* person or persons . . . shall be guilty of a misdemeanour . . . Provided that no person shall be convicted of any offence under this section upon the evidence of one witness, unless such

witness be corroborated in some material particular by evidence implicating the accused.

The present clause makes it an offence for any person to procure or attempt to procure any female defective within the meaning of sect. 1 of the Act to have unlawful carnal connection with *any person* or persons, including the procurer himself. Under sect. 2 of the Act of 1885 (*supra*), it was held in *Rex v. C*— (1910), 74 J. P. 208, that an indictment against a person for attempting to procure a girl under thirteen to have unlawful carnal connection with himself disclosed no offence in law, and was bad.

It is to be observed that there is no proviso to the paragraph of the new Act now under notice, requiring corroborative evidence, but corroboration will usually be requisite where the only witness is the defective herself.

Defective.—*I.e.*, within the meaning of this Act, *see* sect. 1, p. 20, *ante*.

- (c) who causes or encourages the prostitution, whether within or without the King's dominions, of any woman or girl who is a defective; or

Causes or encourages the prostitution.—It would appear that this paragraph is wide enough to secure the conviction of any person responsible for the care and control of a female who is a "defective" within the meaning of the Act (*see* sect. 1), where such person, being aware of immoral tendencies of such defective, by carelessness, indifference, or neglect, fails to prevent her from committing prostitution.

See also sect. 55, p. 157, *ante*, as to the offence of "illtreatment" or "wilful neglect" of a defective.

Defective.—*See* note to paragraph (b), *supra*.

- (d) who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any woman or girl who is a defective to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally; or

Owner, occupier, &c. of premises.—This paragraph is in the same terms as sect. 6 of the Criminal Law Amendment Act,

1885 (48 & 49 Vict. c. 69), except that such section limited the offence of permitting defilement to the cases of girls under sixteen. *See also* Lunacy Act, 1890, s. 324, App., p. 301, *post*.

There is no definition of "owner," or of "occupier," in the Act of 1885, or in the present Act, excepting the person referred to as "the owner" of a certified house (*see* sect. 49 (1), p. 144, *ante*). As regards the former term, however, sect. 4 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), enacts that "'owner' means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent." The like meaning is given to the term in sect. 141 of the Public Health (London) Act, 1891, and the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 109, contains a somewhat similar definition.

The wording of paragraph (d), *supra*, however, appears to be sufficiently wide to include any deputy or other person for the time being exercising the duties of or assisting in the exercise of the duties of management or control of the premises.

Defective.—*See* note to paragraph (b), p. 159, *supra*.

Carnal knowledge.—*See* note to paragraph (a), p. 158, *supra*, under this heading.

(e) who, with intent that any woman or girl who is a defective should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such woman or girl out of the possession and against the will of her parent or any other person having the lawful care or charge of her;

shall be guilty of a misdemeanour and shall be liable upon conviction on indictment to be imprisoned, with or without hard labour, for any term not exceeding two years unless he proves that he did not know, and had no reason to suspect, that the woman or girl was a defective.

With intent . . . takes or causes to be taken—Three matters must be proved in order to obtain a conviction under this paragraph, viz.:—(1) the fact that the person against whom the

offence is alleged to have been committed is a "defective" within the meaning of the Act (*see* sect. 1); (2) the intent that the defendant, or some other person or persons, should have unlawful carnal knowledge of the "defective"; (3) that the defendant took, or caused to be taken, such "defective" out of the possession and against the will of her parent or any other person having the lawful care or charge of her.

The "intent" will generally have to be inferred from evidence of events subsequent to the taking or causing to be taken, but there may be evidence of letters or other communications implicating the defendant.

Defective.—*See* note to paragraph (b), p. 159, *supra*.

Out of the possession and against the will of her parent or—The "defective" must have been actually removed out of the possession *and* against the will of the parent or other person; otherwise it would appear a charge could not be sustained under paragraph (e), though a charge might be sustained under paragraph (b) of this sub-section.

Other person having the lawful care or charge of her.—Such person might be a legal guardian, or the managers or superintendent of an institution, certified house, approved home, or place of safety under the Act (*see* sect. 71, pp. 179—181, *ante*), or a person with whom the defective had been placed under guardianship under the Act (*see* sects. 2, 5—9; *see also* sects. 10—12 as to effect of orders and duration of detention).

Unlawful carnal knowledge.—*See* note to paragraph (a), pp. 158, 159, *supra*.

(2) Section ten of the Criminal Law Amendment Act, 1885, shall apply in the case of a woman or girl who is a defective in the same manner as it applies in the case of a girl who is under the age of sixteen years.

Sect. 10 of the Criminal Law Amendment Act, 1885, provides as follows:—

Power of search.—If it appears to any justice of the peace, on information made before him on oath by any parent, relative, or guardian of any woman or girl, or any other person who, in the opinion of the justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such justice, such

justice may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a justice of the peace; and the justice of the peace before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

“The justice of the peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.

“A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man, or generally, and . . . is under the age of sixteen years . . .

“Any person authorised, by warrant under this section, to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom.

“Provided always, that every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other officer of police who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the justice shall otherwise direct.”

The same Act specifies the following offences:—Sect. 4, defilement of a girl under thirteen years of age constituted a felony, and an attempt constituted a misdemeanour. Sect. 5, defilement or attempt to defile (1) a girl between thirteen and sixteen years of age, or (2) any female idiot or imbecile woman or girl under circumstances not amounting to rape, but showing that the offender knew the woman or girl was an idiot or imbecile, constituted a misdemeanour. Sect. 6, an owner, householder, &c. permitting defilement of young girl on his premises (a) if the girl under thirteen, constituted a felony; (b) if the girl of or above thirteen and under sixteen years of age, constituted a misdemeanour.

Sects. 5 and 6 contain provisoes allowing, as a defence in respect of a charge as to an offence against a girl under sixteen, proof that the person charged had reasonable cause to believe that the girl was of or above the age of sixteen years; but in view of the terms of sect. 56 (1) of the Mental Deficiency Act (p. 158, *supra*), such provisoes will not apply in the case of any similar offences

against girls or women who are "defectives" within the meaning of such Act (*see* sect. 1, p. 20, *ante*).

(3) Without prejudice and in addition to the provisions of the Criminal Law Amendment Act, 1880, no consent shall be any defence in any proceedings for an indecent assault upon any defective, if the accused knew or had reason to suspect that the person in respect of whom the offence was committed was a defective.

Consent.—It is provided by sect. 2 of the Criminal Law Amendment Act, 1880, that:—"It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency." Proof of consent on the part of a "defective" within the meaning of the Act (*see* sect. 1, p. 20, *ante*) will not be a defence if the jury are satisfied that the accused knew, or had reason to suspect, that the person assaulted was such a "defective."

As regards indecent assaults on girls and women in ordinary cases, the age of thirteen is the maximum at which consent is no defence.

Indecent assault.—By sect. 52 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), it is enacted as follows:—"Whosoever shall be convicted of any indecent assault upon any female . . . shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour."

(4) No indictment under this section shall be tried at quarter sessions.

(5) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence under paragraph (a) of sub-section (1) of this section, but are not satisfied that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.

Rape is the unlawful carnal knowledge of a female by force and against her will, and for such offence a person is liable to penal servitude for life. As to the definitions of "unlawful" and "carnal knowledge," *see* note to sect. 56 (1) (a), pp. 158, 159, *supra*.

A man who induces a married woman to permit him to have connection with her by personating her husband is guilty of rape (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4).

Circumstances not amounting to rape.—Unlawful carnal knowledge, or an attempt to have the same, of any female idiot or imbecile woman or girl, *under circumstances which do not amount to rape*, but which prove that the offender knew at the time that the woman or girl was an idiot or imbecile, is a misdemeanour, punishable by imprisonment for any term not exceeding two years (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5 (2); *see also* sect. 324 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5), App., p. 301, *post*).

A jury have power, on an indictment for rape, or any offence made a felony by sect. 4 of the Criminal Law Amendment Act, 1885 (*i.e.*, defilement of a girl under thirteen years of age), if they are not satisfied that the defendant is guilty of the felony or an attempt to commit the same, to find him guilty of a misdemeanour under sects. 3, 4 or 5 of the Act, or of an indecent assault (*ibid.* sect. 9). By sect. 4 (3) of the Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), if, on a trial for rape, the jury are satisfied that the defendant is guilty of an offence under that Act, but is not guilty of rape, the jury may acquit him of rape, and find him guilty of an offence under such Act.

(6) Section four of the Criminal Evidence Act, 1898, shall have effect as if this section of this Act were included in the Schedule to that Act.

Calling of wife or husband as witnesses.—Sect. 4 (1) of the Criminal Evidence Act, 1898, provides that the wife or husband of a person charged with an offence under any enactment mentioned in the schedule of that Act may be called as a witness, either for the prosecution or defence, and without the consent of the person charged; but, by sect. 1 (d), “nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.”

57. False Entries.—Any person who in any book, statement, or return knowingly makes any false entry as to any matter as to which he is by this Act or any rules made under

this Act required to make an entry shall be guilty of a misdemeanour.

False entries.—This provision is in the same terms as sect. 318 of the Lunacy Act, 1890 (*see App.*, p. 300, *post*).

Punishment.—*See* sect. 60 (1), and note, p. 167, *post*, as to the alternative methods of prosecution, and forms of punishment for offences under this Act declared to be misdemeanours.

58. Punishment of Person making Untrue Statement for purpose of obtaining Certificate or Approval.—If any person, for the purpose of obtaining any certificate or approval under this Act or the renewal of any such certificate or approval, wilfully supplies to the Board any untrue or incorrect information, plan, description, or notice he shall be guilty of a misdemeanour.

Certificate or approval or the renewal thereof.—This section refers to any certificate or approval required under sects. 36 to 39, and sects. 49, 50, *ante*. Similar provisions are made under the Lunacy Act, 1890, ss. 214, 317 (*see App.*, pp. 264, 299, *post*).

Wilfully supplies to the Board.—*I.e.*, the Board of Control.

Punishment.—*See* sect. 60 (1), and note, p. 167, *post*, as to the alternative methods of prosecution, and forms of punishment for offences under this Act declared to be misdemeanours.

59. Penalty for breach of Regulations.—If any person is guilty of a breach of any regulation made under this Act, he shall be liable on summary conviction to a penalty not exceeding such as may be prescribed as respects such a breach by the regulations, but the maximum penalty imposed by the regulations in respect of any breach shall not exceed imprisonment, with or without hard labour, for a term of three months or a fine of fifty pounds, or both.

Regulations made under this Act.—It is to be observed that neither sect. 41 (1) of the Act, p. 123, *ante*, which specifies generally the matters in respect of which the Home Secretary may make regulations, nor any other section of the Act, in terms, gives power to make regulations as to penalties. It is submitted, however, that such power is given by the words "such as may be prescribed as respects such a breach by the regulations."

See sect. 320 of the Lunacy Act, 1890, App., p. 300, *post*, as to penalty for non-compliance with that Act, and the rules thereunder made.

“**Prescribed**” means prescribed by regulations made under this Act (*see* sect. 71 (1), p. 179, *post*).

Maximum penalty, imprisonment, or fine, or both.—The use of the word “penalty” in relation to imprisonment is almost unique in criminal legislation, and the power to prescribe, by regulations, a punishment by imprisonment is very uncommon.

60. Punishment for Offences.]—(1) An offence under this Act declared to be a misdemeanour shall be punishable by fine or by imprisonment for a term not exceeding two years, with or without hard labour, but may, except where otherwise expressly provided, instead of being prosecuted on indictment, be prosecuted summarily, and, if so prosecuted, shall be punishable only with imprisonment for a term not exceeding three months, with or without hard labour, or with a fine not exceeding fifty pounds, or both.

An offence . . . declared to be a misdemeanour.—The offences under this Act declared to be misdemeanours are specified in sects. 24 (2), 51 (1), (3), 54 (1), 55, 56 (1), 57 and 58.

Shall be punishable by fine or by imprisonment.—The misdemeanours specified in sect. 56 (1), *see* pp. 158—161, *ante*, are punishable by imprisonment only under that section. In every other case of an offence under the Act declared to be a misdemeanour, where there is a prosecution on indictment, a fine may be inflicted instead of imprisonment.

Except where otherwise expressly provided.—It is not in express terms provided in the case of any of the offences under this Act declared to be misdemeanours that the prosecution shall be only on indictment; but inasmuch as, in the cases of the misdemeanours in sect. 56 (1), punishment is specifically provided on conviction on indictment, it would seem to have been the intention that such misdemeanours should not, in any case, be dealt with summarily.

Summary prosecutions.—Where an offence is prosecuted summarily instead of being prosecuted on indictment, the accused will have no right to elect to be dealt with by a jury under sect. 17 of the Summary Jurisdiction Act, 1879, inasmuch as the maximum imprisonment on summary conviction is not to exceed three months.

(2) Any other offence under this Act shall be punishable summarily with imprisonment for a term not exceeding three months with or without hard labour, or with a fine not exceeding fifty pounds, or both.

Any other offence.—The offences under the Act other than misdemeanours, except as regards breaches of regulations (*see* sect. 59), are specified in sects. 51 (2), 52, 53, 54 (2), pp. 151, 154—156, *ante*.

61. Appeals.—Any person aggrieved by the conviction or sentence of a court of summary jurisdiction under this Act may appeal to quarter sessions.

Appeal to Quarter Sessions.—The procedure on an appeal to Quarter Sessions is regulated by sect. 31 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Sect. 33 of the same Act also provides for an appeal from a Court of summary jurisdiction by special case stated by such Court upon a point of law (*conf.* The Magistrate's Practice, 1913, 10th edition, pp. 177—186, Stevens & Sons, Limited; Sweet & Maxwell, Limited).

62. Protection of Officers for the purposes of Arrest.—The managers of an institution and the owner of a certified house and every officer of such institution or house authorised in writing by the managers or owner, for the purpose of conveying a person to or from the institution, or house, or of apprehending and bringing him back to the institution or house in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protections, and privileges of a constable.

“**Institution,**” “**certified house.**”—For definitions of those terms, *see* sect. 71, p. 180, *post*. Sect. 62 does not apply to a defective escaping from an “approved home.”

Conveyance of persons to and from institutions and certified houses.—This duty will be carried out in accordance with the regulations made under sect. 41 (1) (k), *see* p. 124, *ante*.

Apprehension of defectives escaping.—As regards the power to apprehend and bring back a patient in an institution, or absent from an institution under licence or without a licence, who escapes, *see* sect. 42, p. 125, *ante*, the provisions of which are applied by

sect. 49 (2), p. 145, *ante*, to certified houses and patients *therein*, but not to patients *absent therefrom* under, or without, licence.

Officer . . . authorised in writing.—Under this section, and sects. 42 and 49 (2), pp. 125, 145, *ante*, an escaping patient may be apprehended and brought back without warrant by any constable or by the managers of the institution, or the owner of the certified house, or, in the case of a patient escaping from an institution, by any person authorised by the managers, but in the case of a person escaping from a certified house, it would appear that only an officer of such house can be authorised for the purpose.

“Person,” “patient.”—The use of these terms in sects. 62 and 42, respectively, appears to clearly enable the apprehension of any alleged defective who escapes from an institution or certified house, to which he has been taken as “a place of safety” pending presentation of a petition, under sect. 15 of the Act. But only an officer of the local authority authorised in that behalf, or any constable, can, apparently, legally apprehend an alleged defective who has escaped from any other place to which he has been removed as to a place of safety (*see* definition, sect. 71, p. 179, *post*).

63. *Application of sects. 330 and 332 of Lunacy Act, 1890.*]—Section three hundred and thirty of the Lunacy Act, 1890, which relates to the protection of persons putting that Act in force, and section three hundred and thirty-two of the same Act, which relates to the powers of Commissioners and visitors to summons witnesses, shall have effect as if they were herein enacted and in terms made applicable to this Act.

Protection of persons putting Act into force, &c.—These sections of the Lunacy Act, 1890, are set out in the Appendix, pp. 303, 304, *post*.

The effect of sect. 63 is (1) to protect a person who does anything in pursuance of the Mental Deficiency Act from civil or criminal proceedings, “whether on the ground of want of jurisdiction or on any other ground, if such person has acted in good faith and with reasonable care.” As to actions brought in pursuance of duties imposed by sect. 15 of the Lunacy Act, *conf. Morris v. Atkins and Brooker* (1902), 18 T. L. R. 628 (C. A.); *Welsh v. Duckworth* (1902), 18 T. L. R. 633; and by sect. 20 of the Lunacy Act, 1890, *conf. Thompson v. Schmidt* (1892), 66 J. P. 212; 8 T. L. R. 120 (C. A.); *Harward v. Hackney Union and Frost* (1898), 14 T. L. R.

306 (C. A.). The action will be stayed if the Court is of opinion that there is no evidence of an absence of reasonable care (*conf. Williams v. Beaumont* (1894), 10 T. L. R. 543; *Stevenson v. Potter* (1894), 29 L. J. Newsp. 200; *Louis v. Marylebone Guardians* (1889), 5 T. L. R. 214).

Power to summon witnesses.—As regards the application of sect. 332 of the Lunacy Act, 1890, to sect. 63 of the present Act, it is to be observed that the Commissioners and visitors have not only power to summon witnesses, but to examine such witnesses, or any person appearing before them as a witness, without having been summoned. It is a question of some doubt whether the offence of non-appearance, or refusal to be sworn or examined, now becomes punishable by imprisonment, as well as a fine, under sect. 60 (2) of the present Act (*see* p. 168, *ante*), or only by a fine as provided in sect. 332 (2) of the Lunacy Act.

As to the appointment and functions of visitors under the present Act, *see* sect. 40, pp. 120—123, *ante*.

Supplemental.

64. Administration of Property.—The provisions of section fifty and Part IV. of the Lunacy Act, 1890, as amended by any subsequent enactment, shall apply with respect to the management and administration of the estate of a person sent to or placed in an institution or to or in a certified house or placed under guardianship in accordance with the provisions of this Act, in like manner as they apply to the management and administration of the estate of a person lawfully detained as a lunatic but not so found by inquisition, and shall apply to the management and administration of the estate of a person with regard to whom it is proved to the satisfaction of the judge in lunacy that he is a defective within the meaning of this Act in like manner as they apply to the management and administration of the estate of a person who is through mental infirmity arising from disease or age incapable of managing his affairs.

This important section applies the provisions of sect. 50 of the Lunacy Act, 1890 (App., p. 211, *post*), relating to inquiries as to the property of persons detained as lunatics, by the direction of the Lord Chancellor, upon representation by the Commissioners in

Lunacy that inquiry is desirable; also as to similar inquiries by the Commissioners themselves.

The section also applies sects. 108 to 149 of the Lunacy Act, 1890, as amended by subsequent Acts, forming the whole of Part IV. of the principal Act, which deals with the judicial powers over the persons and estates of lunatics (*see App.*, pp. 228—245, *post*).

For a full exposition of this subject reference may be made to Messrs. Heywood & Massey's Lunacy Practice, 1911, 4th edition, Stevens & Sons, Limited.

65. *Transfer to Board of Powers and Duties of Lunacy Commissioners.*]—(1) All the powers and duties of the Commissioners in Lunacy under the Lunacy Acts, 1890 to 1911, shall, as from the commencement of this Act, be transferred to the Board, and His Majesty may, by Order in Council, direct that anything which under those Acts is required or authorised to be done by, to, or in respect of, any one or more Commissioners in Lunacy or any officer of those Commissioners shall be done by, to, or in respect of, one or more Commissioners under this Act, or the corresponding officer of the Board:

Provided that nothing in such Order in Council shall authorise anything by those Acts required to be done by two Commissioners, one a medical practitioner and the other a barrister, to be done otherwise than by two commissioners, one a medical and the other a legal commissioner, but the order may provide that, in the case of the temporary illness or disability of a legal or medical commissioner, the Lord Chancellor or the Secretary of State (as the case may be) may appoint a person qualified to be a legal or medical commissioner to act as substitute so long as the illness or disability continues.

Transferred powers and duties of Lunacy Commissioners.—Part V. of the Lunacy Act, 1890, of which sects. 150—161 are repealed by the new Act, provided as to the constitution of the Lunacy Commissioners, their meetings and procedure.

The principal powers and duties of the Lunacy Commissioners under the Lunacy Acts are contained in the following parts and

clauses of the Acts, which are set out in full in the Appendix, viz.:—

In Part I., sect. 23 of the Lunacy Act, 1890, it is provided that any two or more Commissioners may, upon a proper medical certificate, send a pauper lunatic or alleged lunatic, not already detained, to an institution for lunatics. By sect. 26, subject to the consent of the Local Government Board and the Commissioners, the visitors of any asylum may make arrangements for chronic lunatics to be received into a union workhouse. By sect. 38, the Commissioners may make orders as to the duration of reception orders in any institution for lunatics; and the remaining paragraphs of the section make provision for special reports as to lunatics proposed to be detained for prolonged periods.

Part II. contains many provisions under which the Commissioners have powers, &c. as to the care and treatment of patients, including reports to and visits of the Commissioners to private patients (sect. 39); regulations of "mechanical means" of restraint (sect. 40); medical attendance on single patients (sect. 44); visits of friends (sect. 47); examination of patients (sect. 49); inquiries as to property (sect. 50); diet of pauper patients in hospitals and licensed houses (sect. 52); change of residence of single patients (sect. 56); removal of lunatics (sects. 58—71); discharge of lunatics (sects. 72—76, 82).

Part VII., "Visitation," by sect. 187, provides as to visits by Commissioners to asylums; sects. 191—197 provide as to their visits to hospitals and licensed houses; and sects. 198—200 as to their visits to single patients. Sects. 203—206 provide, further, as to visits to lunatics in workhouses, special visits, and confer jurisdiction in regard to lunatics in private families and charitable establishments.

Part VIII. provides the licensing jurisdiction of the Commissioners (sects. 207—225); regulations for management of licensed houses (sects. 226—229); registration of hospitals for lunatics, and regulations to be observed therein (sects. 230—237).

Part XI., which makes provisions for penalties, misdemeanours, and proceedings, by sect. 332, gives the Commissioners power to summon witnesses; and by Part XII., sect. 338, they are given power to make rules, with the approval of the Lord Chancellor, in regard to various matters connected with institutions for lunatics and houses for single patients.

(2) As from the commencement of this Act, the existing staff of the Commissioners in Lunacy shall be transferred to

and become members of the staff of the Board, but without prejudice to the rights of any existing members of such staff.

Staff of the Commissioners.—The staff of the Commissioners includes the secretary and the clerks appointed under sects. 154 and 155 of the Lunacy Act, 1890.

The chief rights to which reference appears to be made are in regard to security of tenure of office, amount of salary and expenses, and superannuation allowances, the latter of which are subject to the provisions of the Superannuation Acts.

(3) As from the commencement of this Act, sections one hundred and fifty to one hundred and sixty-one of the Lunacy Act, 1890, shall be repealed.

Repealed provisions.—The repealed sections, which form nearly the whole of Part V. of the Lunacy Act, 1890, provided for the constitution of the Lunacy Commission, and meetings and procedure of the Commission.

Sect. 162 of the Act, which is the concluding section of Part V., and is unrepealed, provides as to the reports to be made by the Commissioners to the Lord Chancellor, and the laying of such reports before Parliament (*see App., p. 245, post*).

66. *Power to authorise Committee for Care of Mentally Defective to act as Asylums Committee.*]—The Secretary of State may by order authorise the council of a county or county borough acting as a local authority under the Lunacy Acts, 1890 to 1911, to appoint the committee for the care of the mentally defective constituted under this Act to be the visiting committee or asylums committee for the purposes of those Acts, anything in those Acts to the contrary notwithstanding.

If the power given by this section is generally used, the principle of placing all classes of mentally unsound and defective persons under the supervision of one body of persons in each local area will be maintained, and the danger of overlapping and unnecessary repetition in regard to many of the duties laid down in the Lunacy Acts, and in this Act, will be countervailed. At the same time, there are great distinctions still preserved as between the classes of persons to be dealt with under the respective statutes, and in very

populous places, it may be deemed inadvisable in the early days of the Act to place all the powers and duties thereunder in the hands of the same committees, who are at present only charged with powers and duties in regard to lunatics. The vast majority of lunatics of the poorer classes, for instance, are maintained largely at the expense of the poor law authorities, and certain provisions of the Lunacy Acts apply only in regard to that class. Further, the area of chargeability respecting a pauper lunatic is usually determined by his legal settlement or statutory irremovability, whereas the area of chargeability respecting a defective is the county or county borough in which he resided (*see* sects. 43, 44, pp. 126—138, *ante*).

67. *Repeal of Idiots Act, 1886.*—(1) The Idiots Act, 1886, is hereby repealed.

Effect of repealed provisions.—The provisions of the Idiots Act, 1886, are rendered unnecessary by the provisions of this Act, which deals with the same classes of defectives as are included in sect. 1 (a), (b) of the present Act (*see* pp. 21, 22, *ante*).

The repealed Act provided for the placing and receiving, in any hospital, institution, or licensed house registered under the Act for the purpose, of idiots or imbeciles from birth, or from an early age, for their detention until full age for care, education and training, upon a medical certificate as to fitness, signed by the person placing him therein (sect. 4). The consent in writing of the Commissioners in Lunacy might be given for further detention of persons detained under sect. 4, after attaining full age; and adult idiots or imbeciles from birth, or from an early age, might be received into similar institutions for adults under similar conditions as set forth in sect. 4 (sect. 5). The Commissioners in Lunacy could order the discharge of an adult idiot or imbecile at any time (sect. 6).

(2) Any hospital, institution, or licensed house which at the commencement of this Act is registered under the Idiots Act, 1886, shall, without further certification, become a certified institution under this Act:

Provided that—

- (a) if any such hospital, institution, or licensed house is carried on for private profit, the hospital, institution, or house shall become a certified house instead of a certified institution; and

- (b) if the committee of management of any such hospital, institution, or licensed house make an application to the Board for the purpose, and the Board makes an order, the whole or any part of the hospital, institution, or house to which the order relates shall become and be treated as an approved home.

Registration of hospitals, &c.—This was subject to the jurisdiction of the Commissioners (Idiots Act, ss. 7, 8).

“Certified institution,” “certified house,” “approved home.”—See sect. 71, p. 180, *post*, as to the definitions of these expressions; also sects. 36—39, 49, 50, pp. 110—120, 144—149, *ante*, for the provisions relating to certificates and approval of premises.

(3) Any person who before the commencement of this Act has been placed in a hospital, institution, or licensed house registered under the Idiots Act, 1886, may, after the commencement of this Act, continue to be detained therein in like manner in all respects as if he had been placed therein in pursuance of the provisions of this Act and immediately after the commencement thereof.

Commencement of this Act.—The date of the commencement of the Act for the purposes of this section is April 1st, 1913 (see sect. 72 (3), p. 183, *post*).

Notice of the first reception of an idiot or imbecile was to be given to the Commissioners (Idiots Act, s. 9); also notice of a death or discharge (*ibid.* sect. 10).

Any person placed in a registered hospital, &c. may be detained.—This sub-section refers to the provisions of sects. 11, 12, pp. 51—56, *ante*, as to the duration of detention under orders, and of detention not under orders.

(4) Nothing in this Act shall affect the right of any person who is or has been an officer or servant of a hospital, institution, or licensed house registered under the Idiots Act, 1886, to receive or to continue to receive any superannuation allowance to which he would have been entitled had this Act not been passed.

Existing rights to superannuation.—By sect. 16 of the

Idiots Act, 1886, the committee of management of any hospital, institution, or licensed house, registered under the Idiots Act, might grant to any officer or servant who was incapacitated by confirmed illness, age, or infirmity, or who had been an officer or servant in the hospital, institution, or house, for not less than fifteen years, and was not less than fifty years old, such superannuation allowance, not exceeding two-thirds of the salary, with the value of the lodgings, rations, or other allowances enjoyed by the superannuated person, as the committee might think proper.

The provisions of the Mental Deficiency Act in regard to superannuation of officers are contained in sects. 45, 46 (*see pp. 138—141, ante*).

68. Provisions as to Regulations.—Regulations made under this Act shall be laid before Parliament as soon as may be after they are made, and, if within thirty sitting days after they have been so laid either House of Parliament presents an address to His Majesty praying that any such regulations may be annulled, His Majesty may, by Order in Council, annul the regulations, without prejudice, however, to anything done thereunder, and the regulations made under this Act shall have effect as if enacted in this Act.

Regulations made under this Act.—The provisions of the Act empowering the making of regulations are contained in sects. 2 (2), 10 (2), 16 (3), 20, 22 (5), 25, 30, 30 (ii), (iii), 40 (3), and 41, *ante*.

See sect. 59, p. 166, *ante*, as to the punishment of a person guilty of a breach of any regulation made under the Act.

69. Liability to Removal.—The time during which a defective is detained in an institution or resides in an approved home under this Act shall for all purposes be excluded in the computation of time mentioned in section one of the Poor Removal Act, 1846, as amended by any subsequent enactment.

The section will apply to the residence of a defective in a "certified house." *See* sect. 49 (2), p. 145, *ante*; also sect. 71, pp. 180, 181, *post*, as to the meanings of "institution," "approved home," "certified house."

A similar provision is contained in the Children Act, 1908

(8 Edw. 7, c. 67), s. 89, with reference to the time during which a child is detained in a certified school; in the Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 22, and the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 32, with reference to the time of detention in an inebriate reformatory or in a retreat.

The effect of sect. 68 is to prevent a defective from acquiring a statutory exemption from removal from the parish or union in which the institution or approved home, where he is detained or resides, is situated. The provision is of some importance, inasmuch as a defective might subsequently become a pauper lunatic, and the provisions of the Lunacy Acts in regard to the repayment of the expenses of his maintenance would then apply (*see* Lunacy Act, 1890, ss. 286, *et seq.*; App., pp. 290—299, *post*).

Sect. 1 of the Poor Removal Act, 1846, to which reference is made in the text, as amended by 24 & 25 Vict. c. 55, s. 1, and 28 & 29 Vict. c. 79, s. 8, enacts as follows:—

No person to be removed from any parish in which he or she shall have resided for five years.—No person shall be removed, nor shall any warrant be granted for the removal of any person from any parish in which such person shall have resided for *one* year next before the application for the warrant.

Time to be excluded in computation of time.—Provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving Her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea hospitals, or shall be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any Act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this Act: . . .

Where a defective has been detained or has resided in an institution, &c., within the meaning of sect. 68, and subsequently becomes chargeable, no account must, therefore, be taken of the time so spent in order to fix the parish or union responsible for his maintenance as a pauper (*conf. Reg. v. Hartfield* (1852), 21 L. J. M. C. 65; *Poplar v. West Ham* (1906), 70 J. P. 255).

For the law on the subject generally, reference should be made to

the author's work on "Poor Law Settlement and Removal," 1913, 2nd edition, Stevens & Sons, Limited.

70. Provisions against Disfranchisement.—The maintenance in an institution or under guardianship under this Act of any person for whose maintenance any other person is responsible shall not deprive that other person of any franchise, right, or privilege, or subject him to any disability.

Provision against disfranchisement.—This section is in accordance with legislative precedents (*conf.* Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 8; Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57), s. 4; *see also* the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 80 (4), and the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), s. 23, which provide that persons shall not by reason of being admitted into the hospitals established under those Acts suffer any disqualification for franchise). The last-mentioned enactments, it will be seen, refer to the admission and maintenance of the patient himself, but such a reservation in favour of a person detained as a "defective" would clearly be an absurdity. The effect of sect. 69 is to preserve to a person responsible for the cost of maintenance of a defective all rights and privileges to which such person would have been entitled if he had not been so responsible. The section removes the disqualification for registration as a parliamentary elector in respect of the receipt of parochial relief other than medical relief (*ubi infra*), or other alms.

By sect. 36 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), a person having received parochial relief, *or other alms*, was disqualified from being registered as a parliamentary elector. This disability was partly taken away by sect. 1 of the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), but the receipt of "other alms" still disqualifies, except where provision is made to the contrary, as in the present Act. As to the meaning of the words "or other alms," *conf.* *Cowen v. Kingston-on-Hull*, [1897] 1 Q. B. 273; *Dix v. Kent* (1891), 55 J. P. 213; *Edwards v. Lloyd* (1888), 20 Q. B. D. 302; *Baker v. Town Council of Monmouth* (1885), 49 J. P. 776; *Harrison v. Carter* (1877), 46 L. J. C. P. 57; *Smith v. Hall* (1864), 33 L. J. C. P. 59.

71. Interpretation.—(1) In this Act, unless the context otherwise requires,—

The expression "prescribed" means prescribed by regulations made under this Act:

The term "prescribed" is used in sects. 3 (1), (2), 18, 30 (ii), (iii), 44 (3), (5), 45, 49 (1), 50 (1), 59.

The expression "parent or guardian" in relation to a defective shall include any person who undertakes or performs towards the defective the duty of a parent or guardian:

The expression "parent or guardian" is used in this connection in sects. 2 (1), 3 (1), 6 (2), (3) (a), 8 (5), 11 (2), (3), 12, 13 (4), 16 (1). *See also* notes to sect. 2 (1) (a), p. 25, *ante*, and reference to the *Southwark Union Case*, p. 93, *ante*.

The expression "relative" means the husband or wife or a lineal ancestor or lineal descendant, or lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother:

The expression "relative" is used in this connection in sects. 5 (1), (3), 7 (3), 11 (2), 17 (4), 18.

The expression "intoxicants" includes any intoxicating liquor, and any sedative, narcotic, or stimulant drug or preparation:

As to the offence of supplying intoxicants to a patient contrary to warning, *see* sect. 52, p. 154, *ante*. As to power of guardian to give warning, *see* sect. 10 (2), p. 51, *ante*.

The expression "place of safety" means any workhouse or police station, any institution, any place of detention, and any hospital, surgery, or other suitable place, the occupier of which is willing to receive temporarily persons who may be taken to places of safety under this Act:

The expression "place of safety" is used in sects. 8 (3), 10 (1), 15, pp. 45, 50, 62, *ante*. It bears a similar meaning to that given in the Children Act, 1908 (8 Edw. 7, c. 67), s. 101. As regards the word "workhouse" in the definition, it may be pointed out that, by sect. 109 of the Poor Law Amendment Act, 1834 (4 & 5

Will. 4, c. 76), the word "shall be construed to include any house in which the poor of any parish or union shall be lodged and maintained, or any house or building purchased, erected, hired or used at the expense of the poor rate, by the parish, vestry, guardian, or overseer, for the reception, employment, classification, or relief of any poor person therein at the expense of such parish." *See also Lunacy Act, 1890, s. 341, wherein "workhouse" includes an asylum provided for the reception and relief of the insane under the Metropolitan Poor Act, 1837 (30 Vict. c. 6).*

As regards "places of safety" which are not already certified or approved by the Board of Control, the occupiers must be careful to observe the provisions for notification, &c. in sect. 51, p. 149, *ante*, which relates to offences with respect to the reception and detention of defectives and alleged defectives.

The expression "special school or class" means a special school or class within the meaning of the Elementary Education (Defective and Epileptic Children) Act, 1899:

As to the expression "special school or class," *see* sects. 2 (2) (a), and 31 (1), pp. 29, 99, *ante*; *also* sects. 2 and 14 of the Act of 1899 (App., pp. 185, 193, *post*).

The expressions "institution" and "institution for defectives" mean a State institution or certified institution:

See sect. 49 (2), p. 145, *ante*, as to the applications of the provisions of the Act relating to institutions and the patients therein to certified houses and the patients therein.

The expression "State institution" means an institution for defectives of dangerous or violent propensities established by the Board under this Act:

As to the establishment of "State institutions," *see* sect. 35, p. 109, *ante*.

The expression "certified institution" means an institution in respect of which a certificate has been granted under this Act to the managers to receive defectives therein, and includes, subject to the provisions of this

Act, any premises provided by a board of guardians and approved under this Act:

As to the certification of institutions, *see* sect. 36, p. 110, *ante*. *See also* sect. 37, p. 111, *ante*, whereby the Act is applied to approved premises of a board of guardians, as if such premises were a certified institution; sect. 39, p. 119, *ante*, as to the transfer of premises for use as certified institutions; and sect. 67 (2), p. 174, *ante*, as to existing institutions under the Idiots Act, 1886.

The expression "certified house" means a house in which defectives are received by the owner thereof for his private profit, and in respect of which a certificate has been granted under this Act:

As to "certified houses," *see* sect. 49, p. 144, *ante*; *also* sect. 67 (2), p. 174, *ante*, in regard to certain existing hospitals under the Idiots Act, 1886.

The expression "approved home" means any premises in which defectives are received and supported wholly or partly by voluntary contributions, or by applying the excess of payment of some patients for or towards the support of other patients, or a house in which defectives are received by the owner thereof for his private profit, and which has been approved by the Board under this Act:

As to the approval of homes, *see* sect. 50, p. 147, *ante*; *also* sect. 67 (2), p. 174, *post*, in regard to certain existing hospitals, &c. under the Idiots Act, 1886.

The expression "institution for lunatics" has the same meaning as in the Lunacy Acts, 1890 to 1911:

By sect. 341 of the Lunacy Act, 1890 (53 Vict. c. 5), "In this Act, if not inconsistent with the context, 'institution for lunatics' means an asylum, hospital or licensed house. 'Asylum' means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs. 'Hospital' means any hospital or part of a hospital, or other house or institution (not being an asylum), wherein lunatics are received and supported wholly or partly by

voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients."

"Licensed house" is not specially defined, but means a house licensed by the Commissioners in Lunacy or by justices, as the case may be, for the reception of a stated number of lunatic patients (*conf.* Lunacy Act, 1890, ss. 191—197, 207—229; App., pp. 255—258, 262—269, *post.* See also Statutory Rules and Orders under the Lunacy Acts (1895), rr. 36—38).

The expression "board of guardians of a poor law union" shall include the Metropolitan Asylums Board and any joint committee of a combination of unions constituted by order of the Local Government Board.

The Metropolitan Asylums Board is not the authority dealing with lunatic asylums, &c. in London, which are under the jurisdiction of the London County Council Asylums Committee. The Metropolitan Asylums Board is established under the provisions of the Metropolitan Poor Act, 1867 (30 Vict. c. 6), is formed of managers elected by each of the metropolitan boards of guardians, together with certain members nominated by the Local Government Board, and is entrusted with powers, subject to the orders of such Board, of providing accommodation for various classes of the London poor not being lunatics, but including children and adults suffering from various physical ailments and intellectual defects.

As regards places outside the metropolis, it was provided by sect. 8 of the Poor Law Act, 1879 (42 & 43 Vict. c. 54), that the Local Government Board might, by order, with the consent of the guardians concerned, on any representation, combine two or more unions for any purpose connected with the relief of the poor, which, in the opinion of such Board, would tend to diminish expense, or would otherwise be of public or local advantage, and should by such order constitute, for the execution of such purposes, a joint committee of the guardians of each of the combined unions. The guardians of such unions so combined cease to exercise any powers and rights, and to be subject to any duties, liabilities and obligations vested by the order in the joint committee. The property acquired by a joint committee becomes vested in the boards of the combined unions as tenants in common.

Various orders have been made under the above statute, and in many counties in England and Wales movements are taking place for the establishment of joint committees for the care and control of the mentally defective poor within such counties.

(2) Cost on income account shall, as respects an institution provided by a local authority, include expenditure out of income by the authority by way of interest on or repayment of capital raised, or by way of rent or other similar payment, for the purposes of the provision of the institution.

Cost on income account.—The definition in this sub-section is made necessary by reason of the limitation of the obligation on local authorities to perform certain duties in respect of defectives within their area, contained in proviso (1) of sect. 30 of the Act, *see* p. 91, *ante*, which relates to the general powers and duties of local authorities.

Provided by a local authority.—*See* sects. 38, 39, pp. 113—120, *ante*.

(3) For the purposes of this Act, the Scilly Islands shall be deemed to be a county, and the council of those Islands the council of a county, and any expenses incurred by that council under the provisions of this Act shall be treated as general expenses of the council.

Scilly Islands.—Somewhat similar provisions in regard to the Scilly Isles are contained in the Old Age Pensions Act, 1908 (8 Edw. 7, c. 40), s. 11, and the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 79. *See also* the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 49, *and* the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 74.

72. Short Title, Extent, and Commencement.]—(1) This Act may be cited as the Mental Deficiency Act, 1913.

(2) This Act shall not extend to Scotland or Ireland.

As to Scotland, *see* the Mental Deficiency and Lunacy (Scotland) Act, 1913 (3 & 4 Geo. 5, c. 38).

(3) This Act shall come into operation on the first day of April nineteen hundred and fourteen, except that as respects the constitution of the Board of Control, and the appointment of the secretary, officers, and servants of the Board, it shall come into operation on the first day of November nineteen hundred and thirteen.

Constitution of the Board of Control.—*See* sect. 22, p. 72, *ante*.

Chairman and paid members of the Board.—At the time of going to press the unpaid members of the Board of Control had not been appointed, but the following were appointed, as from November 1st, 1913, to be the paid Commissioners, viz.: Sir W. P. Byrne, K.C.V.O., C.B. (Chairman), Dr. C. H. Bond, M.D., Dr. E. M. Cooke, M.B., Dr. S. Coupland, M.D., Miss Mary Dendy, Mr. B. T. Hodgson, Mr. S. J. F. Macleod, K.C., Dr. F. Needham, M.D., Dr. A. Rotherham, M.B., Mr. L. L. Shadwell, Mr. A. H. Trevor.

Secretary to the Board of Control.—Mr. O. E. Dickinson, barrister-at-law, the Secretary to the Lunacy Commission, has been appointed Secretary to the Board of Control.

Offices of the Board.—The offices of the Board of Control are at 66, Victoria Street, Westminster, S.W.

Appointment of secretary, officers, and servants.—*See* sect. 23, p. 75, *ante*.

SCHEDULE.

POWERS AND DUTIES OF THE ADMINISTRATIVE COMMITTEE.

1. The supervision of the administration by local authorities of their power and duties under this Act.
2. The certification and approval of premises.
3. The provision and maintenance of State institutions.
4. The administration of grants made out of moneys provided by Parliament under this Act.
5. Such other powers and duties of the Board under this Act of an administrative nature as the Secretary of State or the Board may assign to the administrative committee.

The powers and duties above enumerated are such as may be entrusted to a committee appointed under sect. 22 (5) of the Act, *see* p. 74, *ante*.

APPENDIX

LUNACY ACT, 1890.*

(53 VICT. c. 5.)

An Act to consolidate certain of the Enactments respecting Lunatics. [29th March, 1890.]

Preliminary.

1. *Short title.*]—This Act may be cited as the Lunacy Act, 1890.

This Act and the Lunacy Acts, 1891, 1908 and 1911, are cited together as the Lunacy Acts, 1890 to 1911.

2. *Extent of Act.*]—Save as in this Act otherwise expressly provided, this Act shall not extend to Scotland or Ireland.

See sects. 86—89, 107, 131; *see also* sect. 110, extending the jurisdiction in Lunacy to property within any British possession.

3. *Commencement.*]—This Act shall come into operation, save as in this Act otherwise expressly provided, on the first day of May one thousand eight hundred and ninety.

This section was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

PART I.—RECEPTION OF LUNATICS.

Reception Orders on Petition.

4. *Private patients not found lunatic by inquisition to be received only under order of judicial authority.*]—(1.) Subject to the exceptions in this Act mentioned, a person, not being a pauper or a lunatic so found by inquisition, shall not be received and detained as a lunatic in an institution for lunatics, or as a single patient, unless under a reception order made by the judicial authority hereinafter mentioned. A relative of the person applying for an order under this section or of the

* The text of the Act of 1890 is hereafter set out as amended, extended, and in part repealed by subsequent Acts.

lunatic, or of the husband or wife of the lunatic, shall not be capable of making such order.

(2.) The order shall be obtained upon a private application by petition accompanied by a statement of particulars and by two medical certificates on separate sheets of paper.

5. *Petition for reception order.*]—(1.) The petition shall be presented, if possible, by the husband or wife or by a relative of the alleged lunatic. If not so presented it shall contain a statement of the reasons why the petition is not so presented and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(2.) No person shall present a petition unless he is at least twenty-one years of age and has within fourteen days before the presentation of the petition personally seen the alleged lunatic.

(3.) The petitioner shall in the petition undertake that he will personally, or by someone specially appointed by him, visit the patient once at least in every six months; and the undertaking shall be recited in the order.

(4.) The petition shall be signed by the petitioner and the statement of particulars by the person making the statement.

6. *Procedure upon petition for a reception order.*]—(1.) Upon the presentation of the petition the judicial authority shall consider the allegations in the petition and statement of particulars and the evidence of lunacy appearing by the medical certificates, and whether it is necessary for him personally to see and examine the alleged lunatic; and, if he is satisfied that an order may properly be made forthwith, he may make the same accordingly; or, if not so satisfied, he shall appoint as early a time as practicable, not being more than seven days after the presentation of the petition, for the consideration thereof; and he may make such further or other inquiries of or concerning the alleged lunatic as he may think fit. Notice of the time and place appointed for the consideration of the petition (unless personally given to the petitioner) shall be sent to the petitioner by post in a prepaid registered letter addressed to him at his address as given in the petition.

(2.) The judicial authority, if not satisfied with the evidence of lunacy appearing by the medical certificates, may, if he thinks it necessary so to do, visit the alleged lunatic at the place where he may happen to be.

(3.) The petition shall be considered in private, and no one except the petitioner, the alleged lunatic (unless the judicial authority shall in his discretion otherwise order), any one person appointed by the alleged lunatic for that purpose, and the persons signing the medical certificates accompanying the

petition, shall, without the leave of the judicial authority, be present at the consideration thereof.

(4.) At the time appointed for consideration of the petition the judicial authority may make an order thereon or dismiss the same, or, if he thinks fit, may adjourn the same for any period not exceeding fourteen days for further evidence or information, and he may give notice to such persons as he thinks fit of the adjourned consideration, and summon any persons to attend before him.

(5.) Every judicial authority and all persons admitted to be present at the consideration of any petition for a reception order, or otherwise having official cognisance of the fact that a petition has been presented, except the alleged lunatic and the person appointed by the alleged lunatic as aforesaid, shall be bound to keep secret all matters and documents which may come to his or their knowledge by reason thereof, except when required to divulge the same by lawful authority.

Amendment as to Judicial Authority.—By sect. 24 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), the following amendment was made to sect. 10 (*supra*) of the principal Act, viz.:—

24.—(1.) A justice of the peace specially appointed under section ten of the principal Act may exercise the powers of the judicial authority under that Act, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is.

(2.) A judicial authority may, if he considers it expedient, transfer a petition for a reception order presented to him to any other judicial authority who is willing to receive the same, whether such other judicial authority has or has not jurisdiction in the place where the lunatic is, and such other judicial authority shall have the same powers as the judicial authority to whom the petition was presented would have had.

(3.) A reception order made after the passing of this Act shall not be invalid on the ground only that the justice of the peace who signed the order shall appear to have not been duly appointed under section ten of the principal Act, if the order is within fourteen days after its date approved and signed by a judicial authority.

(4.) The appointment at any time before or after the passing of this Act by the justices of a county or quarter sessions borough of justices to exercise the powers of the judicial authority under the principal Act shall not be invalid on the ground only that the appointment includes all the justices of the county or borough.

(5.) Every justice appointed under section ten of the Lunacy Acts Amendment Act, 1889, shall be deemed to have had power to exercise the jurisdiction conferred upon the judicial authority under the principal Act, and the jurisdiction of such justices and of any justices appointed or hereafter to be appointed under the principal Act shall be deemed to have continued and shall continue until a fresh appointment is made.

Power to confer Powers of Justice of the Peace on Chairman of Board of Guardians.—By sect. 25 of the Lunacy Act, 1891, it was further enacted as follows:—

25. If for the due administration of the Lunacy Acts, 1890 and 1891, in any union it appears to the Lord Chancellor desirable, he may by writing under his hand empower the chairman of the board of guardians to sign orders for the reception of persons as pauper lunatics in institu-

tions for lunatics, and every order so signed shall have effect as if made by a justice of the peace under the principal Act.

7. *Dismissal of petition.*]—(1.) If the petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Commissioners, and shall also, where the alleged lunatic is detained under an urgency order, send notice by post or otherwise to the person in whose charge the alleged lunatic is, that the petition has been dismissed.

(2.) Any judicial authority making or refusing a reception order, shall, if so required by the Commissioners, give to them all such information as they may require as to the circumstances under which the order was made or refused.

(3.) The Commissioners may communicate such information as they think proper, on the dismissal of the petition or the release of the alleged lunatic, to him or to any person who may satisfy them that he is a proper person to receive the information.

(4.) If after a petition has been dismissed another petition is presented as to the same alleged lunatic, the person presenting such other petition, so far as he has any knowledge or information with regard to the previous petition and its dismissal, shall state the facts relating thereto in his petition, and shall obtain from the Commissioners at his own expense, and present with his petition, a copy of the statement sent to them of the reasons for dismissing the previous petition, and, if he wilfully omits to comply with this sub-section, he shall be guilty of a misdemeanour.

8. *Right of lunatic to be examined by judicial authority.*]—(1.) When a lunatic has been received as a private patient under an order of a judicial authority, without a statement in the order that the patient has been personally seen by such judicial authority, the patient shall have the right to be taken before or visited by a judicial authority, other than the judicial authority who made the order, unless the medical officer of the institution or, in the case of a single patient, his medical attendant, within twenty-four hours after reception, in a certificate signed and sent to the Commissioners, states that the exercise of such right would be prejudicial to the patient.

(2.) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right; and if he, within seven days after his reception, expresses his desire to exercise the

right, such manager or person shall procure him to sign a notice of such desire, and shall forthwith transmit it by post in a prepaid registered letter to the judicial authority, who is to exercise the jurisdiction under this section, or to the justices clerk of the petty sessional division or borough, where the lunatic is, to be by him transmitted to such judicial authority, and the judicial authority shall thereupon arrange, as soon as conveniently may be, either to visit the patient or to have the patient brought before him by the manager or person as the judicial authority may think fit.

(3.) The judicial authority shall be entitled, if he desires so to do, to see the medical certificates and any other documents, upon the consideration of which the reception order was made, and shall after personally seeing the patient send to the Commissioners a report, and the Commissioners shall take such steps as may be necessary to give effect to the report.

(4.) For the purposes of this section the jurisdiction shall be exercised by any judicial authority having authority to act in the place where the person received is, and not being the judicial authority who made the reception order; and arrangements shall for that purpose from time to time be made amongst themselves by the persons having such authority as aforesaid.

(5.) If any manager of an institution for lunatics, or any person having charge of a single patient, omits to perform any duty imposed upon him by this section, he shall be guilty of a misdemeanour.

The Judicial Authority defined.

9. *Judicial authority defined.*]—(1.) The powers of the judicial authority under this Act shall be exercised by a justice of the peace specially appointed as hereinafter provided, or a judge of county courts, or magistrate *having respectively jurisdiction in the place where the lunatic is.*

The above italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 29, Sched.

(2.) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

(3.) A judge of county courts and magistrate shall not be required to exercise any powers under this Act so as to interfere with or delay the exercise of his ordinary jurisdiction.

10. *Appointment of justices to make reception orders.*—
 (1.) The justices of every county and quarter sessions borough, shall annually appoint out of their own body as many fit and proper persons as they may deem necessary to exercise *within the county and borough respectively*, the powers conferred by this Act upon the judicial authority. In making such appointments the justices of every county shall have regard to the convenience of the inhabitants of each petty sessional division thereof.

The above italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(2.) The annual appointments under this section shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions to be held in the month of October.

(3.) If in any year such appointments are not made, it shall be lawful for the Lord Chancellor, by writing under his hand, to make the same; and if, on any representation made to him that the number of justices so appointed for any county or borough is at any time insufficient, the Lord Chancellor is satisfied that such representation is well founded, he shall have power to appoint, by writing under his hand, any other justices of such county or borough to act, until the next Michaelmas quarter or special sessions, with the justices so appointed.

(4.) If in the case of a borough or place not having a separate quarter sessions, representation is made to the Lord Chancellor that public inconvenience is likely to result, unless power is given to the justices of such borough or place to exercise *within the same* the powers conferred by this Act upon the judicial authority, it shall be lawful for the Lord Chancellor, from time to time, with or without a fresh representation, to appoint, by writing under his hand, one or more of the justices of such borough or place to exercise *within the same* during such time as the Lord Chancellor thinks fit the powers aforesaid, together with any other specially appointed justices acting therein.

The above italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(5.) In the case of the death, absence, inability, or refusal to act of any justice appointed under this section, the justices of the county or borough, or the Lord Chancellor, as the case may be, may appoint a justice to act in his place. Such appointment may be made by justices of a county at any quarter sessions, and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

(6.) All appointments of justices under this section shall

be recorded by the clerk of the peace of the county or borough, or in the case of a borough or place not having a separate quarter sessions, by the clerk to the justices, and it shall be the duty of every such clerk to publish the names of the justices so appointed in each petty sessional division of the county and otherwise for the information of all persons interested. In the case of quarter sessions boroughs, the clerk to the justices making the appointment shall forthwith notify the same to the clerk of the peace of the borough.

Urgency Orders.

11. *Urgency orders.*—(1.) In cases of urgency where it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be forthwith placed under care and treatment, he may be received and detained in an institution for lunatics, or as a single patient upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate.

(2.) An urgency order may be signed before or after the medical certificate.

(3.) If an urgency order is not signed by the husband or wife or by a relative of the alleged lunatic, the order shall contain a statement of the reasons why the same is not so signed and of the connection with the alleged lunatic of the person signing the order, and the circumstances under which he signs the same.

(4.) No person shall sign an urgency order unless he is at least twenty-one years of age and has within two days before the date of the order personally seen the alleged lunatic.

(5.) An urgency order may be made as well after as before a petition for a reception order has been presented. An urgency order, if made before a petition has been presented, shall be referred to in the petition, and if made after the petition has been presented, a copy thereof shall forthwith be sent by the petitioner to the judicial authority to whom the petition has been presented.

(6.) An urgency order shall remain in force for seven days from its date; or if a petition for a reception order is pending, then until the petition is finally disposed of.

(7.) An urgency order shall have subjoined or annexed thereto a statement of particulars.

Reception after Inquisition.

12. *Lunatics so found by inquisition.*—A lunatic so found by inquisition may be received in an institution for lunatics or

as a single patient upon an order signed by the committee of the person of the lunatic, and having annexed thereto an office copy of the order appointing the committee, or if no such committee has been appointed, upon an order signed by a Master.

Summary Reception Orders.

13. *Lunatics not under proper care and control or cruelly treated or neglected.*—(1.) Every constable, relieving officer, and overseer of a parish, who has knowledge that any person within the district or parish of the constable, relieving officer, or overseer, who is not a pauper and not wandering at large, is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall within three days after obtaining such knowledge give information thereof upon oath to a justice being a judicial authority under this Act.

Provision as to Relieving Officers.—It was further enacted by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

2.—(2.) Where in a union there are two or more relieving officers, and the guardians, with the sanction of the Local Government Board, direct one relieving officer to discharge throughout the union the duties of a relieving officer in respect of lunatics, every other relieving officer in the union shall inform the officer so directed of any case of a lunatic, with which it would otherwise devolve upon such other relieving officer to deal, and it shall be the duty of the relieving officer receiving such information to deal with the case, and the other relieving officer shall be discharged from any further duty in the matter.

(2.) Any such justice upon the information on oath of any person whomsoever, that a person *within the limits of his jurisdiction*, not a pauper and not wandering at large, is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected as aforesaid, may himself visit the alleged lunatic, and shall, whether making such visit or not, direct and authorise any two medical practitioners whom he thinks fit to visit and examine the alleged lunatic and to certify their opinion as to his mental state, and the justice shall proceed in the same manner so far as possible, and have as to the alleged lunatic the same powers, as if a petition for a reception order had been presented by the person by whom the information with regard to the alleged lunatic has been sworn.

The above italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(3.) If upon the certificates of the medical practitioners who examine the alleged lunatic, or after such other and further inquiry as the justice thinks necessary, he is satisfied that the alleged lunatic is a lunatic, and is not under proper care and

control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, the justice may by order direct the lunatic to be received and detained in any institution for lunatics to which, if a pauper, he might be sent under this Act, and the constable, relieving officer, or overseer upon whose information the order has been made, or any constable whom the justice may require so to do, shall forthwith convey the lunatic to the institution named in the order.

Provision as to Relieving Officers.—The Lunacy Act, 1891, provides that:—

2.—(1.) A constable, relieving officer, or overseer whose duty it is, under the principal Act, to convey a lunatic to or from an institution for lunatics, may make proper arrangements for the performance of the duty by some other person or persons.

Classification of Lunatics received under Lunacy Act, 1890, ss. 13, 16.—By sect. 3 of the Lunacy Act, 1891, the following provision was also made:—

3. A lunatic sent to an institution for lunatics under section thirteen or sixteen of the principal Act shall be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient.

14. *Notice to be given of pauper lunatic who ought to be sent to an asylum.*]—(1.) Every medical officer of a union who has knowledge that a pauper resident within the district of the officer is or is deemed to be a lunatic and a proper person to be sent to an asylum, shall, within three days after obtaining such knowledge, give notice thereof in writing to the relieving officer of the district, or, if there is no such officer, to an overseer of the parish where the pauper resides.

(2.) Every relieving officer and every overseer of a parish of which there is no relieving officer, who respectively have knowledge, either by notice from a medical officer or otherwise, that any pauper resident within the district or parish of the relieving officer or overseer is deemed to be a lunatic, shall, within three days after obtaining such knowledge, give notice thereof to a justice having jurisdiction in the place where the pauper resides.

(3.) A justice, upon receiving such notice, shall by order require the relieving officer or overseer giving the notice, to bring the alleged lunatic before him or some other justice having jurisdiction in the place where the pauper resides at such time and place within three days from the time of the notice to the justice as shall be appointed by the order.

15. *Lunatic wandering at large to be brought before a justice.*]—(1.) Every constable and relieving officer and every overseer of a parish who has knowledge that any person (whether a pauper or not) wandering at large within the dis-

trict or parish of the constable, relieving officer, or overseer is deemed to be a lunatic, shall immediately apprehend and take the alleged lunatic, or cause him to be apprehended and taken, before a justice.

(2.) Any justice, upon the information upon oath of any person that a person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, may by order require a constable, relieving officer, or overseer of the district or parish where the alleged lunatic is, to apprehend him, and bring him before the justice making the order, or any justice having jurisdiction where the alleged lunatic is.

16. *Lunatic brought before a justice may be sent to an institution for lunatics.*]—The justice before whom a pauper alleged to be a lunatic or an alleged lunatic wandering at large is brought under this Act shall call in a medical practitioner, and shall examine the alleged lunatic, and make such inquiries as he thinks advisable, and if upon such examination or other proof the justice is satisfied in the first-mentioned case that the alleged lunatic is a lunatic and a proper person to be detained, and, in the secondly-mentioned case, that the alleged lunatic is a lunatic, and was wandering at large, and is a proper person to be detained, and if in each of the foregoing cases the medical practitioner who has been called in signs a medical certificate with regard to the lunatic, the justice may by order direct the lunatic to be received and detained in the institution for lunatics named in the order, and the relieving officer, overseer, or constable who brought the lunatic before the justice, or in the case of a lunatic wandering at large, any constable who may by the justice be required so to do, shall forthwith convey the lunatic to such institution.

Classification of Lunatics received under Lunacy Act, 1890, ss. 13, 16.—By sect. 3 of the Lunacy Act, 1891, the following provision was made:—

3. A lunatic sent to an institution for lunatics under section thirteen or sixteen of the principal Act shall be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient.

17. *Power to examine alleged lunatic at his own abode or elsewhere.*]—Where, under this Act, notice has been given to, or an information upon oath laid before a justice that a pauper resident within the limits of his jurisdiction is deemed to be a lunatic, and a proper person to be sent to an asylum, or that a person, whether a pauper or not, wandering at large within the limits aforesaid, is deemed to be a lunatic, such justice may examine the alleged lunatic at his own house or elsewhere, and may proceed in all respects as if the alleged lunatic had been brought before him.

18. *When lunatic may be treated as a pauper.*]—A justice

shall not sign an order for the reception of a person as a pauper lunatic into an institution for lunatics, or workhouse, unless he is satisfied that the alleged pauper is either in receipt of relief, or in such circumstances as to require relief for his proper care. If it appears by the order that the justice is so satisfied, the lunatic shall be deemed to be a pauper chargeable to the union, county, or borough properly liable for his relief. A person who is visited by a medical officer of the union, at the expense of the union, is, for the purposes of this section, to be deemed to be in receipt of relief.

19. *Suspension of removal under reception order.*]—(1.) A justice making an order for the reception of a lunatic otherwise than upon petition, in this Act called a "summary reception order," may suspend the execution of the order for such period not exceeding fourteen days as he thinks fit, and in the meantime may give such directions or make such arrangements for the proper care and control of the lunatic as he considers proper.

(2.) If a medical practitioner who examines a lunatic as to whom a summary reception order has been made, certifies in writing that the lunatic is not in a fit state to be removed, the removal shall be suspended until the same or some other medical practitioner certifies in writing that the lunatic is fit to be removed, and every medical practitioner who has certified that the lunatic is not in a fit state to be removed shall, as soon as in his judgment the lunatic is in a fit state to be removed, be bound to certify accordingly.

20. *Removal of lunatic to workhouse in urgent cases.*]—If a constable, relieving officer, or overseer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Act, that the alleged lunatic should, before any such proceedings can be taken, be placed under care and control, the constable, relieving officer, or overseer may remove the alleged lunatic to the workhouse of the union in which the alleged lunatic is, and the master of the workhouse shall, unless there is no proper accommodation in the workhouse for the alleged lunatic, receive and relieve, and detain the alleged lunatic therein, but no person shall be so detained for more than three days, and before the expiration of that time, the constable, relieving officer, or overseer shall take such proceedings with regard to the alleged lunatic as are required by this Act.

21. *Temporary removal of lunatic to workhouse under order of justice.*]—(1.) In any case where a summary reception order might be made, any justice, if satisfied that it is expedient for the welfare of the lunatic, or for the public safety, that the lunatic should forthwith be placed under care and control, and

if it appears to him that there is proper accommodation for the lunatic in the workhouse of the union in which the lunatic is, may make an order for taking the lunatic to and receiving him in that workhouse.

(2.) In any case where a summary reception order has been made, an order under this section may be made to provide for the detention of the lunatic until he can be removed.

(3.) An order under this section shall not authorise the detention of a lunatic in a workhouse for more than fourteen days, after which period such detention shall not be lawful, except in accordance with the provisions of this Act as to the detention of lunatics in workhouses.

(4.) An order under this section may be made by any justice having jurisdiction in the place where the lunatic is.

22 Power to allow a relation or friend to take charge of a lunatic.]—In the case of a lunatic as to whom a summary reception order may be made nothing in this Act shall prevent a relation or friend from retaining or taking the lunatic under his own care if a justice having jurisdiction to make the order, or the visitors of the asylum in which the lunatic is or is intended to be placed, shall be satisfied that proper care will be taken of the lunatic.

Reception Order by two Commissioners.

23. Commissioners may send pauper lunatic to an institution for lunatics.]—(1.) Any two or more Commissioners may visit a pauper lunatic or alleged lunatic not in an institution for lunatics, or workhouse, and may, if they think fit, call in a medical practitioner.

(2.) If the medical practitioner signs a medical certificate with regard to the lunatic, and the Commissioners are satisfied that the pauper is a lunatic, and a proper person to be detained, they may by order direct the lunatic to be received in an institution for lunatics, and the relieving officer of the district or any constable who may by them be required so to do shall forthwith convey the lunatic to such institution.

Lunatics in Workhouses.

24. Lunatics in workhouses.]—(1.) Except in the cases mentioned in this Act, no person shall be allowed to remain in a workhouse as a lunatic unless the medical officer of the workhouse certifies in writing—

- (a) that such person is a lunatic, with the grounds for the opinion; and
- (b) that he is a proper person to be allowed to remain in a workhouse as a lunatic; and

- (c) that the accommodation in the workhouse is sufficient for his proper care and treatment, separate from the inmates of the workhouse not lunatics, unless the medical officer certifies that the lunatic's condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate.

Metropolitan Asylums Board Cases.—By the Lunacy Act, 1891, an amendment was introduced for getting rid of the necessity for a certificate as to accommodation in the asylums of the Metropolitan Board, as follows:—

4.—(2.) The medical superintendent of an asylum provided under the Metropolitan Poor Act, 1867 (30 Vict. c. 6), shall not be required in any certificate under sub-section one of section twenty-four of the principal Act, or under this Act, to certify to the effect in sub-clause (c) of that sub-section mentioned, and upon the transfer from a workhouse to an asylum provided under the Metropolitan Poor Act, 1867, of a lunatic, with regard to whom a certificate or order under the said section twenty-four made while he was in the workhouse is in force, no further certificate or order shall be required for the detention of the lunatic in the asylum.

(2.) A certificate under this section shall be sufficient authority for detaining the lunatic therein named against his will in the workhouse for fourteen days from its date.

(3.) No lunatic shall be detained against his will or allowed to remain in a workhouse for more than fourteen days from the date of a certificate under this section without an order under the hand of a justice having jurisdiction in the place where the workhouse is situate.

(4.) The order in the last preceding sub-section mentioned may be made upon the application of a relieving officer of the union to which the workhouse belongs, supported by a medical certificate under the hand of a medical practitioner, not being an officer of the workhouse, and by the certificate under the hand of the medical officer of the workhouse hereinbefore mentioned.

(5.) The guardians of the union to which the workhouse belongs shall pay such reasonable remuneration as they think fit to the medical practitioner who, not being an officer of the workhouse, examines a person for the purpose of a certificate under this section.

(6.) If in the case of a lunatic being in a workhouse, the medical officer thereof does not sign such certificate as in sub-sect. (1) of this section mentioned, or if at or before the expiration of fourteen days from the date of the certificate an order is not made under the hand of a justice for the detention of the lunatic in the workhouse, or, if after such an order has been made, the lunatic ceases to be a proper person to be detained in a workhouse, the medical officer of the workhouse

shall forthwith give notice in writing to a relieving officer of the union to which the workhouse belongs *that a pauper in the workhouse is a lunatic and a proper person to be sent to an asylum*, and thereupon the like proceedings shall be taken by the relieving officer and all other persons for the purpose of removing the lunatic to an asylum, and within the same time, as by this Act provided in the case of a pauper deemed to be a lunatic and a proper person to be sent to an asylum, and, pending such proceedings, the lunatic may be detained in the workhouse.

The italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 29, Sched.

(7.) In the case of a lunatic in an asylum provided for reception and relief of the insane under the Metropolitan Poor Act, 1867, notices to be given to and proceedings to be taken by a relieving officer shall be given to and taken by one of the officers of the asylum to be nominated for the purpose by the managers of the asylum district.

(8.) As regards every pauper in a workhouse at the date of the commencement of this Act, as to whom a certificate has been signed under sect. 20 of the Lunacy Acts Amendment Act, 1862, no certificate or order of a justice under this section shall be required.

By sect. 22 of the Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), power was given to the Poor Law authorities to detain a person suffering from mental disease provided the medical officer had reported he was not in a proper state to leave the workhouse without danger to himself or others. This provision was repealed by the Lunacy Act, 1890, except as regards persons suffering from delirium tremens. The following provision was made by sect. 4 (1) of the Lunacy Act, 1891, in order to remove doubts which existed as to the legality of the detention of certain lunatics who were kept in workhouses on May 1st, 1890, but with regard to whom no certificate had been given under the Lunacy Acts Amendment Act, 1862, s. 20:—

4.—(1.) Every pauper suffering from mental disease in a workhouse at the commencement of the principal Act, as to whom a report had before the commencement of the principal Act been made under section twenty-two of the Poor Law Amendment Act, 1867, may be detained in the workhouse against his will without an order under section twenty-four of the principal Act.

Medical Certificates—To be attached to Justices' Orders.—The following additional provision was enacted by the Lunacy Act, 1891:—

5. There shall be attached to every order made by a justice under section twenty-four of the principal Act the medical certificates on which such order is founded.

25. *Power to send discharged pauper not recovered to a workhouse.*—Where a pauper lunatic is discharged from an institution for lunatics, and the medical officer of the institution is of opinion that the lunatic has not recovered and is a proper

person to be kept in a workhouse as a lunatic, the medical officer shall certify such opinion, and the lunatic may thereupon be received and detained against his will in a workhouse without further order if the medical officer of the workhouse certifies in writing that the accommodation in the workhouse is sufficient for the lunatic's proper care and treatment, separate from the inmates of the workhouse not lunatics, or that the lunatic's condition is such that it is not necessary for the convenience of the lunatic, or of the other inmates, that he should be kept separate.

26. *Chronic lunatics may be received in workhouses in certain cases.*]—(1.) The visitors of any asylum may, with the consent of the Local Government Board and the Commissioners, and subject to such regulations as they respectively prescribe, make arrangements with the guardians of any union for the reception into the workhouse of any chronic lunatics, not being dangerous, who are in the asylum and have been selected and certified by the manager of the asylum as proper to be removed to the workhouse.

(2.) Every lunatic received in a workhouse under this section shall, while he remains there, continue a patient on the books of the asylum for the purposes of this Act so far as it relates to lunatics removed to asylums.

Institutions in which Lunatics may be received.

27. *Institutions to which lunatics may be removed.*]—(1.) Subject to the restrictions in this section mentioned, every summary reception order, and every reception order made by two or more Commissioners, may authorise the reception of the lunatic named in the order not only into an asylum of the county or borough in which the place from which the lunatic is sent is situate, but also into any other institution for lunatics.

(2.) A lunatic shall not under any such order be sent elsewhere than to an asylum of the county or borough in which the place from which he is sent is situate, unless there is no such asylum, or there is a deficiency of room, or there are some special circumstances by reason whereof the lunatic cannot conveniently be taken to such asylum, and the deficiency of room or special circumstances shall be stated in the order.

By the Lunacy Act, 1891, it is now provided as follows:—

6. Where a workhouse is situate in a county which does not include the union to which the workhouse belongs, a summary reception order made by a justice of the county in which the workhouse is situate may order a lunatic in the workhouse to be received in any asylum, in which pauper lunatics chargeable to the union to which the workhouse belongs may legally be received.

(3.) A pauper lunatic shall not be received under an order

into any asylum other than an asylum belonging wholly or in part to the county or borough in which the place from which the lunatic is sent or the parish in which he is adjudged to be settled is situate, unless there is a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to the asylum into which the pauper is to be received, except the order is endorsed by a visitor of that asylum.

(4.) The manager of a hospital or licensed house shall not be bound to receive any lunatic under any such order except in pursuance of a subsisting contract.

Requirements of Reception Orders and Medical Certificates.

28. *Medical certificates.*]—(1.) Every medical certificate under this Act shall be made and signed by a medical practitioner.

(2.) Every medical certificate upon which a reception order is founded shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and a reception order shall not be made upon a certificate founded only upon facts communicated by others.

(3.) The medical certificate accompanying an urgency order shall contain a statement that it is expedient for the welfare of the alleged lunatic or for the public safety that he should be forthwith placed under care and treatment, with the reasons for such statement.

(4.) Every medical certificate made under and for the purposes of this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts, as if the matters therein appearing had been verified on oath.

29 *Time and manner of medical examination of lunatic.*]—(1.) A reception order shall not be made unless the medical practitioner who signs the medical certificate, or where two certificates are required, each medical practitioner who signs a certificate, has personally examined the alleged lunatic in the case of an order upon petition not more than seven clear days before the date of the presentation of the petition, and in all other cases not more than seven clear days before the date of the order.

(2.) Where two medical certificates are required, a reception order shall not be made unless each medical practitioner signing a certificate has examined the alleged lunatic separately from the other.

(3.) In the case of an urgency order, the lunatic shall not

be received under the order unless it appears by the medical certificate accompanying the order that the certifying medical practitioner has personally examined the alleged lunatic not more than two clear days before his reception.

30. *Persons disqualified for signing certificates.*—A medical certificate accompanying a petition for a reception order or accompanying an urgency order shall not be signed by the petitioner or person signing the urgency order, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person.

31. *Usual medical attendant to sign medical certificate in case of private patient, if possible.*—One of the medical certificates accompanying a petition for a reception order shall, whenever practicable, be under the hand of the usual medical attendant, if any, of the alleged lunatic. If for any reason it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in writing by the petitioner to the judicial authority to whom the petition is presented, and such statement shall be deemed to be part of the petition.

32. *Patients not to be received under certificates by interested persons.*—(1.) No person shall be received or detained as a lunatic in any institution for lunatics, or as a single patient, where any certificate accompanying the reception order has been signed by any of the following persons:—

- (a) The manager of the institution or the person who is to have charge of the single patient:
- (b) Any person interested in the payments on account of the patient:
- (c) Any regular medical attendant in the institution:
- (d) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant of any of the foregoing persons.

(2.) Neither of the persons signing the medical certificates in support of a petition for a reception order shall be the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant, of the other of them.

(3.) No person shall be received as a lunatic in a hospital under an order made on the application of, or under a certificate signed by, a member of the managing committee of the hospital.

33. *Commissioners and visitors not to sign certificates.*—A medical practitioner who is a Commissioner or a visitor shall

not sign any certificate for the reception of a patient into a hospital or licensed house, unless he is directed to visit the patient by a judicial authority under this Act, or by the Lord Chancellor, or a Secretary of State, or a Committee appointed by the judge in lunacy.

34. *Amendment of orders and certificates.*]—(1.) If an order or certificate for the reception of a lunatic is, after such reception, found to be in any respect incorrect or defective, such order or certificate may, within fourteen days next after such reception, be amended by the person who signed the same. No amendment shall be allowed unless the same receives the sanction of the Commissioners, or of some one of them, and (in the case of a private patient) the consent of the judicial authority by whom the order for the reception of the lunatic may have been signed.

(2.) If the Commissioners deem any such certificate to be incorrect or defective, they may, by a direction in writing, addressed to the manager of the institution for lunatics, or to the person having the charge of a single patient, require the same to be amended by the person who signed the same, and if the same be not duly amended to their satisfaction within fourteen days next after the reception of the patient, the Commissioners, or any two of them, may, if they think fit, make an order for the patient's discharge.

(3.) Every order and certificate amended under this section shall take effect as if the amendment had been contained therein when it was signed.

35. *Authority for reception.*]—(1.) A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

(2.) In the case of a reception order made upon petition the order, together with the petition, statement of particulars, and medical certificates upon which the order was made, shall be delivered or sent by post to the person on whose petition the order was made, and shall by him or his agent be delivered to the manager of the institution for lunatics in which, or to the person by whom, the lunatic is to be received.

36. *Fresh order and certificates not to be required in certain cases.*]—(1.) Where a reception order has been made, and the execution of the order has been suspended, or the lunatic named in the order has been temporarily taken to a workhouse under

the provisions of this Act, he may be received in the institution for lunatics named in the order at any time within fourteen days after the date of the reception order.

(2.) If the removal of the lunatic has been suspended by reason of a medical certificate that the lunatic is not in a fit state for removal, the lunatic may be received in the institution for lunatics named in the order within three days after the date of a medical certificate that the lunatic is in a fit state to be removed.

(3.) In all other cases a reception order shall cease to be of any force unless the lunatic has been received thereunder before the expiration of seven clear days from its date.

37. *Order and certificate to remain in force in certain cases.*—(1.) An order for the reception of a patient as a pauper shall extend to authorise his detention though it may afterwards appear that he is entitled to be classified as a private patient, and an order required for the reception of a private patient shall authorise his detention although it may afterwards appear that he ought to be classified as a pauper patient.

(2.) If a patient is removed temporarily under the provisions of this Act from the place in which he is confined, or is transferred from one place of confinement to another, the original order and certificate or certificates upon which he was received shall remain in force.

Duration of Reception Orders.

38. *Duration of reception orders.*—(1.) Every reception order *dated after or within three months before the commencement of this Act*, shall expire at the end of one year from its date, and any such order *dated three months or more before the commencement of this Act* shall expire at the end of one year after the commencement of this Act unless such orders respectively are continued as herein-after provided.

The words above italicised were repealed by the S. L. R. Act, 1908.

(2.) In the case of any institution for lunatics the Commissioners may by order under their seal direct that the reception orders of patients detained therein shall, unless continued as hereinafter provided, expire on any quarterly day next after the days on which the orders would expire under the last preceding sub-section.

(3.) An order for the removal of a patient from one custody to another shall not be deemed to be a reception order within this section, but the patient who is removed shall after removal be deemed to be detained under the original reception order as a lunatic, and such order shall expire in accordance with the

provisions of this section unless continued as hereinafter provided.

(4.) . . .

This sub-section was repealed by sect. 7 of the Lunacy Act, 1891, and the following substituted therefor:—

7.—(4.) A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years for successive periods of five years, if not more than one month nor less than seven days before the expiration of the period at the end of which, as fixed by this Act or by an order of the Commissioners under sub-section two, the order would expire, and of each subsequent period of one, two, three, and five years respectively, a special report of the medical officer of the institution or of the medical attendant of the single patient as to the mental and bodily condition of the patient with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment is sent to the Commissioners.

(5.) The person sending the special report shall give to the Commissioners such further information concerning the patient to whom the special report relates as they require.

(6.) If in the opinion of the Commissioners the special report does not justify the accompanying certificate, then—

(a) In the case of a patient in a hospital or licensed house or under care as a single patient, the Commissioners shall make further inquiry, and if dissatisfied with the result they or any two of them may by order direct his discharge:

(b) In the case of a patient in an asylum, the Commissioners shall send a copy of the report, with any other information in their possession relating to the case, to the clerk to the visiting committee of the asylum, and the committee, or any three of them, shall thereupon investigate the case and may discharge the patient or give such directions respecting him as they may think proper.

(7.) The manager of any institution for lunatics, and any person having charge of a single patient, who detains a patient after he has knowledge that the order for his reception has expired, shall be guilty of a misdemeanour.

(8.) The special reports and certificates under this section may include and refer to more than one patient.

(9.) A certificate under the hand of the secretary to the Commissioners that an order for reception has been continued to the date therein mentioned shall be sufficient evidence of the fact.

(10.) This section shall not apply to lunatics so found by inquisition.

PART II.—CARE AND TREATMENT.

*Reports after Reception.**

39. *Reports upon and visits to private patients.*—(1.) The medical officer of every institution for lunatics, and the medical attendant of every single patient shall at the expiration of one month after the reception of a private patient prepare and send to the Commissioners a report as to the mental and bodily condition of the patient, in such form as the Commissioners direct.

(2.) The medical officer of every house licensed by justices shall also at the same time send a copy of such report to the clerk of the visitors of licensed houses in the county or borough where the house is situate to be by him laid before the visitors.

(3.) The Commissioners, after receiving the report upon any patient in a licensed house within their immediate jurisdiction, shall make arrangements for a visit being paid as soon as conveniently may be to the patient by one or more of the Commissioners; and the Commissioner or Commissioners so visiting shall report to the Commissioners whether the detention of the patient is or is not proper.

(4.) The visitors, after receiving the report, shall, in every case of a private patient in a licensed house in the county or borough for which the visitors are appointed, make arrangements for a visit being paid by the medical visitor (either alone or with one or more of the other visitors) to the patient therein named for such purpose as aforesaid, as soon as conveniently may be; and if on such visit there appears to be any doubt as to the propriety of the detention of the patient, such visitor or visitors shall forthwith report the same in writing to the Commissioners, who shall thereupon make all such further inquiries as may be necessary to satisfy themselves whether the patient is properly detained as a lunatic, or whether he ought to be discharged, or whether the case ought to be reported to the Lord Chancellor with a view to an inquisition.

(5.) In the case of a single patient the Commissioners, after receiving the report, shall either make arrangements for a visit being paid as soon as conveniently may be to the patient therein named by one or more of the Commissioners, or, if no Commissioner is available, shall cause a copy of the report to be sent to a medical visitor for the county or borough in which the single patient resides, or to some other competent person, and shall direct him to visit the patient therein named as soon as

* By sect. 8 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), it is enacted as follows:—

8. Section thirty-nine of the principal Act shall not apply to lunatics received under a removal order or to lunatics so found by inquisition.

conveniently may be. The Commissioner or Commissioners, or other person visiting the patient, shall report to the Commissioners whether his detention is or is not proper.

(6.) The person directed to visit a single patient under the last preceding sub-section shall for that purpose have all the powers of a Commissioner, and the Commissioners may, with the consent of the Treasury, pay to him such reasonable remuneration for his services as they think fit out of any funds which may be provided by Parliament to defray the general expenses of the Commissioners.

(7.) In the case of a private patient in an asylum or hospital the Commissioners, after receiving the report, shall either make arrangements for a visit being paid, as soon as conveniently may be, to the patient therein named by one or more of the Commissioners, who shall report to the Commissioners whether the detention of the patient is or is not proper; or the Commissioners shall send a copy of the report to the clerk to the visiting committee of the asylum or to the managing committee of the hospital, and one or more members of the committee shall thereupon, as soon as conveniently may be, visit the patient named in the report and report to the committee whether his detention is or is not proper, and the committee, or any three of them, may, upon consideration of such last-mentioned report, by writing under their hands discharge the patient or give such directions with regard to him as they think fit.

(8.) If within a month after the reception of any private patient, the institution for lunatics or house into which he was received is visited by one or more Commissioners or by any visitors, and such patient is there seen and examined by him or them, and the propriety of his detention reported on in like manner as by this section provided, no special visit shall necessarily be paid to such patient after receipt of any such report.

(9.) If the Commissioners in any case under this section determine that a patient ought to be discharged they may make an order for his discharge.

Mechanical Restraint.

40. *Mechanical means of restraint.*]—(1.) Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others.

(2.) In every case where such restraint is applied a medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the grounds upon which the certificate is founded.

(3.) The certificate shall be signed, in the case of a lunatic in

an institution for lunatics or workhouse, by the medical officer thereof, and in the case of a single patient, by his medical attendant.

(4.) A full record of every case of restraint by mechanical means shall be kept from day to day; and a copy of the records and certificates under this section shall be sent to the Commissioners at the end of every quarter.

(5.) In the case of a workhouse, the record to be kept under this section shall be kept by the medical officer of the workhouse, and the copies of records and certificates to be sent shall be sent by the clerk to the guardians.

(6.) In the application of this section "mechanical means" shall be such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine.

(7.) Any person who wilfully acts in contravention of this section shall be guilty of a misdemeanour.

Correspondence.

41. *Letters of patients.*]—(1.) The manager of every institution for lunatics, and every person having charge of a single patient, shall forward unopened all letters written by any patient and addressed to the Lord Chancellor or any judge in lunacy, or to a Secretary of State, or to the Commissioners, or any Commissioner, or to the person who signed the order for the reception of the patient, or on whose petition such order was made, or to the Chancery Visitors or any Chancery Visitor or to any other visitors or visitor or to the visiting committee, or any member of the visiting committee of the institution, in which any patient writing such letters may be, and may also at his discretion forward to its address any other letter if written by a private patient.

(2.) Every manager of an institution for lunatics, and every person having charge of a single patient who makes default in complying with the obligation imposed on him by this section shall for each offence be liable to a penalty not exceeding twenty pounds.

Notices.

42. *Notices as to letters and interviews.*]—(1.) Whenever the Commissioners so direct, there shall, unless there is no private patient therein, be posted up in every institution for lunatics, printed notices setting forth—

- (a) The right of every private patient to have any letter written by him forwarded in pursuance of the last preceding section;
- (b) The right of every private patient to request a personal and private interview with a visiting Commissioner

or visitor at any visit which may be made to the institution.

(2.) The notices shall be posted in the institution, so that every private patient may be able to see the same.

(3.) The visiting Commissioners or visitors may give directions as to the places in which such notices are to be posted.

(4.) If the manager of any institution for lunatics makes default in posting such notices, or does not within ten days carry out any directions as to such notices given by the visiting Commissioners or visitors, he shall for each offence be liable to a penalty not exceeding twenty pounds.

Medical Attendance.

43. *Persons disqualified to be medical attendants of lunatics.*]—(1.) A medical practitioner who has signed a certificate upon which a reception order in the case of a private patient has been made shall not be the regular professional attendant of the patient while detained under the order.

(2.) A medical practitioner, who is a Commissioner or visitor, shall not professionally attend upon a patient in a hospital or licensed house, unless he is directed to visit the patient by the person on whose petition the reception order was made, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the judge in lunacy.

44. *Medical attendance on single patients.*]—(1.) The Commissioners may by order direct how often any single patient is to be visited by a medical practitioner.

(2.) Until any such order is made, every single patient shall be visited once at least in every two weeks by a medical practitioner not deriving, and not having a partner, father, son, or brother who derives, any profit from the charge of the patient.

(3.) Any two Commissioners may direct that the medical attendant of a single patient shall cease to act in that capacity, and that some other person be employed in his place.

(4.) If a person having charge of a single patient fails to give effect to any direction of the Commissioners under this section, he shall be guilty of a misdemeanour.

(5.) This section shall not apply to lunatics so found by inquisition.

45. *Special report as to single patient.*]—The Commissioners may at any time require from the medical attendant of a single patient a report in writing as to the patient, in such form and specifying such particulars as the Commissioners direct, and such report shall be in addition to any periodical reports required to be sent to the Commissioners.

Power to take more than one Lunatic as a Single Patient.

46. *Power to take more than one person on same conditions as a single patient.*]—In the case of any person having charge of a single patient, if the Commissioners are satisfied that it is desirable, under special circumstances and for the interest of the patient that another patient or more than one other should reside in the same house, that person may, with the approval of the Commissioners, receive such other patient or patients on the same terms and conditions in all respects as if each of them were a single patient.

*Visits of Friends.*47. *Admission to patients of friends, relations, and others.*]—

(1.) Any one of the Commissioners, as to patients confined in an institution for lunatics or other place (not being a gaol) authorised to be visited by the Commissioners, and any one of the visitors of a licensed house, as to patients confined in such house, may at any time give an order in writing under his hand for the admission to any patient of any relation or friend or of any medical or other person whom any relation or friend desires to be admitted to him.

(2.) The order of admission may be either for a single admission, or for an admission for a limited number of times, or for admission generally at all reasonable times, and with or without any restriction as to the presence of an attendant or otherwise.

(3.) If the manager or principal officer of any institution or place refuses, prevents, or obstructs the admission to any patient of any person who produces an order of admission, he shall for every offence be liable to a penalty not exceeding twenty pounds.

Appointment of Substitute for Person who applied for Reception Order.

48. *Power to appoint substitute for the person who applied for reception order.*]—(1.) The Commissioners may by order substitute for the person upon whose petition a reception order was made, and either during the life of such person or after his death, any other person who is willing to undertake the duties and responsibilities of the petitioner.

(2.) As from the date of an order by the Commissioners under this section the substituted person shall be subject to all the obligations and may exercise all the powers and authorities in relation to the patient of the person for whom he is substituted.

(3.) The substitution shall not release the petitioner or his estate from any liabilities already incurred by him.

(4.) An order under this section may be made with or without the consent of the petitioner, but in the last-mentioned case the order shall not be made during his life until fourteen days after the Commissioners have given to him notice in writing of their intention to take into consideration the advisability of making an order under this section and of the name of the person proposed to be substituted.

(5.) Within fourteen days after receipt of the notice the person to whom the notice is given may lay before the Commissioners a statement in writing of his reasons why an order under this section should not be made, or he may appear in person before the Commissioners at such time and place and subject to such restrictions as the Commissioners may appoint for the purpose of stating such reasons. The Commissioners shall, upon consideration of such statement, or, if no statement is made, at their own discretion, finally determine the matter, and make or decline to make the order, as they may think fit.

(6.) A notice under this section may be sent by post to the last known address of the petitioner.

Examination of Lunatic.

49. *Provision for any person to apply to have patient examined.*—An order for the examination by two medical practitioners, authorised by the Commissioners, of any person detained as a lunatic in any institution for lunatics, or as a single patient, may be obtained from the Commissioners upon the application of any person, whether a relative or friend or not, who satisfies the Commissioners that it is proper for them to grant such order; and on production to the Commissioners of the certificates of the medical practitioners so authorised, certifying that after two separate examinations with at least seven days intervening between the first and the second examination, they are of opinion that the patient may, without risk or injury to himself or the public, be discharged, the Commissioners may order the patient to be discharged at the expiration of ten days from the date of the order.

Inquiries as to Property.

50. *Inquiries as to property.*—(1.) Where any person is detained as a lunatic and the Commissioners represent to the Lord Chancellor that it is desirable that the extent and nature of his property, and its application, should be ascertained, the Lord Chancellor may, if he think fit, through the Masters, require that the person upon whose petition the reception order

under which the lunatic is detained was made, or other the person paying for the care and maintenance of the lunatic or having the management of his property, shall transmit to the Lord Chancellor a statement in writing, to the best of his knowledge, of the particulars of the property of the lunatic and of its application.

(2.) The Commissioners may also, whenever they think it expedient, make inquiries as to the property of any person detained as a lunatic.

This section and Part IV. of this Act are applied by sect. 64 of the Mental Deficiency Act, 1913: *see* p. 170, *ante*.

Application for a Search.

51. *Power for a Commissioner or visitor to direct a search whether a particular person has been confined.*—(1.) If any person applies to a Commissioner in order to be informed whether any particular patient is confined in any institution for lunatics, or other place subject to the visitation of the Commissioners, the Commissioner, if he thinks fit, may sign an order to the secretary of the Commissioners, who shall search amongst the returns made to the Commissioners, whether the person inquired after is or has been within the last twelve months confined.

(2.) If it appears that the patient is or has been so confined, the secretary shall deliver to the applicant a statement in writing, specifying the situation of the institution or place in which the patient appears to be or to have been confined, and also (so far as the secretary can ascertain the same from any register or return in his possession) the name of the manager or principal officer of the institution or place, and the date of admission, and (in case of the patient's removal or discharge) the date of his removal or discharge.

(3.) If any such application is made to a visitor as to any licensed house within his jurisdiction, the visitor may make the like order upon the clerk to the visitors, who shall make search among the returns made to him, and deliver to the applicant the like statement as to any such licensed house as the secretary of the Commissioners is by this section required to make and deliver.

(4.) The applicant shall pay to the person required to make a search under this section such sum not exceeding seven shillings as the Commissioners or visitors fix.

Diet.

52. *Diet of patients.*—(1.) The visiting Commissioners may determine and regulate the diet of the pauper patients in any hospital or licensed house.

(2.) The visitors of a licensed house shall have the like power as to that house, subject, nevertheless, to any direction the visiting Commissioners may give.

Employment of Males in care of Females.

53. *Males not to be employed in personal custody of females.*]—It shall not be lawful to employ any male person in any institution for lunatics in the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be liable to a penalty not exceeding twenty pounds. Provided that this section shall not extend to prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may in the judgment of the manager of the institution render such employment necessary, but the manager shall in each case report the employment to the visiting Commissioners or visitors at their next visit.

Book to be kept in Workhouse.

54. *Book to be kept in workhouse.*]—(1.) The visiting guardians of every union shall, once at least in each quarter, enter in a book to be provided and kept by the master of the workhouse, such observations as they may think fit to make respecting the diet, accommodation, and treatment of the lunatics or alleged lunatics in the workhouse.

(2.) Such book shall be laid by the master before the Commissioner or Commissioners at his or their next visit.

Absence on Trial or for Health.

55. *Absence on trial or for health.*]—(1.) Any two visitors of an asylum, with the advice in writing of the medical officer, may permit a patient in the asylum to be absent on trial so long as they think fit.

(2.) The visitors may make an allowance to a pauper lunatic absent from the asylum on trial, not exceeding the charge in the asylum, and that allowance, and no more, shall be paid for him as if he were in the asylum.

(3.) The manager of any hospital or licensed house may, with such consent as hereinafter mentioned,—

- (a) send or take, under proper control, any private patient or two or more private patients to any specified place [or to travel in England], for such period as may be thought fit for the benefit of his or their health:
- (b) permit a private patient to be absent upon trial for such period as may be thought fit.

The words in brackets in paragraph (a) were added by sect. 9 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(4.) The consent required by this section shall be either that of a Commissioner, or in the case of a hospital that of two members of the managing committee, or in the case of a house licensed by justices that of two of the visitors. Any such consent may be renewed, and the place when required to be specified varied.

(5.) Before such consent is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was made, shall be produced, unless the consenting persons, on cause being shown, dispense with the same.

(6.) A Commissioner as regards any hospital or licensed house, and two members of the managing committee of a hospital, and two of the visitors of a house licensed by *visitors*, [*justices*] may, of their own authority, permit a pauper patient to be absent upon trial for such period as may be thought proper, and may make or order to be made an allowance to the pauper, not exceeding the charge for him in the hospital or house, which shall be payable as if he were in the hospital or house, but shall be paid over to him or for his benefit as *the Commissioners or visitors* [*such Commissioners or such two visitors*] may direct.

The italicised words were repealed and the words in brackets substituted therefor by sect. 9 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(7.) The medical officer of a hospital or licensed house may, of his own authority, permit any patient to be absent from the hospital or house for a period not exceeding forty-eight hours.

(8.) If a person allowed to be absent on trial for any period does not return at the expiration thereof, and a medical certificate certifying that his detention as a lunatic is no longer necessary is not sent to the visitors of the asylum or the manager of the hospital or house, he may at any time within fourteen days after the expiration of the period of trial be retaken as in the case of an escape.

56. Change of residence of single patients.]—(1.) Any person having charge of a single patient may change his residence and remove the patient to any new residence of such person in England.

(2.) Seven clear days before a change of residence, the person having charge of a single patient shall give notice in writing thereof, and of the place of the new residence, to the Commissioners and to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made.

(3.) Any person having charge of a single patient, with the previous consent of a Commissioner, may take or send the

patient, under proper control, to any specified place or places, for any definite time, for the benefit of his health, [*or permit the patient to be absent upon trial for such period as may be thought fit*].

The words in brackets were added by sect. 10 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(4.) Before any consent by a Commissioner is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, shall be produced to the Commissioner, unless, on cause being shown, he dispenses with the same.

Boarding-out Lunatics.

57. *Maintenance for pauper lunatic taken charge of by relatives.*—(1.) Where application is made to the visiting committee of an asylum by any relative or friend of a pauper lunatic confined therein that he may be delivered over to the custody of such relative or friend, the committee may, upon being satisfied that the application has been approved by the guardians of the union to which the lunatic is chargeable or the local authority liable for his maintenance, and, in case the proposed residence is outside the limits of such union or the area subject to such local authority, then also by a justice having jurisdiction in the place where the relative or friend resides, and that the lunatic will be properly taken care of, order the lunatic to be delivered over accordingly.

(2.) Where any such order is made, the authority liable for the maintenance of the lunatic shall pay to the person to whom the lunatic is delivered such allowance for the maintenance of the lunatic, not exceeding the expenses which would be incurred on his account if he were in the asylum, as such authority on the recommendation of the visiting committee of the asylum from which the lunatic was delivered over thinks proper.

(3.) For the purposes of sect. 24, sub-sect. (2) (f), of the Local Government Act, 1888 (51 & 52 Vict. c. 41), a lunatic boarded-out by the authorities of any asylum shall be deemed to be a lunatic maintained in an asylum.

Removal of Lunatics.

58. *Removal of private patient by person authorised to discharge the patient.*—A person having authority to order the discharge of a private patient from an institution for lunatics, or of any single patient, may, with the previous consent in writing of a Commissioner, by order in writing direct the

removal of the patient to any institution for lunatics or to the charge of any person named in the order.

59. Removal of lunatics by Commissioners.]—(1.) Any two Commissioners may by order direct the removal of a lunatic from an institution for lunatics to any other institution for lunatics.

(2.) Upon the death of a person having charge of a single patient, the Commissioners may, upon the application of the person having authority to discharge the patient, or if he does not apply within seven days after the death, upon their own motion, direct the patient to be removed to the charge of a person named in the order.

(3.) Any two Commissioners may at any time by order direct the removal of a lunatic from the charge of any person under whose care he is as a single patient, to the charge of any other person or to any institution for lunatics.

60. Removal of lunatic from workhouse by Commissioners.]—(1.) Where, upon the visitation of a workhouse by any two or more Commissioners, it appears to them that a lunatic or alleged lunatic therein is not a proper person to be allowed to remain in a workhouse, they may by order direct the lunatic to be removed to an institution for lunatics, and every such order shall have the same effect as a summary reception order.

(2.) The guardians of the union to which the workhouse belongs may appeal against an order under this section within one month from the making thereof to a Secretary of State, who shall thereupon employ a Commissioner, not being one of the Commissioners who made the order, or some other person, to make a special visitation of the workhouse and to report to him upon the matter, and the decision of the Secretary of State upon such report shall be conclusive.

61. Removal of lunatic in a hospital or licensed house by guardians.]—(1.) The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the removal of the lunatic [*to the workhouse of the union to which the lunatic is chargeable, or if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the hospital or licensed house,*] and may direct the mode of removal.

The words in brackets were added by sect. 11 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(2.) Upon production to the manager of the hospital or house of a copy of the order he shall forthwith remove the patient or suffer him to be removed.

62. Removal from workhouse by guardians.]—*The guardians*

of the union to which a workhouse belongs may make an order for the removal of any lunatic detained therein.

This section was repealed by the Lunacy Act, 1891. *See, however, sect. 81, post.*

63. *Removal of lunatic boarded out into asylum.*]—Where the visiting committee of an asylum has made an order for a pauper lunatic in the asylum to be delivered to the custody of a relative or friend, any two members of the committee may at any time, if they think fit, **order** the lunatic to be removed to the asylum.

64. *Removal of pauper into country asylum.*]—Any two visitors of an asylum may order a pauper lunatic chargeable to any union within any county or borough to which the asylum wholly or in part belongs, or to such county or to any county for the reception of the pauper lunatics whereof into that asylum there is a subsisting contract, to be removed to that asylum from any other institution for lunatics in which he may be detained.

65. *Removal of pauper from asylum.*]—(1.) Any two visitors of an asylum may order a pauper lunatic in the asylum to be removed to some other institution for lunatics.

(2.) A lunatic shall not be removed under this section without the consent in writing of two Commissioners, except to—

- (a) an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or to the county in some parish of which the lunatic may have been adjudged to be settled; or
- (b) a hospital or licensed house within any such county as aforesaid; or
- (c) an institution for lunatics into which the lunatic can be received under a subsisting contract.

66. *Directions as to execution of order for removal.*]—The visitors making an order for the removal of a pauper lunatic may by the order require any relieving officer, or other officer of the union, county, or borough to which the lunatic is chargeable, or may authorise any other person, to execute the same.

67. *Restriction upon removal of paupers by two visitors.*]—A pauper lunatic shall not be removed under any order for removal made by two visitors without a medical certificate signed by the medical officer of the institution for lunatics from which the patient is to be removed, certifying that he is in a fit condition of bodily health to be removed.

68. *Removal of lunatic from workhouse by a justice.*]—Where a union is in more than one county, and the workhouse

of the union is in one county, and the place from which a lunatic was sent to the workhouse is in another county, an order may be made by a justice for the county in which the workhouse is, or a justice for the county from which the lunatic was sent, for the removal of the lunatic either to the asylum of the county in which the workhouse is or to the asylum of the county from which the lunatic was sent, and such latter order may be made notwithstanding that there may be an asylum of the county in which the workhouse is, and there may not be a deficiency of room or any other special circumstances by reason whereof the lunatic cannot conveniently be taken to that asylum.

69. *Restriction as to institution to which pauper may be removed.*—Except under the provisions of the preceding section a pauper lunatic shall not be removed under an order of removal to any institution for lunatics into which he could not have been received under a reception order.

70. *Removal orders to be in duplicate.*—(1.) Every order for the removal of a lunatic from an institution for lunatics or from the charge of any person and the consent of the Commissioners thereto, where required, shall be in duplicate. One duplicate shall be delivered to the manager of the institution for lunatics or the person from whose care the lunatic is removed, and the other to the manager of the institution for lunatics, or the person into whose care the lunatic is removed.

(2.) Every such order, with such consent as aforesaid where required, shall be sufficient authority for the removal and reception of the lunatic, in accordance with the order.

(3.) The manager of the institution from which, or the person from whose care the lunatic is removed under any such order, shall deliver, free of expense, a copy of the reception order and documents accompanying the same to the person executing the order for removal, to be by him delivered to the manager of the institution into which or the person into whose care the lunatic is removed.

(4.) Every such copy shall be certified under the hand of the person whose duty it is to deliver the same.

71. *Removal of alien to his native country.*—(1.) Where an alien is detained as a lunatic, and his family or friends desire that he should be removed to the country of which he is a subject, the Commissioners, upon application by any member of the family or by a friend of the alien, may inquire into the circumstances of the case and report thereon to a Secretary of State.

(2.) A Secretary of State, if satisfied by such report that the person to whom the report relates is an alien and a lunatic, and that his removal is likely to be for his benefit, and that

proper arrangements have been made for such removal and for his subsequent care and treatment, may, by warrant, direct the alien to be delivered to the person named in the warrant for the purpose of removal to the country of which he is a subject, and every such warrant shall be obeyed by the person or authority under whose charge the lunatic is.

(3.) A warrant under this section shall be sufficient authority for the master of any vessel to receive and detain the lunatic on board the vessel, and to convey him to his destination.

Discharge of Lunatics.

72. *Discharge of private patient.*]—(1.) A private patient detained in an institution for lunatics, or under care as a single patient, shall be discharged if the person on whose petition the reception order was made by writing under his hand so directs.

(2.) If that person is dead, or incapable by reason of insanity, absence from England, or otherwise, of signing an order for discharge, or, if a patient having been originally classified as a pauper is afterwards classified as a private patient, the person who made the last payment on account of the patient, or the husband or wife, or if there is no husband or wife, or the husband or wife is incapable as aforesaid, the father, or if there is no father, or he is incapable as aforesaid, the mother of the patient, or, if there is no mother, or she is incapable, then any one of the nearest of kin of the patient, may give the direction for his discharge.

(3.) If there is no person qualified to direct the discharge of a patient under this section, or no person able or willing to act, the Commissioners may order his discharge.

73. *Discharge of pauper in hospital or house.*]—The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the discharge of the lunatic, and may direct the mode of discharge, and upon production to the manager of the hospital or house of a copy of the order he shall forthwith discharge the patient, or suffer him to be discharged.

74. *Restriction on discharge.*]—A patient shall not be discharged under the provisions of the two preceding sections if the medical officer of the institution, or, in the case of a single patient, his medical attendant, certifies in writing that the patient is dangerous and unfit to be at large, together with the grounds on which the certificate is founded, unless two of the visitors of the asylum, or the Commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the Commissioners, after the certificate

has been produced, consent in writing to the patient's discharge.

75. *Discharge by Commissioners of patients in hospital or licensed house, and of single patients.*]—Two of the Commissioners, one of whom shall be a medical and the other a legal Commissioner, may visit a patient detained in any hospital or licensed house, or as a single patient, and may, within seven days after their visit, if the patient appears to them to be detained without sufficient cause, make an order for his discharge.

76. *Notice of order of discharge.*]—(1.) The Commissioners when they have made any order of discharge shall forthwith serve the same upon the manager of the institution for lunatics where the patient is detained, or upon the person having charge of the patient as a single patient, and shall give notice of such order,—

- (a) In the case of a private patient, to the person on whose petition the reception order was made or who made the last payment on account of the patient:
- (b) In the case of a pauper, to the authority liable for his maintenance.

(2.) Any person who has been duly served with any such order of discharge and detains a patient after the date of discharge appointed thereby shall be guilty of a misdemeanour.

77. *Visitors may discharge patients in asylums.*]—(1.) Any three visitors of an asylum may order the discharge of any person detained therein whether he is recovered or not.

(2.) Any two such visitors, with the advice in writing of the medical officer, may order the discharge of any person detained in the asylum.

78. *Discharge by visitors of lunatics in licensed houses.*]—(1.) If after two visits by two visitors to a house licensed by justices, it appears to the visitors that any patient is detained without sufficient cause, the visitors may make such order as they think fit for his discharge.

(2.) In the case of visits under this section, one of the visitors shall be a medical practitioner.

(3.) The two visits shall be made by the same visitors at an interval of not less than seven days.

(4.) Seven days' notice of the second visit shall be given either by post or by an entry in the patient's book to the manager of the house, who shall forthwith send by post a copy of the notice, in the case of a private patient to the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was made, and in the case of a pauper to the authority liable for his maintenance, and also to the clerk of the visitors of the house.

(5.) The visitors before making an order under this section shall examine the medical officer of the house as to his opinion respecting the fitness of the patient to be discharged, if he tenders himself for examination.

(6.) If after such examination an order for discharge is made, and the medical officer furnishes to the visitors a statement of his reasons against the discharge, they shall forthwith send the statement to the clerk of the visitors.

(7.) This section shall not apply to a lunatic so found by inquisition.

(8.) Every order under this section shall be signed by the visitors by whom it is made.

79. Discharge of pauper on application of relative or friend.]—When application is made to the visiting committee of an asylum by a relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, any two of the visitors may, if they think fit, discharge the lunatic upon the undertaking of the relative or friend, to their satisfaction, that the lunatic shall be no longer chargeable to any union, county, or borough, and shall be properly taken care of and prevented from doing injury to himself or others.

80. Visiting committee may send notice of intention to discharge pauper lunatic to relieving officer or clerk of local authority.]—(1.) When the visitors of an asylum order a pauper lunatic confined therein to be discharged, except on the application of a relative or friend, they may, when they think fit, send a notice in writing, signed by the clerk of the asylum, by post or otherwise, of their intention to discharge the lunatic to a relieving officer of the union to which the lunatic is chargeable, or to the clerk of the local authority liable for his maintenance.

(2.) Upon receipt of such notice, the relieving officer or clerk shall cause the lunatic upon his discharge to be forthwith removed to the workhouse of the union to which the lunatic is chargeable, or, if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the asylum.

81. Discharge from workhouse by guardians.]—The guardians of the union to which a workhouse belongs may make an order for the discharge of any lunatic detained therein.

82. Copies of reception order and other documents to be furnished.]—The Secretary to the Commissioners shall, upon the discharge of a person who considers himself to have been unjustly confined as a lunatic, furnish to him upon his request, free of expense, a copy of the reception order and certificate or

certificates upon which he was confined, and if the order was made upon petition, also of the petition and statement of particulars upon which the reception order was made.

Recovery of Patient.

83. *Notice to be given on recovery of a patient.*—(1.) The manager of every hospital and licensed house, and a person having charge of a single patient, shall forthwith, upon the recovery of a patient, send notice thereof in the case of a patient not a pauper to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, and in the case of a pauper to the guardians of his union, or if a local authority is liable for his maintenance to the clerk of the local authority.

(2.) The notice shall state that unless the patient is removed within seven days from the date of the notice he will be discharged.

(3.) In case the patient is not removed within seven days from the date of the notice he shall be forthwith discharged.

Inquiry into Cause of Death.

84. *Coroner to inquire into death, if necessary.*—Every coroner shall upon receiving notice of the death of a lunatic within his district, if he considers that any reasonable suspicion attends the cause and circumstances of the death, summon a jury to inquire into the same.

Escape and Recapture.

85. *Escape and recapture.*—If any person detained as a lunatic under this Act escapes, he may, without a fresh order and certificate or certificates, be retaken at any time within fourteen days after his escape by the manager of the institution for lunatics or the master of the workhouse in which he was detained, or any officer, or servant thereof respectively, or by the person in whose charge he was as a single patient, or by anyone authorised in writing by such manager, master, or person.

86. *Escape from England into Scotland or Ireland.*—(1.) If any person detained as a lunatic under lawful authority in England escapes into Scotland or Ireland, notice of the escape shall as soon as practicable be given to the Commissioners, who may, by writing under their seal, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

(2.) Such warrant, when granted, shall in Scotland or Ireland as well as in England be sufficient *primâ facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any sheriff in Scotland, or for any justice in Ireland, to countersign the same; and any such warrant so countersigned may be executed in Scotland, or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

87. *Escape from Scotland into England or Ireland.*—(1.) If any person detained as a lunatic under lawful authority in Scotland escapes into England or Ireland, notice of the escape shall as soon as practicable be given to the General Board of Commissioners in Lunacy for Scotland, who may, by writing under the hand of one of such Commissioners, authorise an application to be made by such person as they think fit to any sheriff having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

(2.) Such warrant, when granted, shall in England and Ireland as well as in Scotland be sufficient *primâ facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any justice in England or Ireland to countersign the same; and any such warrant so countersigned may be executed in England or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

(3.) For the purposes of this section a writing purporting to be signed by one of the Commissioners in Lunacy for Scotland shall be deemed to have been signed by him until the contrary is proved.

88. *Escape from Ireland into England or Scotland.*—(1.) If any person detained as a lunatic under lawful authority in Ireland escapes into England or Scotland, notice of the escape shall as soon as practicable be given, where such person has been so detained by order of the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics in Ireland, to the Registrar in Lunacy, and in other cases to the Inspectors of Lunatics in Ireland, who may, by writing under the hand of the said registrar, or one of the said inspectors, as the case may be, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for

a warrant authorising such person to retake the lunatic and bring him back to such place.

(2.) Such warrant, when granted, shall in England and Scotland as well as in Ireland be sufficient *primâ facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of such escape, and shall be sufficient authority for any justice in England, and for any sheriff in Scotland, to countersign the same; and any such warrant so countersigned may be executed in England or Scotland, as the case may be, by retaking the lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

(3.) For the purposes of this section a writing purporting to be signed by the Registrar in Lunacy, or one of the Inspectors of Lunatics in Ireland, as the case may be, shall be deemed to have been signed by him unless the contrary is proved.

89. *Limit of time of retaking lunatic.*]—A warrant, granted under any of the three preceding sections, shall not authorise the retaking of a lunatic after the expiration of the time during which he could have been retaken according to the law in force in the place where he was detained as a lunatic if he had remained there after his escape.

PART III.—JUDICIAL INQUISITION AS TO LUNACY.

The Inquisition.

90. *Order for inquisition as to lunacy.*]—(1.) The judge in lunacy may upon application by order direct an inquisition whether a person is of unsound mind and incapable of managing himself and his affairs.

(2.) Where the alleged lunatic is within the jurisdiction, he shall have notice of the application and shall be entitled to demand an inquiry before a jury.

(3.) Upon the hearing of the application, the alleged lunatic may withdraw any demand for a jury made by him.

91. *Demand of a jury by alleged lunatic.*]—Where the alleged lunatic demands a jury, the Judge in Lunacy shall in his order for inquisition direct the return of a jury, unless he is satisfied, by personal examination of the alleged lunatic, that he is not mentally competent to form and express a wish for an inquisition before a jury; and the judge may, where he deems it necessary, and for the purpose of personal examination, require the alleged lunatic to attend him at such convenient time and place as he may appoint.

92. *Cases where a jury may be dispensed with.*]—Where the alleged lunatic does not demand a jury, or the judge in

lunacy is satisfied by a personal examination that he is not mentally competent to form and express a wish in that behalf, and it appears to the judge, upon consideration of the evidence, and of the circumstances of the case, to be unnecessary or inexpedient that the inquisition should be before a jury, and he accordingly does not in his order for inquisition direct the return of a jury, then the Masters shall, without a jury, personally examine the alleged lunatic, and take such evidence, upon oath or otherwise, and call for such information as they think fit or the judge directs, in order to ascertain whether or not the alleged lunatic is of unsound mind, and shall certify their finding thereon.

93. *Jury to be had, if masters certify that it is expedient.*—Where the judge in lunacy does not in his order for inquisition direct the return of a jury, but the Masters, upon consideration of the evidence, certify that in their opinion an inquisition before a jury is expedient, they shall, without further order, issue their precept to the sheriff, and shall proceed in like manner in all respects, and their proceedings shall be as valid and effectual as if the judge had directed the return of a jury in the first instance.

94. *Inquiries before a jury may be made by means of an issue in the High Court.*—(1.) Wherever the judge in lunacy orders an inquisition before a jury, he may by his order direct an issue to be tried in the High Court, and the question in such issue shall be, whether the alleged lunatic is of unsound mind and incapable of managing himself or his affairs; and the provisions of this Act with respect to commissions of lunacy, and orders for inquisition to be tried by a jury, and the trial thereof, and the constitution of the jury, shall apply to any issue to be directed as aforesaid, and the trial thereof, and subject thereto and to the provisions of this Act such issue and the trial thereof shall be regulated by the Rules of the Supreme Court for the time being in force relating to the trial of issues of fact by a jury, and the verdict upon any such issue finding the alleged lunatic to be of unsound mind and incapable of managing himself or his affairs shall have the same effect as an inquisition under this Act.

(2.) On the trial of every such issue the alleged lunatic shall, if he is within the jurisdiction, be examined before the evidence is taken, and at the close of the proceedings, before the jury consult as to their verdict, unless the judge who tries the issue otherwise directs; and such examinations shall take place either in open Court or in private as such judge directs.

Amendments in Procedure upon Inquisitions.—It is provided by sect. 26 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

26.—(1.) The provisions of section ninety-four sub-section two of

the principal Act as to the trial of issues in the High Court shall extend to all inquisitions, and the masters may, for the purpose of inquisitions held before them, exercise the powers by that sub-section conferred upon the judge who tries the issue.

(2.) The masters may make orders for the attendance of an alleged lunatic at such time and place as the order directs, for examination by the masters or a medical practitioner, and such order may be enforced in the same way as an order of a judge of the High Court.

95. Certificate of masters without a jury to have the force and effect of an inquisition.—Where the Masters certify that the alleged lunatic is of unsound mind, and incapable of managing himself or his affairs, or that he is of sound mind, and capable of managing his affairs, the certificate shall have the same effect as an inquisition taken upon the oath of a jury.

96. Jury to be had if lunatic out of jurisdiction.—Where the alleged lunatic is not within the jurisdiction it shall not be necessary to give him notice of the application for inquisition, and the inquisition shall be before a jury.

97. Number of jury.—The Lord Chancellor may, by order, regulate the number of jurors to be sworn, but so that every inquisition upon the oath of a jury be found by the oaths of twelve men, at least.

98. Nature and limit of inquisitions.—(1.) The inquisition shall be confined to the question whether or not the alleged lunatic is at the time of the inquisition of unsound mind, and incapable of managing himself or his affairs, and no evidence as to anything done or said by him, or as to his demeanour or state of mind at any time, being more than two years before the time of the inquisition, shall be receivable in proof of insanity, or on the trial of any traverse of an inquisition, unless the person executing the inquisition otherwise directs.

(2.) If upon such inquisition it appears that the alleged lunatic is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, it may be so specially found and certified.

99. Power of person executing inquiry.—The person executing an inquisition *with a jury* shall, while so employed, have all the powers, authorities, and discretion of a judge of the High Court.

The italicised words were repealed by the Lunacy Act, 1891, s. 29, Sched.

100. Inquisition may be ordered on report of Commissioners.—Where the Commissioners report to the Lord Chancellor that they are of opinion that the property of any person

detained or taken charge of as a lunatic, but not so found by inquisition, is not duly protected, or that the income thereof is not duly applied for his benefit, or to the same effect, the report shall be filed with the Masters, and shall be deemed to be an application for inquisition supported by evidence, and the alleged lunatic shall have notice of the report from such person as the judge in lunacy directs, and the case shall proceed and be conducted as nearly as may be in all respects as is hereinbefore directed upon an application for inquisition.

Traverse and Supersedeas of an Inquisition.

101. *Applications for traverse to be made within a limited time.*]—(1.) Any person desiring to traverse an inquisition, not being a verdict upon an issue tried in the High Court, may, within three months next after the day of the return of the inquisition, apply for that purpose to the judge in lunacy.

(2.) The judge shall hear and determine the application, and shall in his order upon it for a traverse limit a time, not exceeding six months from the date of the order, within which the person desiring to traverse and all other proper parties are to proceed to trial of the traverse.

(3.) The judge may by the same or any other order direct that the person desiring to traverse, not being the person the object of the inquisition, shall within three weeks next after the date of the order, give sufficient security to and to the satisfaction of the Masters for all proper parties proceeding to trial within the time to be limited as aforesaid.

102. *Persons not proceeding to trial within limited time barred.*]—Every person who does not within the appointed time apply for a traverse, or who refuses or neglects to give such security as aforesaid, or who does not proceed to trial within the appointed time, shall be absolutely barred of the right of traverse: Provided that the judge in lunacy may, under the special circumstances of any particular case, extend the time upon such terms as he thinks just.

103. *Judge may direct new trials.*]—If the judge in lunacy is dissatisfied with the verdict returned upon a traverse, he may order one or more new trial or trials thereon, as he thinks fit; but no person shall be admitted to traverse oftener than once.

104. *New trial of an issue.*]—A traverse of a verdict upon an issue tried in the High Court shall not be allowed, but the judge in lunacy may, if he thinks fit, upon application within three months next after the trial of any such issue, order a new trial of the issue, or a new inquisition as to the insanity of the

alleged lunatic, subject to such directions and upon such conditions as to the judge may seem proper.

105. *Commission may be superseded on conditions.*—If it appears to the judge in lunacy that it is not expedient or for the benefit of the lunatic that the commission should be unconditionally superseded, but that the same should be superseded on terms and conditions, he may, upon the consent of the lunatic and any other persons whose consent he deems necessary, order the commission to be superseded upon such terms and conditions as he thinks proper, and the judge may make such orders as he thinks fit for giving effect to such terms and conditions.

106. *Power to supersede inquisition as regards commitment of person.*—(1.) The judge in lunacy, if satisfied by a report of the Commissioners, or of one of the Chancery Visitors, or on any other evidence, that a lunatic so found by inquisition is cured or capable of managing himself, and not dangerous to himself or others, though incapable of managing his affairs, may, if he thinks it desirable that the ordinary proceedings for a *supersedeas* should not be insisted on, by order supersede the inquisition, so far as the same finds that the lunatic is incapable of managing himself, and rescind or vary any order for the commitment of the person of the lunatic.

(2.) An order under this section may be made on such terms and conditions as the judge thinks fit.

(3.) Notice of an order under this section shall be forthwith given to the committee of the person of the lunatic, and also to the person under whose care the lunatic is.

Transmission of Inquisition and Supersedeas to Ireland and England.

107. *Transmission of inquisition and supersedeas to Ireland and England.*—Where it is desired that an inquisition taken, or a writ of *supersedeas* issued in England or Ireland, should be acted upon in Ireland or England, the proper officer may, under order of the judge in lunacy in England, or the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics in Ireland, as the case may be, transmit a transcript of the record of the inquisition, or of the writ, to the registrar in lunacy in Ireland or the High Court in England, as the case may be, which transcript shall thereupon be entered and be of record there respectively, and shall, when so entered of record, and if and so long only as the Lord Chancellor entrusted as aforesaid in Ireland and the judge in lunacy in England, as the case may be, thinks fit, be acted upon by them respectively, and be of the same validity and effect, to all intents

and purposes, as if the inquisition had been taken or the writ issued in Ireland or England respectively.

PART IV.—JUDICIAL POWERS OVER PERSON AND ESTATE OF LUNATICS.*

The Judge in Lunacy.

108. *Jurisdiction of judge in lunacy.*—(1.) The jurisdiction of the judge in lunacy under this Act shall be exercised either by the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics, acting alone or jointly with any one or more of such judges of the Supreme Court as may for the time being be entrusted as aforesaid, or by any one or more of such judges as aforesaid.

Jurisdiction may be exercised by Masters.—It was provided by sect. 27 (1) of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

27.—(1.) Subject to rules in lunacy the jurisdiction of the judge in lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the judge in lunacy.

(2.) The judge in lunacy may make orders for the custody of lunatics so found by inquisition and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the Master's certificate of completion of the committee's security.

(3.) Where upon the inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the judge in lunacy may make such orders as he thinks fit for the commitment of the estate of the lunatic and its management, including all proper provisions for the maintenance of the lunatic, but it shall not be necessary, unless in the discretion of the judge it appears proper to do so, to make any order as to the custody or commitment of the person of the lunatic.

(4.) Any order under this section may be made notwithstanding proceedings are pending for a traverse or new trial, and any person acting upon an order so made shall be indemnified as effectually as if there had been no right of traverse or new trial.

* The whole of this Part of the Act with sect. 50, *ante*, is applied to the management and administration of estates of defectives, by sect. 64 of the Mental Deficiency Act, 1913: *see* p. 170, *ante*.

109. *Costs.*]—The costs of all proceedings for the purpose of ascertaining whether a person is lunatic, and of all proceedings in the matter of a lunatic shall be in the discretion of the judge in lunacy, who may order all or any of such costs to be paid by the lunatic or alleged lunatic, or to be charged upon and paid out of his estate, or such part thereof as the judge thinks fit, or by any other party to the proceedings; and in the case of the death of the lunatic or alleged lunatic, an order for payment of costs out of his estate may be made within six years next after the right to recover the costs has accrued, and every such order shall have the effect of an order of the High Court.

110. *Powers to extend to British possessions.*]—The powers and authorities given by this Act to the judge in lunacy shall extend to property within any British possession.

The Masters.

111. *Masters in Lunacy.*]—(1.) There shall continue to be Masters in Lunacy as heretofore, and they shall, subject to the provisions of this Act and the rules in lunacy, execute and perform the same powers and duties as heretofore, and shall perform such other duties for the benefit of lunatics and their estates as the Lord Chancellor may direct.

(2.) The powers and authorities of the Masters shall be joint and several, and they shall execute commissions and conduct inquiries connected with lunatics or their estates, and perform all other duties committed to them, either separately or together, and at such places, within such times, and in such manner as the rules in lunacy, and, subject thereto, as the judge in lunacy may by any special order direct.

Jurisdiction may be exercised by Masters.—It was provided by sect. 27 (1) of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

27.—(1.) Subject to rules in lunacy the jurisdiction of the judge in lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the judge in lunacy.

(3.) A Master must be a barrister of not less than ten years' standing, and shall be appointed by the Lord Chancellor.

(4.) A Master shall, before being capable of acting, make before the Lord Chancellor, in the manner now used, the declaration to be made by a Master set forth in the First Schedule.

(5.) The Masters shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

(6.) The salaries of the Masters, their clerks and officers,

and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

Power to appoint Deputy Master.—It is provided by sect. 4 of the Lunacy Act, 1908 (8 Edw. 7, c. 47), as follows:—

4. In case of the illness or unavoidable absence of a Master, the Lord Chancellor may appoint a barrister of not less than ten years' standing to be his deputy during such illness or absence, and such deputy shall, while his appointment remains in force, have all the powers and perform all the duties of a Master.

112. Commission of inquiry.]—A general commission of inquiry, with such variations as may be expedient, may from time to time be issued in duplicate under the Great Seal, directed to the Masters by name, jointly and severally, who shall by virtue thereof proceed, in each case of alleged lunacy concerning which the judge in lunacy orders them to inquire, in like manner and with all the like powers and authorities (subject to the provisions in this Act contained) as heretofore.

113. Special commission may issue.]—The Lord Chancellor may issue a commission specially to any person or persons alone or in addition to the Masters, or one of them, if upon any occasion he thinks it proper to do so; and the provisions of this Act so far as applicable shall extend to every commission so issued specially.

114. Power to summon witnesses.]—The Masters may administer any oath and take any affidavit and may summon any person to give evidence before them, and every person so summoned shall be bound to attend as required by the summons.

Attendance of Alleged Lunatics before Masters.—It was provided by sect. 26 (2) of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

26.—(2.) The Masters may make orders for the attendance of an alleged lunatic at such time and place as the order directs, for examination by the Masters or a medical practitioner, and such order may be enforced in the same way as an order of a judge of the High Court.

Expiration of Orders for the Commitment of Person.

115. Order for custody of person of lunatic so found to determine unless continued.]—(1.) The medical attendant of every lunatic so found by inquisition shall, *before the expiration of one, three, and six years respectively from the commencement of this Act, and before the expiration of every subsequent period of five years after the expiration of six years from the commencement of this Act, send to the Masters a report as to the mental and bodily condition of the patient, with a certificate under his hand certifying, if it is the fact, that the patient is*

still of unsound mind and a proper person to be detained under care and treatment.

The above italicised words were repealed by the S. L. R. Act, 1908.

(2.) If, before the expiration of any of the periods hereinbefore mentioned, such report and certificate are not sent to the Masters, they shall inquire as to the omission, and unless they are satisfied that the lunatic is still of unsound mind, the order for the commitment of the person of the lunatic as to whom such report and certificate are not sent shall determine at the expiration of such period; but nothing herein contained shall affect the commitment of the estate.

(3.) A Master may, by order under his hand, extend the time within which any report and certificate under this section is to be sent to the Masters, and if the time is so extended, the order for commitment of the person of the lunatic as to whom the time is so extended shall continue in force until the expiration of the extended time, but such extended time shall not exceed six months.

(4.) Where any order for commitment of the person of a lunatic has determined under this section, the Masters shall forthwith give notice of such determination to the committee of the person of the lunatic and to the person under whose care the lunatic is.

Management and Administration.

116. *Extent of the administrative power of the judge in lunacy.*]—(1.) The powers and provisions of this Part of this Act relating to management and administration apply:—

- (a) To lunatics so found by inquisition;
- (b) To lunatics not so found by inquisition for the protection or administration of whose property any order has been made before the commencement of this Act;
- (c) To every person lawfully detained as a lunatic though not so found by inquisition;
- (d) To every person not so detained and not found a lunatic by inquisition, with regard to whom it is proved to the satisfaction of the judge in lunacy that such person is through mental infirmity arising from disease or age incapable of managing his affairs;

It was provided by sect. 27 (4) of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

27.—(4.) The provisions of section one hundred and sixteen, sub-section two, of the principal Act shall apply to the persons named in sub-section one (*d.*) of the same section though not lunatics.

- (e) To every person with regard to whom it is proved to the

satisfaction of the judge in lunacy by the certificate of a Master, or by the report of the Commissioners, or by affidavit or otherwise, that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed two thousand pounds in value, or that the income thereof does not exceed one hundred pounds per annum;

- (f) To every person with regard to whom the judge is satisfied by affidavit or otherwise that such person is or has been a criminal lunatic and continues to be insane and in confinement.

Jurisdiction may be exercised by Masters.—It was provided by sect. 27 (1) of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

27.—(1.) Subject to rules in lunacy the jurisdiction of the judge in lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the judge in lunacy.

(2.)

This sub-section was repealed by sect. 1 of the Lunacy Act, 1908 (8 Edw. 7, c. 47), which enacted as follows:—

1. *Extension to quasi-committees of powers of committees with respect to management of property.*—In the case of any of the persons mentioned in sub-section (1) of section one hundred and sixteen of the Lunacy Act, 1890, not being a lunatic so found by inquisition, any powers which, if such person were a lunatic so found by inquisition, could be exercised by the committee of the estate, may be exercised by such person in such manner, and with or without security, as the judge in lunacy or, subject to rules in lunacy, a Master may direct, and any such order may confer on the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise until further order all or any of such powers without further application to the judge or a Master, and sub-section (3) of the said section shall apply to every person so appointed, and sub-section (2) of the said section shall be repealed.

(3.) Every person appointed to do any such act or exercise any such power shall be subject to the jurisdiction and authority of the judge as if such person were the committee of the estate of a lunatic so found by inquisition.

(4.) The powers of this Act relating to management and administration shall be exercisable in the discretion of the judge for the maintenance or benefit of the lunatic or of him and his family, or where it appears to be expedient in the due course of management of the property of the lunatic.

(5.) Nothing in this Act shall subject a lunatic's property to claims of his creditors further than the same is now subject thereto by due course of law.

117. *Power to raise money for certain purposes.*]—(1.) The judge may order that any property of the lunatic, whether present or future, be sold, charged, mortgaged, dealt with, or

disposed of as the judge thinks most expedient for the purpose of raising or securing, or repaying with or without interest, money which is to be or which has been applied to all or any of the purposes following:—

- (a) Payment of the lunatic's debts or engagements;
- (b) Discharge of any incumbrance on his property;
- (c) Payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;
- (d) Payment of or provision for the expenses of his future maintenance.

(2.) In case of a charge or mortgage being made under this Act for the expenses of future maintenance, the judge may direct the same to be payable, either contingently if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as he thinks expedient.

118. *Charge for permanent improvements.*]—(1.) The judge may order that the whole or any part of any moneys expended or to be expended under his order for the permanent improvement, security, or advantage of the property of the lunatic, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the lunatic, but so that no right of sale or foreclosure during the lifetime of the lunatic be conferred by the charge.

(2.) The interest shall be kept down during the lunatic's lifetime, out of the income of his general estate, as far as the same is sufficient to bear it.

(3.) The charge may be made either to some person advancing the money, or if the money is paid out of the lunatic's general estate, to some person as a trustee for him, as part of his personal estate.

119. *Power to dissolve partnership.*]—Where a person being a member of a partnership becomes lunatic the judge may, by order, dissolve the partnership.

120. *Powers exercisable by committee under order of judge.*]—The judge may, by order, authorise and direct the committee of the estate of a lunatic to do all or any of the following things:—

- (a) Sell any property belonging to the lunatic;
- (b) Make exchange or partition of any property belonging to the lunatic or in which he is interested, and give or receive any money for equality of exchange or partition;
- (c) Carry on any trade or business of the lunatic;

- (d) Grant leases of any property of the lunatic for building, agricultural, or other purposes;
- (e) Grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land;
- (f) Surrender any lease and accept a new lease;
- (g) Accept a surrender of any lease and grant a new lease;
- (h) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends;
- (i) Perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy;
- (j) Surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the lunatic;
- (k) Enter into any agreement touching the patronage of augmented cures under the Act one George the First, chapter ten, which the lunatic might have entered into if he had been of sound mind;
- (l) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit or the power of consent is in the nature of a beneficial interest in the lunatic.

121. *Property exchanged and renewed lease to be to same uses as before*—Any property taken in exchange and any renewed lease accepted on behalf of a lunatic under the powers of this Act shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would but for the exchange or surrender have been subject to.

122. *Extent of leasing power.*—(1.) The power to authorise leases of a lunatic's property under this Act shall extend to property of which the lunatic is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the lunatic and all persons entitled in remainder and reversion expectant upon the estate tail of the lunatic including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the lunatic shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the lunatic or his committee would have had.

(2.) Leases authorised to be granted and accepted by or on behalf of a lunatic under this Act may be for such number of lives or such term of years, at such rent and royalties, and

subject to such reservations, covenants, and conditions as the judge approves.

(3.) Fines or other payments on the renewal of leases may be paid out of the lunatic's estate, or charged with interest on the leasehold property.

123. *Lunatic's interest in property not to be altered.*—

(1.) The lunatic, his heirs, executors, administrators, next of kin, devisees, legatees, and assigns, shall have the same interest in any moneys arising from any sale, mortgage, or other disposition, under the powers of this Act which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, or disposition, if no sale, mortgage, or disposition had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged, or disposed of.

(2.) Moneys received for equality of partition and exchange, or under any lease of unopened mines, and all fines, premiums, and sums or money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange, or lease was real estate of the lunatic, shall, subject to the application thereof for any purposes authorised by this Act, as between the representatives of the real and personal estate of the lunatic, be considered as real estate, except in the case of fines, premiums, and sums of money received upon the grant or renewal of leases of property of which the lunatic was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the lunatic.

(3.) In order to give effect to this section the judge may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as he thinks expedient.

124. *Power to carry orders into effect.*—The committee of the estate, or such person as the judge approves, shall in the name and on behalf of the lunatic execute and do all such assurances and things for giving effect to any order under this Act as the judge directs, and every such assurance and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

125. *Admittance to copyholds.*—Where a lunatic so found by inquisition is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next Courts holden for the manor (for the holding whereof the usual notice shall be given), and there offer himself to be admitted tenant in the name and on behalf of the lunatic; and in default of his appearance, or of his acceptance of

admittance, the lord or his steward may, after three Courts duly holden, and proclamations thereat regularly made, at any subsequent Court appoint any fit person to be attorney for the lunatic for that purpose only, and by that attorney admit the lunatic tenant of the land, according to such estate as the lunatic is legally entitled to therein.

126. *Fines upon admittance.*]—(1.) The lord or his steward may upon the admittance impose such fine as might have been imposed if the lunatic had been of sound mind, which fine may be demanded by the lord's bailiff or agent, by a note in writing signed by the lord or his steward, to be left with the committee of the estate, or with the tenant or occupier of the land.

(2.) If the fine is not paid or tendered to the lord or his steward within three months after demand, then the lord may enter upon and hold the land, and receive the rents and profits thereof, (but without liberty to fell any timber standing thereon,) until he is thereby fully paid the fine, with his reasonable costs and charges of raising the same, and of obtaining the possession of the land, although the lunatic die before the fine and costs and charges have been raised.

(3.) The lord shall yearly, on demand by the person entitled to the surplus rents and profits, after payment of the fine and costs and charges, or by the person then entitled to the land, render an account of the rents and profits received by him or on his behalf, and shall pay the surplus, if any, to the person entitled thereto.

(4.) As soon as the fine and costs and charges have been fully paid, or if after the lord's entry, the fine and costs and charges are lawfully tendered to him, then the lunatic, by the committee of his estate or other the person entitled, may enter upon and hold the land, according to his estate or interest therein; and the lord shall deliver possession thereto accordingly, and if he refuse so to do he shall make satisfaction to the person kept out of possession for all the damages which he thereby sustains, and all his costs and charges of recovering possession.

(5.) If the committee pays the fine and costs and charges, then he, his executors and administrators, may enter upon and hold the land, and receive the rents and profits thereof until payment thereout of the amount disbursed upon that account, although the lunatic die before reimbursement.

(6.) If the fine imposed is not warranted by the custom of the manor, or is unlawful, the lunatic may controvert its legality, as if this Act had not been passed; and no lunatic so found by inquisition shall forfeit any land for his neglect or refusal to appear at any Court, or to be admitted thereto, or to pay the fine imposed upon his admittance.

127. *Where lunacy temporary money may be applied for temporary maintenance.*]—(1.) Where it appears to the judge that there is reason to believe that the unsoundness of mind of any lunatic so found by inquisition is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the lunatic, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available and may be safely and properly applied in that behalf, the judge may allow thereout such amount as he thinks proper for the temporary maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money as aforesaid, or any part thereof, to such person as, under the circumstances of the case, he thinks proper to intrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied, and the same shall accordingly be applied, in or towards such temporary maintenance as aforesaid.

(2.) The receipt in writing of the person to whom payment is to be made for any moneys payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

(3.) The person receiving any money by virtue of an order under this section shall pass an account thereof before the Masters, when required.

128. *Committee may exercise power vested in lunatic in character of trustee or guardian.*]—Where a power is vested in a lunatic in the character of trustee or guardian, or the consent of a lunatic to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the judge to be expedient that the power should be exercised or the consent given the committee of the estate, in the name and on behalf of the lunatic, under an order of the judge, made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs.

129. *Appointment of new trustees under power to have effect of appointments by High Court, and like orders may be made as under Trustee Act, 1850.*]—Where under this Act the com-

mittee of the estate, under order of the judge, exercises, in the name and on behalf of the lunatic, a power of appointing new trustees vested in the lunatic, the person or persons who shall, after and in consequence of the exercise of the power, be the trustee or trustees, shall have all the same rights and powers as he or they would have had if the order had been made by the High Court; and the judge may in any such case, where it seems to him to be for the lunatic's benefit and also expedient, make any order respecting the property subject to the trust which might have been made in the same case under the Trustee Act, 1850, or any Act amending the same, on the appointment thereunder of a new trustee or new trustees.

130. *Temporary provision for maintenance of lunatic.*]—In any case where, pending the appointment of committees, it appears to the Masters desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the lunatic, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Masters shall be at liberty by certificate to authorise such banker or other person to pay to the person to be named in such certificate such sum as they certify to be proper; and may by such certificate give any directions as to the proper application thereof for the lunatic's benefit by that person, who shall be accountable for the same as the Masters direct.

Powers as to Property in England, Scotland, and Ireland.

131. *Power to deal with property in England, Scotland, and Ireland.*]—(1.) The powers of management and administration of the estates of lunatics conferred by this Act shall, without an inquisition or other proceedings in Ireland, extend to the personal property in Ireland of a lunatic so found by inquisition in England where such personal property does not exceed two thousand pounds in value or the income thereof does not exceed one hundred pounds a year; and the like powers conferred by the Lunacy Regulation (Ireland) Act, 1871, shall, without an inquisition or other proceedings in England, extend to the personal property in England of a lunatic so found by inquisition in Ireland where such personal property or the income thereof does not exceed such amount as aforesaid.

(2.) Where a person has been found lunatic by inquisition in England or Ireland, and has personal property in Scotland, the committee of the estate of the lunatic shall, without cognition or other proceedings in Scotland, have all the same powers as to such property, or the income thereof, as might be exercised by a tutor at law after cognition or a duly appointed curator bonis to a person of unsound mind in Scotland.

(3.) Where a tutor at law after cognition or a curator bonis has been appointed to a lunatic in Scotland, who has personal property in England or Ireland, the tutor at law or curator bonis shall, without an inquisition or other proceedings in England or Ireland, have all the same powers as to such property, or the income thereof, as might be exercised by the committee of the estate of a lunatic, so found by inquisition in England or Ireland.

(4.) The powers of management and administration conferred by this Act in cases where the property of a person of unsound mind does not exceed two thousand pounds in value, or the income thereof does not exceed one hundred pounds per annum, and the powers conferred by section sixty-eight of the Lunacy Regulation (Ireland) Act, 1871, shall extend to the property in Ireland or England, as the case may be, of the lunatic where the total value of the property in England and Ireland does not exceed two thousand pounds in value or the income thereof does not exceed one hundred pounds a year.

Power of County Court Judge.

132. *Power to deal with property of small amount.*]—
 (1.) Where a reception order is made in the case of a lunatic the value of whose real and personal property is under two hundred pounds, and no relative or friend of the lunatic is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, may, upon the application of the clerk of the guardians, or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(2.) The judge, by whom such order is made, may by the same or any subsequent orders give such directions as he thinks fit as to the application of the property of the lunatic for his benefit or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid, or the judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account

intituled in the matter of such lunatic, and any sum so paid into Court may either be invested in the manner provided by the County Court Rules in force for the time being, or be paid out of Court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the judge directs.

(3.) The person acting under any such order shall render an account of his dealings with the lunatic's property to the judge by whom such order was made in such manner as the judge appoints.

Vesting Orders.

133. *Power to transfer stock of lunatic.*]—Where any stock is standing in the name of or is vested in a lunatic beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a lunatic so found by inquisition, in trust for the lunatic, or as part of his property, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the High Court, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, and to receive and pay over the dividends thereof as the judge in lunacy directs, then the judge may order some fit person to transfer the stock to or into the name of a new committee or into Court or otherwise, and also to receive and pay over the dividends thereof in such manner as the judge directs.

134. *Stock in name of lunatic out of the jurisdiction.*]—Where any stock is standing in the name of or vested in a person residing out of the jurisdiction of the High Court, the judge in lunacy, upon proof to his satisfaction that the person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof, as the judge thinks fit.

135. *Power to vest lands and release contingent right of lunatic trustee or mortgagee.**]—(1.) When a lunatic is solely

* *Transfer of powers as to vesting orders from Judge in Lunacy to High Court.*—By sect. 1 of the Lunacy Act, 1911 (1 & 2 Geo. 5, c. 40), it is enacted as follows:—The powers of the judge in lunacy under sections one hundred and thirty-five to one hundred and forty-three of the Lunacy Act, 1890, as amended by any subsequent enactment, to make such vesting and other orders as are in those sections

or jointly seised or possessed of any land upon trust or by way of mortgage the judge in lunacy may by order vest such land in such person or persons for such estate, and in such manner, as he directs.

(2.) When a lunatic is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage, the judge may by order release such hereditaments from the contingent right, and dispose of the same to such person or persons as the judge directs.

(3.) . . .

This section was repealed by sect. 2 of the Lunacy Act, 1908 (8 Edw. 7, c. 47), and the following sub-section was substituted therefor:—

(3.) An order under sub-sections one and two shall have the same effect as if the lunatic had been sane, and, if solely seised, possessed, or entitled as aforesaid, had executed, or, if jointly seised, possessed, or entitled as aforesaid with any other person or persons, he and such other person or persons had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right.

The terms "seised" and "possessed" were defined by sect. 28 of the Lunacy Act, 1891: *see* p. 310, *post*.

(4.) In all cases where an order can be made under this section the judge may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under sub-sections (1) and (2).

(5.) Where an order under this section vesting any copyhold land in any person or persons is made with the consent of the lord or lady of the manor, such land shall vest accordingly without surrender or admittance.

(6.) Where an order is made appointing any person or persons to convey any copyhold land, such person or persons shall execute and do all assurances and things for completing the assurance of the lands; and the lord and lady of the manor shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done such assurances and things.

136. *Power to vest right to transfer stock and sue for chose in action.**—(1.) Where a lunatic is solely entitled to

mentioned shall except so far as they relate to lunatic mortgagees, not being also trustees, be transferred to, and, subject to rules of the Supreme Court, be exercisable by, the High Court, and, except as aforesaid, those sections as so amended shall have effect accordingly as if for references to the judge in lunacy there were substituted references to the High Court.

* *See* footnote to sect. 135.

any stock or chose in action upon trust or by way of mortgage, the judge in lunacy may by order vest in any person or persons the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action.

(2.) In the case of any person or persons jointly entitled with a lunatic to any stock or chose in action upon trust or by way of mortgage, the judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action either in such person or persons alone or jointly with any other person or persons.

(3.) When any stock is standing in the name of a deceased person, whose personal representative is a lunatic, or when a chose in action is vested in a lunatic as the personal representative of a deceased person, the judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action in any person or persons he may appoint.

(4.) In all cases where an order can be made under this section, the judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(5.) The person or persons in whom the right to transfer or call for a transfer of any stock is vested, may execute and do all powers of attorney, assurances, and things to complete the transfer to himself or themselves or any other person or persons according to the order, and the bank and all other companies and their officers and all other persons shall be bound to obey every order under this section according to its tenor.

(6.) After notice in writing of an order under this section, it shall not be lawful for the bank or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

137. *Person to be appointed to transfer.*]*—Where a person is appointed to make or join in making a transfer of stock, such person shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

138. *Charity trustees.*]*—The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in the trustee or trustees of any charity or society over which the High Court would have jurisdiction upon suit duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

139. *Declarations and directions.*]*—The judge in lunacy may make declarations and give directions concerning the

* See footnote to sect. 135.

manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

140. *Order to be conclusive evidence of allegation on which it is founded.*]*— . . .

This section was repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 51, Sched., and the following provision was enacted, viz.:—

40. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

The Trustee Act, 1893, was applied to the Official Trustee created by the Public Trustee Act, 1906 (6 Edw. 7, c. 55).

141. *Power to appoint new trustees.*]*—In every case in which the judge in lunacy has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, he may also make an order appointing a new trustee or new trustees.

142. *Costs.*]*—The judge in lunacy may order the costs of and incident to obtaining an order under the provisions of this Act as to vesting orders and carrying the same into effect to be paid out of the land or personal estate or the income thereof in respect of which the order is made, or in such manner as the judge may think fit.

143. *Saving of power of High Court.*]*—The provisions of this Act as to vesting orders shall not affect the jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant.

Orders of Judge in Lunacy and Certificates of Masters.†

144. *Office copies to be evidence.]*—Every office copy of the whole of an order or report confirmed by fiat purporting to

* See footnote to sect. 135.

† *Appeals against and enforcement of orders.*—It is provided by sect. 3 of the Lunacy Act, 1908 (8 Edw. 7, c. 47), as follows:—

3. Every order of the Masters shall be subject to appeal in the

be signed by a Master, and sealed or stamped with the seal of the Masters' office, and every office copy of a certificate in lunacy shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order, report, or certificate of which it purports to be a copy, without any further proof thereof.

145. *Money orders to be acted upon.*]—Where an order relates to the payment, transfer, carrying over, or depositing of any cash, stocks, funds, annuities, securities, or other effects into or in Court to the credit of the matter of a lunatic, or to the payment, transfer, or carrying over, or other disposal by the Paymaster-General of any cash, stocks, funds, annuities, securities, or other effects standing in his name or deposited in his custody to the credit of the matter of a lunatic, or of any cash, stocks, funds, annuities, securities, or other effects to or in which a lunatic is entitled or beneficially interested, and which are not standing to the credit of a cause or matter depending in the High Court, the Paymaster-General and the bank, and all other persons, shall act upon an office copy of the order.

146. *Transfers to be binding.*]—All transfers and payments made in pursuance of this Act under an order or a Master's certificate shall be valid and binding on all persons.

147. *Forgery of signature of Master or seal of Masters' office.*]—If any person forges the signature of a Master, or forges or counterfeits the seal of the Masters' office, or knowingly concurs in using any such forged or counterfeited signature or seal, or tenders in evidence any document with a false or counterfeit signature of a Master, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding three years with or without hard labour.

Percentage and Fees.

148. *Percentage and fees.*]—(1.) The Lord Chancellor, with the concurrence of the Treasury, may make rules fixing the percentage and fees payable in proceedings relating to lunatics and their estates, and regulating the mode in which the same are to be ascertained and paid.

manner provided by rules in lunacy, and orders of the judge in lunacy and Masters shall be enforceable in manner provided by those rules, which may confer on the judge and Masters any of the powers exercisable by the High Court or the judges or Masters thereof for the purpose of enforcing orders of the High Court.

(2.) Save as otherwise provided by the rules in lunacy the percentage and fees in lunacy shall be subject to the rules contained in section twenty-six of the Supreme Court of Judicature Act, 1875.

(3.) The percentage, or a proper proportionate part thereof (as the case may require), shall be charged upon the estate of a lunatic, and be payable thereout, although before payment thereof he die, or the inquisition be superseded, or be vacated and discharged on a traverse; but in either of the two last-mentioned cases the judge in lunacy may, if he thinks fit, remit or reduce the amount of the sum to be paid.

(4.) Where it is made to appear to the judge in lunacy that the property of a lunatic does not exceed seven hundred pounds in value, or that the income thereof does not exceed fifty pounds per annum, he may order (if he thinks fit) that no fee shall be taken, or percentage levied, in relation to the proceedings in the matter or the property, as from the date of the order or such other time as he directs, during the continuance of the lunacy or until further order.

149. *Extent of power to fix percentage and fees.*— . . .

This section was repealed by sect. 27 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), and the following provision enacted:—

27.—(3.) The power conferred by section one hundred and forty-eight of the principal Act to make rules fixing percentage and fees shall be deemed to extend to all proceedings under the principal Act or this Act, whether relating to lunatics so found by inquisition or to any other person in relation to whom or to whose property an order under the said Acts has been or may be made. Provided that in the case of lunatics under the protection of the judge in lunacy by virtue of the transmission of the record of an inquisition from Ireland and its entry of record in the High Court, and in the case of persons residing out of England and declared lunatic according to the laws of their place of residence, no percentage shall be levied except upon income arising from property within the jurisdiction of the judge in lunacy and administered under his direction.

PART V.—THE COMMISSIONERS IN LUNACY.

Constitution of the Commission.

Sects. 150 to 161 were repealed by the Mental Deficiency Act, 1913, s. 65 (3). Under sect. 22 (9) of that Act the paid Commissioners in Lunacy became members of the Board of Control thereby constituted; and by sect. 65 (1), (2), the powers and duties of the Commissioners in Lunacy under the Lunacy Acts, together with their existing staff, were transferred to the Board of Control.

Reports and Records.

162. *Reports to be made to the Lord Chancellor.*—(1.) The Commissioners shall, at the expiration of every six months,

report to the Lord Chancellor the number of visits they have made and the number of patients they have seen.

(2.) They shall also in or before the month of June in every year, make to the Lord Chancellor a report made up to the end of the preceding year of the condition of the institutions for lunatics, and other places visited by them, and of the care of the patients therein, with such other particulars as they think deserving notice.

(3.) They shall lay copies of the reports to be made under this section before Parliament within one month after the same have been made if Parliament is then sitting, and, if not, within twenty-one days after the commencement of the next session.

PART VI.—VISITORS OF LUNATICS.

The Chancery Visitors.

163. *Appointment and qualification of Chancery Visitors.*—

(1.) There shall continue to be medical and legal visitors of lunatics so found by inquisition, and they are in this Act referred to as the Chancery Visitors.

(2.) The Lord Chancellor may, when a vacancy occurs in the office of medical visitor or legal visitor, appoint, by writing under his hand, a fit person, being a medical practitioner in actual practice, to succeed a medical visitor, and a fit person, being a barrister of not less than five years' standing, to succeed a legal visitor.

(3.) The visitors shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

(4.) The salaries of the Chancery Visitors, their clerks and officers, and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

164. *Tenure of office by Chancery Visitors.*—The Chancery Visitors may be removed by the Lord Chancellor in case of misconduct or neglect in the discharge of their duties, or of their being disabled from performing the same, and they shall not be engaged in the practice of their respective professions.

165. *Visitors not to be interested in licensed houses.*—A person shall not be appointed a Chancery Visitor if he is or has been within the two years preceding his appointment directly or indirectly interested in any licensed house; and if any person after his appointment becomes so interested, his appointment shall become void, and thereupon his salary shall cease.

166. *Masters to be ex-officio visitors.*—The Masters for the time being shall by virtue of their office be visitors of lunatics so found by inquisition, jointly with the Chancery Visitors.

167. *The Visitors and Masters to form a board.*]—(1.) The Chancery Visitors and the Masters, or so many of them, not being less than three in number, as may from time to time be able, consistently with the discharge of their other duties, to attend, shall from time to time form themselves into a board for their mutual guidance and direction on matters connected with the visiting of lunatics.

(2.) The board may report to the Lord Chancellor upon any matter connected with the duties of the Chancery Visitors or of the board, as they think proper.

168. *Medical or legal visitor may appoint a substitute.*]—(1.) Where a medical or a legal Chancery Visitor is temporarily prevented from discharging his duty by illness or unavoidable absence, but not otherwise, he may, with the approbation of the Lord Chancellor, appoint a medical practitioner in actual practice, or a barrister of not less than five years' standing (as the case may require), to act in his stead during his illness or unavoidable absence.

(2.) The medical practitioner or the barrister so appointed shall, while his appointment remains in force, have, perform, and execute all the powers, duties, and authorities belonging to the office of medical or legal visitor (as the case may be) with full validity and effect to all intents and purposes.

Visiting Committees of Asylums.

169. *Constitution of visiting committee.*]—(1.) For every asylum there shall be a visiting committee appointed annually by the local authority, consisting of not less than seven members.

(2.) The visiting committee of a district asylum shall be constituted of the number of members fixed by the agreement under which the asylum is provided.

(3.) Where there is more than one asylum, the local authority may appoint one committee for the management and control of all the asylums, and such committee shall appoint a sub-committee for each separate asylum, and may delegate to that sub-committee such powers and duties as the committee from time to time think fit.

(4.) Where a county borough has contributed towards the cost of any county asylum, the council of the borough may, if they so desire, appoint to be members of the visiting committee of the asylum such number of members of the council as may be agreed upon, or in default of agreement be determined by the Commissioners under the Local Government Act, 1888 (51 & 52 Vict. c. 41), or after they have ceased to hold office, by arbitration under that Act. Such appointment shall be in

substitution for any appointment previously made on the part of the borough.

(5.) Where a borough, not being a county borough, has contributed towards the cost of any county asylum, and the representatives of the borough on the county council are not entitled to vote for the appointment by the council of visitors of the asylum, the council of the borough may appoint two persons to be members of the committee.

(6.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or borough specified in the Fourth Schedule into a county asylum, the council of the borough shall appoint a visiting committee to visit the lunatics sent from such county borough or borough in the asylum.

170. *Mode of election of visiting committee.*]—Unless some other day is appointed by the standing orders of the local authority, the visiting committee shall be appointed at the quarterly meeting of the local authority in November.

171. *Vacancies to be filled up.*]—(1.) If a visitor dies or resigns, or becomes incapable or disqualified to act, the authority by whom he was appointed shall, as soon as possible, appoint in his place some qualified person, and the new appointment shall be made in the same manner as the annual election of visitors.

(2.) The continuing members of a visiting committee may act notwithstanding any vacancy in the body.

172. *Duration of office.*]—(1.) A visiting committee shall hold office until the first meeting of their successors.

(2.) If default is made in electing a visiting committee, the visiting committee last elected shall continue in office as if they had been duly re-elected.

173. *Examination of accounts.*]—The visiting committee of every asylum shall, previously to the month of June in every year, examine the accounts of the treasurer and clerk of the asylum, and shall report the same to the next meeting of the local authority, or of each local authority to whom the asylum wholly or in part belongs.

174. *Members of visiting committee not to be interested.*]—(1.) A member of a visiting committee shall not be interested either in his own name or in the name of any other person in any contract entered into or work done for the committee, and shall not derive any profit or emolument whatsoever from the funds of the asylum.

(2.) This provision shall not extend to any interest which a member of a visiting committee may have by reason of his being a shareholder of a company which has entered into any

contract with or done any work for the visiting committee, but he shall not be entitled to vote in respect of such contract or work.

175. *Meetings of visiting committee.*]—(1.) The provisions of sect. 82 of the Local Government Act, 1888, with respect to the proceedings of committees of county councils shall apply to the proceedings of every visiting committee appointed wholly or partly by a county council, and the chairman of such committee may be elected accordingly.

(2.) To other visiting committees the following provisions shall apply:—

- (a) The members of the committee shall within one month after their election meet at some convenient place, to be named in a notice in writing given by two or more of such members, or by the clerk of the outgoing committee by the direction of two or more of such members;
- (b) Notices of meetings shall be given to each member personally, or left at his place of abode, or sent by post seven days at least before the time appointed for the meeting;
- (c) The members shall at the first meeting elect one of their number to be chairman of the committee;
- (d) The chairman shall preside at all meetings at which he is present. In case of his absence from any meeting the members present shall elect one of their number to be chairman of the meeting;
- (e) Any meeting may be adjourned from time to time and from place to place;
- (f) The committee shall meet as often as they may think fit;
- (g) A meeting may be adjourned by two members; for all other purposes three members shall be a quorum;
- (h) Every question shall be decided by a majority of the votes of the members present, and in the event of an equality of votes the chairman shall have a second or casting vote;
- (i) The clerk of the committee shall, whenever required in writing by the chairman or any two members of the committee, or by the manager of the asylum, and the chairman may, whenever he thinks fit, summon a meeting of the committee.

176. *Clerk to visiting committee.*]—(1.) Every visiting committee shall appoint a clerk (who may also be the clerk to the asylum) at such salary as the committee think fit, and a clerk so appointed may be discharged, and in the event of a vacancy in the office a new clerk may be appointed. The clerk

to the visiting committee shall, unless he be sooner discharged, continue in office so long as the committee continue in office.

(2.) A visiting committee may sue and be sued in the name of their clerk, and an action by or against a visiting committee shall not abate by the death or removal of the clerk, but the clerk for the time being shall always be deemed the plaintiff or defendant in the action.

Visitors of Licensed Houses.

177. *Justices to appoint visitors.*]—(1.) The justices of every county and quarter sessions borough not within the immediate jurisdiction of the Commissioners shall, whether there is a licensed house within the county or borough or not, annually, appoint three or more justices, and also one medical practitioner, or more, to act as visitors of licensed houses within the county or borough and otherwise for the purposes of this Act.

(2.) The visitors shall at their first meeting make before a justice the declaration required by this Act to be made by a Commissioner, with the necessary modification.

(3.) A person shall not be qualified to be a visitor or clerk, or assistant clerk to any visitor, who is or within one year prior to his appointment has been interested in a licensed house.

(4.) If a visitor or a clerk or assistant clerk to any visitors becomes interested in a licensed house he shall be disqualified to hold his office.

(5.) Any disqualified person continuing to act shall be guilty of a misdemeanour.

(6.) In case of the death, inability, disqualification, resignation, or refusal to act of any visitor, the justices of the county or borough may appoint a visitor in his place.

(7.) The annual appointment of visitors shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions, to be held in the month of October; other appointments may be made by justices of a county at any quarter sessions and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

(8.) In any county or borough in which no appointment of visitors has been made before the commencement of this Act the first appointment shall be made, in the case of a county, at the quarter sessions next after the commencement of this Act, and in the case of a borough, at special sessions to be held at the same time as the next quarter sessions.

(9.) The clerk to the justices of a quarter sessions borough shall forthwith notify to the clerk of the peace of the borough

the names, places of abode, and occupations or professions of all visitors appointed by the justices.

(10.) A list of the names, places of abode, and occupations, or professions of all visitors of licensed houses shall, within fourteen days from the date of their appointment, be published by the clerk of the peace of the county or borough for which they are appointed in a local newspaper, and shall, within three days from the date of their appointment, be sent by the clerk of the peace to the Commissioners.

(11.) Every clerk of the peace making default in publishing and sending to the Commissioners the list of visitors within the time hereby limited, shall for every default be liable to a penalty not exceeding two pounds.

(12.) Every visitor, being a medical practitioner, shall be entitled to such remuneration for services rendered under this Act as the justices of the county or borough may approve.

178. Clerk to visitors; his duties and remuneration.]—

(1.) The clerk of the peace or some other person to be appointed by the justices for the county or borough shall act as clerk to the visitors.

(2.) The clerk to the visitors shall, at the first meeting of the visitors, make the declaration required by this Act to be made by the secretary of the Commissioners with the necessary modification, such declaration to be made before one of the visitors, being a justice.

(3.) The name, place of abode, occupation, and profession of the clerk to the visitors (whether he is the clerk of the peace or any other person), shall within fourteen days after the appointment, be published by the clerk of the peace for the county or borough in some local newspaper, and shall within three days from the date of the appointment be communicated by the said clerk of the peace to the Commissioners.

(4.) Every clerk of the peace making default in either of the respects aforesaid shall for every such default be liable to a penalty not exceeding two pounds.

(5.) Every clerk to the visitors shall be allowed such salary or remuneration for his services as the justices for the county or borough direct.

179. Provision for assistants to the clerk of the visitors.]—

(1.) If the clerk to any visitors at any time desires to employ an assistant in the execution of the duties of his office, he shall certify his desire and the name of the assistant to one of the visitors, being a justice.

(2.) If the visitor approves of the assistant, the assistant shall make before the visitor the declaration to be made by assistants to the clerk to the visitors in the First Schedule.

(3.) Thereafter the clerk may, at his own cost, employ the assistant.

180. *Consent of recorder.*]—A visitor or clerk shall not be appointed by the justices of a borough without the consent in writing of the recorder of the borough.

181. *Meetings of visitors.*]—(1.) The visitors shall meet at such times and places as they may think proper.

(2.) The clerk to the visitors shall, upon the direction of any two visitors, call a meeting of the visitors at such time and place as the two visitors may appoint.

(3.) The times and places of meeting shall be kept secret, and each meeting shall be held privately and so that no manager or person interested in or employed about or connected with any house to be visited shall have notice of any intended visit.

182. *Payment of expenses of visitors of licensed houses.*]—The expenses incurred by or under the order of any visitors of licensed houses in proceedings under this Act shall be paid out of the county or borough fund.

PART VII.—VISITATION.

Duties of Chancery Visitors.

183. *Duties of Chancery Visitors.*]—(1.) The Chancery Visitors shall visit lunatics so found by inquisition at such times, and in such rotation and manner, and make such inquiries and investigations as to their care and treatment and mental and bodily health, and the arrangements for their maintenance and comfort, and otherwise respecting them, as the rules in lunacy, or as any special order of the judge in lunacy in any particular case, shall from time to time direct.

(2.) Provided that every lunatic shall be personally visited and seen by one of the Chancery Visitors twice at least in every year, and such visits shall be so regulated as that the interval between successive visits to any such lunatic shall in no case exceed eight months.

(3.) Provided also, that every lunatic resident in a private house shall, during the two years next following inquisition, be visited at least four times in every year.

184. *Chancery Visitors to visit alleged lunatics.*]—(1.) The Chancery Visitors shall also visit such persons alleged to be lunatics, and shall make such inquiries and reports in reference to them as the judge in lunacy directs, and at the expiration of every six months they shall report to the Lord Chancellor the number of visits made, the number of patients seen, and the number of miles travelled during such months, and shall

on the first of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other account.

(2.) A copy of every report and return under this section shall be laid before Parliament on or before the first of February in each year, if Parliament be then sitting, and if not, within twenty-one days next after the commencement of the next session.

185. *Chancery Visitors to report to Lord Chancellor.*—

(1.) The Chancery Visitors shall respectively, within a convenient time after each visit, make a report in writing of the state of mind and bodily health and of the general condition and also of the care and treatment of each person visited, which reports shall, annually or oftener, as the Lord Chancellor directs or the board of visitors think expedient, be submitted to the Lord Chancellor.

(2.) The Chancery Visitors respectively shall make separate or special reports on any case to the Lord Chancellor as and when they or the board of visitors think expedient, and in particular shall report to him, without delay, any instance in which, on proceeding to visit, they have been unable to discover the residence of or have been by any other circumstance prevented from actually seeing on that occasion the lunatic whom they intended to visit.

186. *Reports to be kept secret.*—(1.) The reports of the Chancery Visitors shall be filed and kept secret in their office, and shall not be open to the inspection of any person save the members of the board of visitors, and the judge in lunacy and such persons as he specially appoints.

(2.) All the reports relating to any particular patient shall be destroyed on his death, and shall also be destroyed on the inquisition in his case being superseded, or being vacated and discharged on a traverse, unless the judge in lunacy, within fourteen days after the *supersedeas*, or the vacating and discharge on a traverse, specially orders that the same be not destroyed until the lunatic's death.

Lunatics in Asylums.

187. *Visits by Commissioners.*—(1.) Two or more Commissioners, of whom one shall be a medical practitioner and one a barrister, shall once at least in each year visit every asylum and shall inquire—

- (a) Whether the provisions of the law have been carried out;
- (i) As to the construction of the building;
 - (ii) As to visitation;

- (iii) As to management;
- (iv) As to the regularity of the admission and discharge of patients;
- (b) Whether divine service is performed;
- (c) Whether any system of coercion is practised, and its result;
- (d) As to the classification of patients and the number of attendants on each class;
- (e) As to the occupations and amusements of the patients, and their effects;
- (f) As to the bodily and mental condition of the pauper patients when first admitted;
- (g) As to the dietary of pauper patients;
- (h) As to such other matters as to the visiting Commissioners seem fit.

(2.) Any one or more of the Commissioners may at any time visit any asylum with the like powers as are by this section given to two or more Commissioners.

188. *Visits by visiting committee.*—At least two members of the visiting committee shall together, once at least in every two months, inspect every part of the asylum, and see every patient therein, so as to give everyone, as far as possible, full opportunity of complaint, and examine the order and certificate or certificates for the admission of every lunatic admitted since the last visitation and the general books kept in the asylum; and shall enter in the visitors' book any remarks they think proper in regard to the condition and management of the asylum and the lunatics therein, and shall sign the book upon every visit.

189. *Visits to lunatics received under a contract.*—(1.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or other borough in a county asylum not less than two members of the visiting committee of the borough appointed for the purpose shall together, at least once in every six months, visit the asylum and see and examine the lunatics received under the contract, and shall report the result of their visit to the council of the borough.

(2.) The visitors may, if they think fit, be accompanied by a medical practitioner who is not an officer of the asylum, and they may by order direct payment to such medical practitioner of such a sum as they think fit for his services, and such sum shall upon the production of the order be paid to the medical practitioner by the treasurer of the borough.

(3.) Every report under this section shall be entered among the records of the council of the borough, and may be inspected by the Commissioners, and the Commissioners may, if they

think fit, require the town clerk of the borough to transmit to them a copy of any such report.

190. *Reports by visiting committee.*]—(1.) The visiting committee of every asylum shall in every year lay before each local authority to which the asylum belongs, at their quarterly meeting in November, or at such other time as the local authority appoints, a report in writing of the state and condition of the asylum, and as to its sufficiency to provide the necessary accommodation, and as to its management and the conduct of the officers and servants and the care of the patients therein.

(2.) The committee may in the report make such remarks in relation to any matters connected with the asylum as they think fit.

Lunatics in Hospitals and Licensed Houses.

191. *Visits of the Commissioners to licensed houses and hospitals.*]—(1.) Every hospital and licensed house may at any time, by day or night, be visited by any one or more of the Commissioners.

(2.) Every licensed house within the immediate jurisdiction of the Commissioners shall be visited six times a year (namely):—

(a) Four times by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister; and

(b) Twice by one or more of the Commissioners.

(3.) Every licensed house not within the immediate jurisdiction of the Commissioners shall be visited twice a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister.

(4.) Every hospital shall be visited once a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister.

(5.) The visits of the Commissioners shall be made without previous notice.

(6.) Every visit shall be made on such day or days, and at such hours, and for such length of time, as the visiting Commissioners or Commissioner may, subject to any direction of the Commissioners, think fit.

(7.) The Lord Chancellor, on a representation by the Commissioners setting forth the expediency of the alteration, may by writing under his hand direct that during a specified period, or until the direction is revoked, the Commissioners shall not be required—

(a) To visit a house licensed by justices more than once a year;

- (b) To visit a house licensed by the Commissioners and not receiving pauper patients more than twice a year.

192. *Inspection of licence.*]—The visiting Commissioners at their first visit to a house licensed by justices after the grant or renewal of the licence shall examine the licence, and if the same is in conformity with this Act shall sign the same, or if it is informal shall enter in the visitors' book in what respect it is informal.

193. *Visits of visitors to licensed houses.*]—(1.) Every licensed house within the jurisdiction of visitors appointed by justices may at any time, by day or night, be visited by one or more of the visitors.

(2.) Every such house shall be visited—

- (a) Four times a year by not less than two of the visitors, of whom one shall be a medical practitioner; and
 (b) Twice a year by one or more of the visitors.

194. *Inspections and inquiries.*]—(1.) The visiting Commissioners and visitors shall, at every visit to a hospital and licensed house which they are by this Act required to make, and any one or more of the Commissioners or visitors may at any other visit do all or any of the following things:—

- (a) Inspect any or every part of the building where lunatics are received, and every building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground and appurtenances held, used, or occupied therewith;
 (b) See every patient and inquire whether any patient is under restraint, and why;
 (c) Inspect the order and certificates or certificate for every patient received since the last visit;
 (d) Consider the observations made in the visitors' book;
 (e) Enter in the visitors' book a minute of the condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof;
 (f) Inquire—

When divine service is performed, and to what number of patients, and its effects;

What occupations and amusements are provided for the patients, and the results thereof;

How the patients are classified;

As to the condition of the pauper patients when first admitted;

As to the diet of the pauper patients;

As to the moneys paid to the manager on account of any lunatic under his care;

As to such other matters as may in their opinion require investigation.

(2.) The result of the foregoing inspections and inquiries, with such observations as may be thought proper, shall be entered in the visitors' book.

(3.) Each visiting Commissioner or visitor may at any visit enter in the patients' book such observations as he thinks fit as to the state of mind or body of any patient, and any irregularity which exists in any order or certificates, and also whether the suggestions (if any) made at any previous visit have been attended to, and any observations which may be thought proper.

195. *Managers of hospitals and licensed houses to show every part and every patient to the visiting Commissioners and visitors.*—(1.) The manager of every hospital or licensed house shall show to each Commissioner and visitor visiting the same every part thereof, and every person therein detained as a lunatic.

(2.) Every manager of a hospital or licensed house who conceals or attempts to conceal, or refuses or wilfully neglects to show, any part of the building, or any building communicating therewith or detached therefrom, but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained, or being therein, from any one or more of the visiting Commissioners or visitors, or from any person authorised under this Act to visit and inspect the hospital or house, or the patients therein or any of them, or who does not give full and true answers to the best of his knowledge to all questions which any visiting Commissioner or visitor asks in the execution of his office, shall be guilty of a misdemeanour.

196. *Books and documents to be produced to visiting Commissioners and visitors.*—(1.) The manager of every hospital or licensed house shall lay before the visiting Commissioners or Commissioner, or the visitors or visitor, at each visit—

- (a) A list of all the patients then in the hospital or house (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable):
- (b) The several books by this Act or any rules under this Act required to be kept by the manager and by the medical officer of a hospital or licensed house:
- (c) All orders and certificates relating to patients admitted since the last visit:
- (d) In the case of a licensed house the licence then in force:
- (e) All other orders, certificates, documents, and papers relating to any of the patients at any time received into the

hospital or licensed house which may be required to be produced.

(2.) Each visiting Commissioner or visitor shall sign the said books as having been produced.

197. *Entries in the patients' book as to doubtful patients.*—

(1.) Every Commissioner visiting a house licensed by justices shall carefully consider and give special attention to the state of mind of any patient, as to the propriety of whose detention there is a doubt or as to whose sanity their attention is specially called, and shall, if the state of mind of such patient is considered doubtful, and the propriety of his detention requires further consideration, make and sign a minute thereof in the patients' book.

(2.) A copy of every such minute shall, within two clear days after the same has been made, be sent by the manager of the house to the clerk of the visitors of the house, and the clerk shall forthwith communicate the same to the visitors, or some two of them (of whom one shall be a medical practitioner), and the visitors shall thereupon immediately visit the patient and act as they think fit.

(3.) Every manager who omits to send a copy, as hereinbefore directed, of every such last-mentioned minute, and every clerk who neglects to communicate the same to two of the visitors as aforesaid, shall be guilty of a misdemeanour.

Visits to Single Patients.

198. *Annual visit to single patient.*—One or more of the Commissioners shall once at least in every year visit every unlicensed house in which a single patient is detained as a lunatic and inquire into and report to the Commissioners on the treatment and state of bodily and mental health of the patient.

199. *Power to visit single patients, and report.*—(1.) Any one Commissioner, on the direction of the Commissioners, or of any two of them (of whom the one Commissioner may be one), may at all reasonable times visit a single patient, and inquire into and report to the Commissioners or the Lord Chancellor on the treatment and state of health, both bodily and mental, of the patient, and as to the moneys paid on his account.

(2.) Any one or more of the visitors appointed for any county or borough shall, upon the request in writing of the Commissioners, or any two of them, have the like power as regards any single patient detained in an unlicensed house in such county or borough.

(3.) Upon every visit under this section the medical journal shall be produced to the person making the visit, and he shall sign the same.

(4.) Every report under this section shall be kept by the secretary of the Commissioners, and a copy thereof shall, if the Commissioners think it expedient, be laid before the Lord Chancellor.

200. Power to inspect.]—(1.) Any Commissioner visiting an unlicensed house may inspect any part of the house and the grounds belonging thereto.

(2.) If the person having charge of a single patient refuses to show to any Commissioner, at his request, any part of the house wherein the single patient resides, or any part of the grounds belonging thereto, he shall be guilty of a misdemeanour.

Visits to Paupers in certain Cases.

201. Visits to paupers in institutions for lunatics.]—(1.) A medical practitioner appointed by the guardians of a union, and also the guardians of any union shall be permitted, whenever they see fit, between eight in the morning and six in the evening, to visit and examine any pauper lunatic chargeable to the union confined in any institution for lunatics, unless the medical officer of the institution delivers to the person or persons intending to make the visit a statement signed by him certifying that for the reasons set forth in the statement the visit would be injurious to the lunatic.

(2.) The medical officer shall forthwith enter in the medical journal the reasons set forth in the statement, and shall sign the entry.

202. Visits to pauper lunatics not in an institution for lunatics.]—(1.) Every pauper lunatic not in an institution for lunatics shall once in every quarter of a year (reckoning the several quarters as ending on the thirty-first of March, the thirtieth of June, the thirtieth of September, and the thirty-first of December) be visited, if not resident in a workhouse, by the medical officer of the union, or district in which the lunatic is resident, and, if resident in a workhouse, by the medical officer of the workhouse.

(2.) The guardians of every union shall from time to time furnish to every medical officer of the union forms for the prescribed returns relating to pauper lunatics not in an institution for lunatics.

(3.) Where a pauper lunatic has, by order of the visiting committee, been delivered over to the custody of a relative or friend to whom an allowance is made for the maintenance of

the lunatic, the medical officer of the union or district in which the lunatic resides shall, within three days after each quarterly visit, send to the visiting committee a report stating whether in his opinion the lunatic is properly taken care of, and may properly remain out of an asylum.

(4.) Each medical officer shall be paid two shillings and sixpence for each quarterly visit to a pauper not in a workhouse, and in addition two shillings and sixpence for every report sent to a visiting committee under this section, and those sums shall be paid by the same persons and be charged to the same account as the relief of the pauper.

(5.) Nothing in this section shall relieve any medical officer from any obligation under this Act to give notice to a relieving officer or overseer when it appears to such medical officer that a pauper lunatic ought to be sent to an asylum.

203. *Visitation of workhouses.*]—Any one or more of the Commissioners shall, on such day or days, and at such hours in the day, and for such length of time as he or they may think fit, visit all such workhouses in which there is or is alleged to be any lunatic, as the Commissioners by any resolution direct, and shall inquire whether the provisions of the law have been carried out, and also as to the dietary, accommodation, and treatment of the lunatics, and shall report in writing thereon to the Commissioners, and the Commissioners shall forward a copy of every such report to the Local Government Board.

Special Visits.

204. *Power to appoint a person to inquire into cases requiring immediate investigation.*]—(1.) If, for reasons to be entered on the minutes of the board, any case appears to the Commissioners to call for immediate investigation, they may by order direct any competent person or persons to visit and report upon the mental and bodily condition of any lunatic or alleged lunatic in any institution for lunatics or workhouse, or under the charge of any person as a single patient, and to inquire into and report upon any matters into which the Commissioners are authorised to inquire.

(2.) Every such person shall, for the special purposes mentioned in the order, have all the powers of a Commissioner.

(3.) The Commissioners may allow to any such person a reasonable sum for his services and expenses.

205. *Visits to lunatics so found, and other lunatics.*]—(1.) The Lord Chancellor in the case of a lunatic so found by inquisition, and the Lord Chancellor or a Secretary of State in any other case, may at any time, by an order in writing under

the hand of the Lord Chancellor or the Secretary of State, as the case may be, directed to the Commissioners or any of them, or to any other person, require the persons or person to whom the order is directed to visit and examine a lunatic or alleged lunatic and to inspect any place in which a lunatic or alleged lunatic is detained, and to report to the Lord Chancellor or to a Secretary of State upon such matters as in the order are directed to be inquired into.

(2.) Every person (not being a Commissioner) employed under this section may be paid such sum of money for his services as the Lord Chancellor or a Secretary of State thinks reasonable.

(3.) Every person so employed, whether a Commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed.

(4.) Sums payable under this section shall be paid out of moneys provided by Parliament.

Lunatics in Private Families and Charitable Establishments.

206. *Lunatics in private families and charitable establishments.*]—(1.) If it comes to the knowledge of the Commissioners that any person appears to be without an order and certificates detained or treated as a lunatic or alleged lunatic by any person receiving no payment for the charge, or in any charitable, religious, or other establishment (not being an institution for lunatics), they may require the person by whom the patient is detained, or the superintendent or principal officer of the establishment, to send to them, within or at such time or times as the Commissioners may appoint, a report or periodical reports by a medical practitioner of the mental and bodily condition of the patient, with all such other particulars as to him and his property as they think fit.

(2.) Any one or more of the Commissioners may at any time visit any such patient and report the result of the visit to the Commissioners, and may exercise, with respect to such patient, all the powers (except that of discharge) given to them as to persons confined in any institution for lunatics, or as single patients.

(3.) The Commissioners may, if they think fit, transmit any reports received by them, or may report the results of any inquiries made by them under this section, to the Lord Chancellor, who may thereupon make an order for the discharge of the patient from the custody in which he is detained or for his removal to an institution for lunatics, or to such other custody as he may think fit, and the expenses properly incurred of carrying any such order into effect and of maintaining the patient if so removed shall, if the order so directs, be paid by the

guardians of the union in which the patient was found, until the authority legally liable for his maintenance has been ascertained; and such guardians shall have the same right to recover any such expenses paid by them against the lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

(4.) Where an order is made by the Lord Chancellor under this section for removal of a lunatic to an asylum, any justice of the county or borough in which the asylum is may exercise all the authorities conferred upon a justice by this Act, for the purpose of making the lunatic's property applicable to his maintenance and for maintaining him as a pauper.

(5.) All reports and particulars sent to the Commissioners under this section shall be kept by them, and shall be open to inspection only by the Commissioners and the Lord Chancellor, and by such persons as the Lord Chancellor directs.

PART VIII.—LICENSED HOUSES AND HOSPITALS.

Restrictions on New Licences.

207. *Restrictions on new licences.*]—(1.) If the Commissioners in the case of a house within their immediate jurisdiction, or in the case of a house licensed by justices the justices, are of opinion that a house licensed for the reception of lunatics has been in all respects well conducted by the licensees, the Commissioners or justices may upon the expiration of the licence renew the licence for that house to the former licensees, or any one or more of them, or to their successors in business.

(2.)

This sub-section, which was repealed by the Statute Law Revision Act, 1908 (8 Edw. VII. c. 49), gave the Commissioners power to grant a licence for a house which was being taken over in place of an existing house at the commencement of the Act.

(3.) If at any time it is shown to the satisfaction of the Commissioners or the justices, as the case may be, that it would be for the comfort and advantage of the patients in any licensed house that another house should be substituted in place thereof, the Commissioners or justices may grant to the licensees of such first-mentioned house a licence in respect of such other house upon and subject to the same conditions and restrictions as may have existed in respect of the first-mentioned house.

(4.) In the case of joint licensees or proprietors who desire to carry on business apart from one another, if, in the opinion of the Commissioners or of the justices, as the case may be, the establishment conducted by them jointly, and also any new house which any of them desires to conduct, answers the con-

ditions hereinbefore required for granting renewed licences, the Commissioners or justices, as the case may be, may grant to each of such licensees or proprietors renewed licences for such number of patients (not exceeding in the aggregate the number allowed by the joint licence) as such joint licensees or proprietors agree upon, or, failing their agreement, as the Commissioners or justices determine.

(5.) Where the licensee of a house is a medical man in the employment of the proprietor of such house as his manager, the licence shall be transferable or renewable to such licensee so long as he continues manager of the house, or to the proprietor, or to any other medical manager while employed by the proprietor in the place of the former manager.

(6.) Save as in this section provided, no new licence shall be granted to any person for a house for the reception of lunatics, and no house in respect of which there is at the passing of this Act an existing licence shall be licensed for a greater number of lunatics than the number authorised by the existing licence.

Jurisdiction of Commissioners and Justices.

208. *Places within immediate jurisdiction of Commissioners.*—(1.) The Commissioners shall exercise the licensing jurisdiction under this Act as regards the places mentioned in the Third Schedule which are to be deemed within their immediate jurisdiction.

(2.) In all places not within the immediate jurisdiction of the Commissioners the justices for every county and quarter sessions borough shall be the licensing justices, and shall at quarter or special sessions respectively have the same authority within their counties and boroughs to license houses for the reception of lunatics as the Commissioners within their immediate jurisdiction.

(3.) A person shall not act in granting any licence if he is, or within one year next preceding has been, interested in a licensed house.

209. *Borough justices to hold special sessions.*—For the purposes of this Part of this Act the justices of every borough shall assemble in special sessions at such times as the quarter sessions for the borough are held.

Conditions on which Licences granted.

210. *Before grant of a new licence by justices Commissioners to inspect and report.*—Before a licence is in any case provided for by this Act granted for a house not within the immediate jurisdiction of the Commissioners and not previously licensed,

one or more of the Commissioners shall by inspection ascertain whether the house and its appurtenances are suitable for the reception of lunatics, and the Commissioners shall report thereon to the clerk of the peace of the county or borough, and the report shall be received and considered by the justices.

211. Licensee to reside.]—A licence shall not be granted unless the licensee or one of the licensees undertakes to reside in the house.

212. Licence to joint licensees.]—In the case of a licence granted to two or more persons, if before the expiration of the licence any of such persons dies leaving the others surviving, and one of the survivors has undertaken or within ten days after the death gives to the Commissioners or the justices who granted the licence a written undertaking to reside on the licensed premises, the licence shall remain in force and have the same effect as if granted to the survivors.

213. Notice of additions and alterations.]—No addition or alteration shall be made to any licensed house or the appurtenances without the previous consent in writing of the Commissioners, and also of two of the visitors in the case of a house within the jurisdiction of visitors.

214. Untrue statement a misdemeanour.]—If any person, for the purpose of obtaining a licence or the renewal of a licence for a house for the reception of lunatics, wilfully supplies to the Commissioners or justices any untrue or incorrect information, plan, description, statement, or notice, he shall be guilty of a misdemeanour.

215. A copy of licence granted by justices to be sent to the Commissioners.]—(1.) Within seven days after the grant of a licence by the justices of a county or borough the clerk of the peace of the county or borough shall send a copy thereof to the Commissioners.

(2.) Any clerk of the peace omitting to send such copy within such time shall for every such omission be liable to a penalty not exceeding forty shillings.

216. Stamps on licences.]—Licences and renewed licences shall be stamped with a ten shilling stamp, and shall be under the seal of the Commissioners, if granted by them, and if by any justices under the hands of three or more of them in quarter or special sessions assembled, and shall be granted for such period, not exceeding thirteen months, as the Commissioners or justices, as the case may be, think fit.

217. Charge for licences.]—(1.) For every licence there shall be paid to the secretary of the Commissioners, or to the clerk of

the peace, according as the licence is granted by the Commissioners or justices, (exclusive of the stamp,) the sum of ten shillings for every patient not being a pauper, and the sum of two shillings and sixpence for every patient being a pauper.

(2.) If the total amount of such sums of ten shillings and two shillings and sixpence does not amount to fifteen pounds, then so much more shall be paid as makes up fifteen pounds.

(3.) If the period for which a licence is granted is less than thirteen months, the Commissioners or the justices may reduce the payment to any sum not less than five pounds.

(4.) The payment for a licence for a new house granted upon the transfer of patients from a licensed house shall be not less than one pound (exclusive of the stamp).

(5.) No licence shall be delivered until the sum payable for the same has been paid.

218. Incapacity or death of the person licensed.]—(1.) If a person to whom a licence has been granted becomes by sickness or other sufficient reason incapable of keeping the licensed house, or dies before the expiration of the licence, the Commissioners or any three justices for the county or borough, as the case may be, may, if they think fit, by writing endorsed on the licence under the seal of the Commissioners or under the hands of such three justices, transfer the licence, with all the privileges and obligations annexed thereto, for the term then unexpired, to such person as the Commissioners or justices approve.

(2.) Where a licence is transferred by justices of a county or borough under this section, the clerk of the peace of the county or borough shall within three days after the date of the instrument of transfer send a copy thereof to the Commissioners.

(3.) A clerk of the peace who makes default in performing the duty imposed upon him by this section, shall, for each day during which the default continues, be liable to a penalty not exceeding forty shillings.

219. Notice on change of house.]—In cases in which under this Act a house not previously licensed is to be substituted for a licensed house, unless the substitution is occasioned by fire or tempest, seven clear days' notice of the intended substitution shall be sent to the person on whose petition the reception order of each private patient was made, or to the person by whom the last payment on account of the patient was made, and to the authority liable for the maintenance of each pauper patient.

220. Penalty for infringing licence.]—If a licensee receives into his licensed house any patients beyond the number specified in the licence, or fails to comply with the regulations of the licence as to the sex of the patients or the class of patients, he

shall for each patient received contrary to his licence forfeit fifty pounds.

221. Power of revocation and prohibition of renewal of licences.]—(1.) If a majority of the justices of a county or quarter sessions borough in quarter or special sessions assembled recommend to the Lord Chancellor that any licence granted by the justices for such county or borough be revoked, or if the Commissioners recommend to the Lord Chancellor that any licence granted either by them or by any justices be revoked or if granted by any justices be not renewed, the Lord Chancellor may, by an instrument under his hand and seal, revoke or prohibit the renewal of the licence.

(2.) A revocation of a licence shall take effect at a date to be named in the instrument of revocation, not more than two months from the time when a copy or notice thereof has been published in the London Gazette.

(3.) A copy or notice of the instrument of revocation shall be published in the London Gazette, and shall, before publication, be transmitted to the manager of the licensed house, or shall be left at the licensed house.

(4.) In case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the manager, or left at the licensed house.

222. Detention of lunatics after expiration or revocation of a licence a misdemeanour.]—If after the lapse of two months from the expiration or revocation of the licence of any house, there are in the house two or more lunatics, every person keeping the house or having the care or charge of the lunatics therein, shall be guilty of a misdemeanour.

223. Powers to continue so long as any lunatics detained.]—The powers of the Commissioners and visitors with reference to any licensed house and the patients therein, and all powers and provisions of this Act having reference to the discharge, removal, and transfer of the patients, shall, after the expiration or revocation of the licence, continue in force so long as any patients are detained therein as lunatics.

Application of Fees for Licences.

224. Application of moneys received for licences by clerks of the peace.]—(1.) All moneys received for licences granted by any justices shall be paid by the clerk of the peace for the county or borough into the county or borough fund.

(2.) The clerk of the peace for every county or borough shall keep an account of all moneys received and paid by him as

aforesaid, and of all moneys otherwise received or paid by him in the execution of this Act.

(3.) Such account shall be made up to the thirty-first day of March in each year, or to such other date as the Local Government Board appoint, and shall be signed by two at least of the visitors for the county or borough; and in the case of the clerk of the peace of a county, shall be audited by the same person, in the same manner, and with the same incidents and consequences as the accounts of officers of the county council under the Local Government Act, 1888 (51 & 52 Vict. c. 41).

225. *Balance of payments over receipts may be paid out of the funds of the county or borough.*—(1.) The justices of every county or borough in quarter or special sessions may order such sums as may be reasonable for payment of the remuneration or salary of the visitors and their clerk, and of all other expenses incurred by or under the authority of the justices or visitors in the execution of this Act, to be paid to the clerk of the peace of the county or borough out of the county or borough fund.

(2.) Every such sum shall be paid out of the county or borough fund by the treasurer thereof, and shall be allowed in his accounts, on the authority of the order by the justices for the payment thereof.

(3.) Every sum ordered to be paid by justices of a county under this section shall be subject to the sanction of the standing joint committee of the county council and quarter sessions as provided by section sixty-six of the Local Government Act, 1888.

Management of Licensed Houses.

226. *Commissioners may make regulations for the government of licensed houses.*—The Commissioners, with the sanction of a Secretary of State, may make regulations for the government of any licensed house; and such regulations of the Commissioners, or a copy thereof, shall be transmitted by their secretary to the manager of every licensed house to which the same relate, and shall be observed therein.

227. *Plans to be hung up.*—There shall be hung up in some conspicuous part of every licensed house a copy of the plan given to the Commissioners or justices on applying for the licence.

228. *Provision for residence and visits of medical attendants.*—(1.) In every house licensed for one hundred patients, or more, there shall be resident as the manager and medical officer thereof a medical practitioner.

(2.) Every house licensed for less than one hundred and more than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited daily by a medical practitioner.

(3.) Every house licensed for less than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited twice a week by a medical practitioner.

(4.) The visitors of any licensed house may direct that such house, and the Commissioners may direct that any licensed house shall be visited by a medical practitioner at any other time or times, not being oftener than once a day.

(5.) When a house is licensed to receive less than eleven lunatics, any two of the Commissioners or any two of the visitors of such house may, if they think fit, by any writing under their hands, permit the house to be visited by a medical practitioner at such intervals more distant than twice a week as the Commissioners or visitors appoint, but not at a greater interval than once in every two weeks.

229. Boarders in licensed houses.]—(1.) The manager of a licensed house may, with the previous consent in writing of two of the Commissioners, or, where the house is licensed by justices, of two of the justices, receive and lodge as a boarder for the time specified in the consent any person who is desirous of voluntarily submitting to treatment; after the expiration of which time (unless any further consent is in like manner given for the extension thereof) he shall be discharged. The manager of a licensed house may also, with such previous consent as aforesaid, receive and lodge as a boarder, for the time specified in the consent, any relative or friend of a patient.

(2.) The consent of the Commissioners or justices, as the case may be, shall be given only upon application to them by the intending boarder.

(3.) The total number of patients and boarders in a licensed house shall at no one time exceed the number of patients for which the house is licensed.

(4.) Every boarder shall, if required, be produced to the Commissioners and visitors respectively on their respective visits.

(5.) A boarder may leave the licensed house in which he is a boarder upon giving to the manager thereof twenty-four hours' notice in writing of his intention so to do.

(6.) If any person is not allowed to leave the licensed house in which he is a boarder after the expiration of twenty-four hours' notice to the manager thereof of his intention so to do, he shall be entitled to recover from the manager ten pounds as

liquidated damages for each day or part of a day during which he is detained.

Notice of reception of Boarders into Licensed Houses and Hospitals.—It was further provided by sect. 20 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

20. Where a boarder is received into a licensed house not within the immediate jurisdiction of the Commissioners in Lunacy, or into a registered hospital, notice of his reception shall be given to the Commissioners in Lunacy within twenty-four hours of his reception by the manager of the licensed house or hospital into which such boarder has been received.

If any manager fails to comply with the provisions of this section he shall, for each day or part of a day during which the default continues, be liable to a penalty not exceeding five pounds.

If the Commissioners after inquiry are of opinion that the mental state of any boarder received into a licensed house or hospital is such as to render him unfit to remain as a boarder, they may order the manager of the licensed house or hospital either to remove such boarder or to take steps to obtain an order for his reception as a patient into the licensed house or hospital.

Any manager failing to comply with an order of the Commissioners in Lunacy made pursuant to this section shall, for each day during which the default continues, be liable to a penalty not exceeding five pounds.

Hospitals.

230. *Hospitals to have a resident medical attendant.*]—Every hospital for the reception of lunatics shall have a medical practitioner resident therein as the superintendent and medical officer thereof.

231. *Provisions for registration of hospitals in which lunatics are received.*]—(1.) When application is made for the registration of a hospital for the reception of lunatics, the Commissioners may depute any one or more members of their body, or may employ such person or persons as they think fit, to inspect the hospital and report to them thereon.

(2.) If the Commissioners are of opinion that the hospital ought not to be registered for the reception of lunatics, they shall make a written report to a Secretary of State, stating the reasons for such opinion, and the Secretary of State shall thereupon finally determine whether the hospital ought to be registered or not.

(3.) If the Commissioners are of opinion or a Secretary of State determines that the hospital ought to be registered, the Commissioners shall issue a provisional certificate of registration.

(4.) A provisional certificate shall be valid for six months from the date of its issue, and for such extended time as the Commissioners allow, unless before its expiration it is superseded by a complete certificate of registration.

(5.) Within three months from the date of the provisional certificate, the managing committee of the hospital shall frame regulations for the hospital, and shall submit the same to a Secretary of State for approval.

(6.) Upon approval of the regulations by a Secretary of State, the Commissioners shall issue a complete certificate of registration, and shall specify therein the total number of patients of each sex who may be received in the hospital.

(7.) As from the date of a provisional certificate lunatics may be received in the hospital, but if no complete certificate of registration is granted, then no lunatic shall be received or detained in the hospital after the expiration of the provisional certificate.

(8.) The total number of patients and boarders, if any, in a hospital shall at no one time exceed the number of patients for which the hospital is certified.

(9.) No lunatic shall be received in any hospital unless the same has been registered before the passing of this Act, or is registered under a provisional or complete certificate by virtue of this Act.

(10.) The superintendent of any hospital who receives or detains any lunatic in the hospital contrary to the provisions of this Act, or to the terms of the complete certificate of registration, shall be guilty of a misdemeanour.

232. Regulations.]—(1.) The regulations for the time being in force in a hospital shall be observed.

(2.) Such regulations shall be printed, and a copy thereof shall be sent to the Commissioners, and another copy hung up in the visitors' room in the hospital.

(3.) If the regulations are not so sent and hung up, the superintendent shall be liable to a penalty not exceeding twenty pounds.

Hospitals may alter regulations.—It was provided by sect. 12 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

12. The managing committee of every hospital may, with the approval of a Secretary of State, alter the regulations of the hospital.

233. Buildings not shown on plans not to be used for accommodation of lunatics.]—(1.) No building in the occupation of the managing committee of a registered hospital not shown on the plans sent to the Commissioners pursuant to any rules made by them shall be deemed part of the hospital for any purpose connected with the reception or the care and treatment of lunatics.

(2.) If the superintendent of a registered hospital knowingly permits any lunatic to be detained or lodged in any building not shown on the plans of the hospital sent to the Commissioners, he shall be deemed guilty of a misdemeanour.

234. *Accounts to be audited and printed.*—(1.) The accounts of every registered hospital which does not submit its accounts to the Charity Commissioners shall be audited once a year by an accountant or other auditor to be approved by the Lunacy Commissioners, and shall be printed.

(2.) The Lunacy Commissioners may, if they think fit, prescribe the form in which the accounts of any registered hospital are to be kept, and the day of the year to which they are to be made up.

235. *Superannuation allowance of officer of hospital.*]—The managing committee of any hospital may grant to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the hospital for not less than fifteen years and is not less than fifty years old, such superannuation allowance, not exceeding two-thirds of the salary of the superannuated person, with the value of the lodgings, rations, or other allowances enjoyed by him, as the committee think fit.

236. *Persons disqualified to be members of managing committee of hospital.*]—The following persons shall be disqualified from being members of the managing committee of a registered hospital:

- (a) Any medical or other officer of the hospital:
- (b) Any person who is interested in or participates in the profits of any contract with or work done for the managing committee of the hospital, but so that this disqualification shall not extend to a person who is a member of an incorporated company which has entered into a contract with or done any work for the managing committee.

237. *Powers for enforcing regulations of hospitals.*]—(1.) The Commissioners may require the superintendent or any other officer of a registered hospital to give them such information as the Commissioners think fit as to the mode in which the regulations of the hospital are carried out.

(2.) If the Commissioners are of opinion that the regulations are not properly carried out, they may give to the superintendent and any two members of the managing committee of the hospital notice stating the particulars in which the regulations are not properly carried out, and requiring such things to be done as the Commissioners think proper for carrying out the same.

(3.) If at the expiration of six months from the date of the notice the requirements of the notice have not, in the opinion of the Commissioners, been complied with, the Commissioners, with the consent in writing of a Secretary of State, may make

an order directing the hospital to be closed as from the date named in the order, so far as the reception and detention of lunatics is concerned.

(4.) If any lunatics are detained or kept in the hospital after the date appointed by the order for closing the hospital, the superintendent of the hospital shall be guilty of a misdemeanour.

(5.) Before an order is made under this section, the Commissioners shall send to the superintendent and any two members of the managing committee of the hospital notice in writing requiring them to state in writing within fourteen days the reasons why the requirements of the first notice have not been complied with; and such statement, if any, shall be laid before the Secretary of State.

Complaints as to Control of Patients.—It is further provided by sect. 21 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

21. If complaints are made by persons resident in the neighbourhood of any hospital that the patients are allowed to go outside the hospital without a sufficient number of officers to control them, or that the patients are allowed to wander at large without any control, the Commissioners may, if they are satisfied that there are *prima facie* grounds for such complaints, inquire into the same, and may make such order in relation thereto as the Commissioners think just, and the superintendent of any hospital disobeying any such order shall be guilty of a misdemeanour.

PART IX.—COUNTY AND BOROUGH ASYLUMS.

Obligation to provide Asylums.

238. Local authorities to provide asylums.]—(1.) Every local authority, as defined by this Act, shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics.

(2.) Where the asylum accommodation of a local authority appears to the local authority to be insufficient, the local authority may supply the deficiency by exercising the powers by this Act conferred for providing asylum accommodation, or by rebuilding or enlarging any existing asylum.

(3.) For the purpose of providing asylum accommodation, a local authority may purchase any licensed or other houses and land.

(4.) For the purpose of providing asylum accommodation, a local authority not being a county council shall have the same powers as are by section sixty-five of the Local Government Act, 1888 (51 & 52 Vict. c. 41), conferred upon a county council.

239. Powers to be exercised by a visiting committee.]—A local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee, subject, if the local authority thinks fit, to their directions as

to which of the methods of providing asylum accommodation authorised by this Act shall be adopted.

Local Authority defined.

240. *Local authority defined.*]—The council of every administrative county and county borough respectively constituted under the Local Government Act, 1888, and the council of each of the boroughs specified in the Fourth Schedule, or in the case of the City of London the common council, shall be a local authority for the purposes of this Act.

Powers for providing Asylums.

241. *Power to provide asylums for pauper and private patients.*]—A local authority may provide asylum accommodation for pauper and private patients, together or in separate asylums, and may provide separate asylums for idiots or patients suffering from any particular class of mental disorder.

242. *Modes in which asylum may be provided.*]—(1.) For the purpose of providing asylum accommodation, a local authority may do all or any of the following things:—

- (a) Provide and maintain an asylum alone;
- (b) Agree to unite in providing and maintaining a district asylum with any other local authority or local authorities;
- (c) Agree to unite with any other local authority or local authorities upon such terms as to payment and otherwise as may be thought proper for the joint use as a district asylum of any existing asylum, and, if they think fit, for the enlargement of the same.

(2.) Where an agreement to unite has been entered into, an agreement for further union may be entered into between all or any of the local authorities concerned, and for all the purposes of this Act an agreement for further union shall be deemed to be an agreement to unite.

(3.) An agreement to unite shall not be carried into effect without the approval of a Secretary of State.

243. *Contract between council of county borough and visiting committee.*]—(1.) The council of a county borough may contract with the visiting committee of an asylum for the reception of the pauper lunatics of the borough into the asylum.

(2.) Any such contract may be made for such consideration and upon such terms as to duration, determination, and otherwise as may be agreed between the council of the borough and the visiting committee of the asylum.

(3.) While a contract under this section is in force, making adequate provision for the pauper lunatics of the borough, the council of the borough shall not be required to provide an asylum alone or in union.

(4.) A contract under this section shall not be carried into effect until approved by a Secretary of State.

244. *Provision for case where a county borough has contributed to the cost of a county asylum.*—(1.) Where a county borough has contributed to the cost of building and furnishing a county asylum, the existing liability of the borough council shall continue until a new arrangement is made under this section, and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the same terms as hitherto.

(2.) Any new arrangement may be made between the county council and all the borough councils concerned, with respect to any such asylum; and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under the Local Government Act, 1888 (51 & 52 Vict. c. 41), or, after they have ceased to hold office, to arbitration under that Act.

Power to refer Questions to the Court or Arbitration.—The following sections of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), must here be noted, viz.:—

14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal Act and any boroughs not being local authorities under that Act, and any visiting committees or any two or more of such parties respectively, may be referred to an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.

15. The provisions of sub-sections five, six, and seven of section sixty-two of the Local Government Act, 1888 (51 & 52 Vict. c. 41), shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section sixty-two of the Local Government Act, 1888.

The provisions of the Local Government Act, 1888, which are thus incorporated in the Lunacy Acts are as follows:—

62.—(5.) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of any fund which in pursuance of the Acts relating to the relief of the poor would be or might be made available for defraying the like expenditure, or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

(6.) The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of

any award or any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

(7.) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

See also sect. 13 of the Asylum Officers Superannuation Act, 1909 (9 Edw. 7, c. 48), p. 317, *post*, in regard to the saving of liabilities imposed by virtue of any award made under sect. 244 of the Lunacy Act, 1890, in respect of contributions to superannuation allowances granted to asylum officers and servants.

245. *Borough contributing to county asylum exempt.]—*

(1.) Where any borough specified in the Fourth Schedule contributes to a county asylum, such borough shall, so long as it continues to contribute, be deemed to satisfy the requirements of this Act with respect to asylum accommodation.

(2.) The council of the borough may resolve for the purpose of providing asylum accommodation to separate from the county to which it contributes.

(3.) Notice of the resolution to separate shall be given to the clerk of the county council, and upon the expiration of six months from the date of the notice, the council of the borough shall be subject to the obligations imposed by this Act of providing asylum accommodation.

(4.) Notwithstanding a notice to separate, the council of the borough shall continue liable to contribute to the county asylum, until all the pauper lunatics therein belonging to the borough have been removed.

246. *Where borough contracts with county powers of borough to provide an asylum to cease on determination of contract.]—*Where any borough specified in the Fourth Schedule has contracted for the reception of the lunatics of the borough in the asylum of the county in which the borough is situate, the borough shall, on the determination of the contract, cease to be a local authority under this Act, and *subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum*, shall be liable

to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county.

Boroughs annexed to Counties under sect. 246 to Contribute to Costs of Asylum.—The words above italicised were repealed by sect. 29, Sched. of the Lunacy Act, 1891, and the following provision was incorporated with the principal Act:—

13.—(1.) Where under section two hundred and forty-six of the principal Act, a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its legal liability; and the arbitrator shall take into consideration the amounts that may have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.

(2.) Where a borough had before the passing of this Act, by virtue of section eighty-six of the Local Government Act, 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act, to be a local authority.

Power of Secretary of State to enforce Act.

247. Default by county or borough in providing asylum.]— If the Commissioners report to a Secretary of State that any local authority has failed to satisfy the requirements of this Act as regards asylum accommodation, the Secretary of State may require the local authority to provide such accommodation in such manner as he may direct, and the local authority shall forthwith carry the requisition into effect.

Agreements to unite.

248. Provisions to be contained in agreements to unite.]—

(1.) Agreements to unite shall state—

- (a) The number of visitors to be chosen by each contracting party;
- (b) The proportion in which the expenses of providing the asylum are to be borne by each contracting party, and the basis upon which such proportion is fixed;
- (c) Where the agreement provides for the joint user of an existing asylum, the sum to be paid by each contracting party towards expenses already incurred.

(2.) Provisions in any agreement to unite, subjecting the visiting committee to any control not provided for by this Act, except the control of the Secretary of State, shall be of no effect.

249. *Apportionment of expenses.*]—The proportion in which the expenses of providing a district asylum are to be borne, as between the uniting counties and boroughs, may be fixed either according to the extent of the accommodation required for each county and borough, or in proportion to the respective population of each county or borough according to the last census for the time being.

250. *Power to vary agreement to unite.*]—An agreement to unite may with the consent in writing of a majority of the visitors of each contracting local authority and with the sanction of the Secretary of State be altered or varied, but not so as to contain any provision which might not have been contained in an agreement to unite in the first instance.

251. *Agreement to unite to be reported and delivered to clerk of local authority.*]—(1.) Every agreement to unite shall as soon as possible be reported to the local authorities interested.

(2.) The original of every agreement to unite, and of every agreement varying an agreement to unite, shall be delivered to the clerk of the local authority within whose administrative area the asylum to which the same relates is situate or is intended to be situate, and shall be kept by him among the records of the local authority.

(3.) The original agreement so delivered may be inspected without payment by any Commissioner and by any member of the council of any of the contracting local authorities.

(4.) The clerk of a local authority to whom any such agreement is delivered shall cause copies to be made thereof, and shall within twenty days after delivery to him of the original send one copy to the Commissioners and another copy to each of the contracting local authorities.

252. *Application of money paid for expenses already incurred.*]—Where under an agreement to unite a sum is to be paid towards the expenses already incurred by a local authority in relation to an existing asylum, the sum shall be paid to the treasurer of the local authority as part of the county or borough fund and shall be applied to purposes for which capital is properly applicable.

253. *Visitors to be chosen.*]—When an agreement to unite has been reported, each local authority shall elect out of their body the number of visitors agreed to be chosen by them, and the visitors so chosen shall carry the agreement into effect and

shall be the visiting committee of the asylum until the election of a visiting committee in their place.

Purchase of Land and other incidental Powers.

254. *Powers of committee to provide asylum.*—(1.) A visiting committee authorised to provide asylum accommodation may agree upon plans and estimates, and contract for the purchase of lands and buildings with or without fittings and furniture, and for the erection, restoration, enlargement, and furnishing of buildings, and for the supply of clothing, and for all the matters necessary for carrying into effect the authority conferred upon them.

(2.) Plans and contracts [*for the purchase of lands and buildings, and for the erection, restoration and enlargements of buildings*] agreed upon by a visiting committee shall not be carried into effect until approved by a Secretary of State.

The words in brackets were added by sect. 16 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

(3.) A visiting committee shall report to the local authority or local authorities by whom they were elected, all plans, estimates, and contracts agreed upon, and also the amount to be paid by each local authority, and such plans, estimates, and contracts shall be subject to the approval of the local authority, to whom they are to be reported, except where the amount to be expended does not exceed an amount previously fixed by the local authority.

(4.) In the event of a difference between any local authorities as to whether any plan, estimate, or contract ought to be approved, the local authority withholding approval shall, within four months after the plan, estimate, or contract has been reported to them, send to a Secretary of State a statement in writing of their objections, and the Secretary of State may direct the plan, estimate, or contract to be carried into execution, with or without any alterations, or he may direct such other plan, estimate, or contract, as he thinks fit, to be carried into execution, and the decision of a Secretary of State under this section shall be final.

255. *Additions to asylums for private patients.*—The visiting committee of an asylum, with the consent of each local authority by whom the asylum is provided, and with the approval in writing of a Secretary of State, may make such alterations in or additions to the asylum either by way of detached buildings or blocks of buildings or otherwise as they think fit for the purpose of providing accommodation for private lunatics.

256. *Contracts.*—(1.) Every person entering into a con-

tract with a visiting committee shall give sufficient security for due performance of the contract.

(2.) Every such contract and all orders relating thereto shall be entered in a book to be kept by the clerk of the visiting committee, and when the contract is completed the book shall be deposited and kept among the records of the local authority, or, when more than one local authority is interested, then among the records of the local authority which contributes the largest proportion of the expenses of the contract.

(3.) Every such book may be inspected at all reasonable times by any person contributing to the rates of the local authority interested in the contract.

(4.) A copy of every such book shall be kept at the asylum to which the contract relates.

257. *Enlargement of district asylum.*—A district asylum shall not be enlarged or improved without the consent of all the parties to the agreement under which the same is provided.

258. *Burial grounds.*—(1.) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed and of a Secretary of State, may provide for the burial of lunatics dying in the asylum, and of the officers and servants belonging thereto—

(a) By appropriating any land already belonging to them or acquiring any land, not exceeding in either case two acres, for enlarging an existing burial ground, or for providing a new burial ground;

(b) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons as aforesaid.

(2.) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground, may provide for the appointment of a chaplain therein.

(3.) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate, shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

259. *Burial of lunatics.*—Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish; and in that case the visiting committee shall pay to the person entitled thereto the burial fees payable under any Act or according to the custom of the place of burial.

260. *Incorporation of Lands Clauses Acts.*—For the pur-

pose of the purchase of lands by visiting committees the Lands Clauses Acts are hereby incorporated with this Act, except the provisions relating to the purchase of land otherwise than by agreement, the sale of superfluous lands, the recovery of forfeitures, penalties, and costs and access to the special Act, and the expression "promoters of the undertaking" wherever used in the Lands Clauses Acts shall mean a visiting committee, and the expression "special Act" shall mean this Act.

261. Power to take land on lease.]—(1.) A visiting committee, instead of purchasing any land or buildings which they are authorised to purchase, may take a lease thereof for any term not less than sixty years at such rent and subject to such covenants as the committee think fit.

(2.) A visiting committee, with the sanction of each local authority for whom they are authorised to act, may hire or take on lease from year to year, or for any term of years, at such rent and subject to such covenants as they think fit, any land or buildings for the employment of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum is inadequate.

(3.) Lands and buildings hired or taken on lease under this section shall be deemed part of the asylum, and be subject to all existing provisions as to the asylum.

262. Situation of asylum.]—The asylum to be provided by any local authority either solely or jointly, may be situate without the limits of the administrative area of the local authority, and if the asylum or any part thereof is so situate, the council and justices of the county, county borough, or borough to which the asylum wholly or in part belongs shall have full power and authority to act in the county or borough in which the asylum is situate, so far as concerns the regulation of the asylum and the powers conferred by this Act, as if the asylum were situated within the proper jurisdiction of such council and justices.

263. Rating of asylums.]—Lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district and other rates made after the commencement of this Act on the same basis and to the same extent as other lands and buildings in the same parish, township, or district.

264. How lands to be conveyed.]—Any lands acquired for the purposes of this Act may be conveyed to the local authority

being a county council, or in cases where the local authority is the council of a borough to the municipal corporation of the borough, or, where more than one local authority is interested, to the local authorities interested as joint tenants.

265. *Power to retain land unsuitable or not required for asylum purposes.*—Any lands or buildings which have been used for the purposes of an asylum, and have been found unsuitable, or are otherwise not required for such purposes, may, with the consent of a Secretary of State, and subject to such conditions as he thinks fit to impose, be retained by the local authority, and appropriated for any purposes for which the local authority is empowered to acquire land.

266. *Repairs, alterations, improvements.*—(1.) The visiting committee of an asylum may, of their own authority, order all necessary and ordinary repairs. They may also, of their own authority, order all necessary and proper additions, alterations, and improvements which the asylum may require, to an amount not exceeding four hundred pounds in any one year.

(2.) An order for repairs, additions, alterations, or improvements to an amount exceeding one hundred pounds shall not be given, unless the order is approved and signed by at least three visitors at a meeting of the visiting committee duly summoned upon notice that the proposed expenditure is to be considered thereat.

(3.) Any expenditure incurred, except for repairs, shall be reported by the visiting committee to the local authority on whose behalf the expenditure was incurred.

(4.) In the case of a district asylum, the visiting committee shall apportion expenses incurred under this section in the proportion in which each local authority has contributed to the erection of the asylum, or where any other proportion is fixed by an agreement to unite then in the proportion so fixed; and where any such agreement only provides in what proportion the expense of repairs shall be borne, the expense of additions, alterations, and improvements shall be borne in the same proportion.

(5.) The visiting committee shall make an order for payment of the expenses incurred under this section upon the treasurer of the local authority, or, in the case of a district asylum, shall make an order upon the treasurer of each local authority concerned for payment of the expenses apportioned to that local authority, and the treasurer upon whom the order is made shall pay the amount mentioned in the order out of the county or borough fund.

Dissolution of Agreement to unite.

267. *Power to dissolve a union.*]—(1.) A visiting committee, with the consent of a Secretary of State, may by a resolution passed by a majority of the whole number of the members of the committee at a meeting summoned upon notice that the resolution is to be proposed thereat dissolve an agreement to unite.

(2.) Every local authority interested under an agreement to unite shall, before a dissolution of the agreement takes effect, elect a committee to provide asylum accommodation in accordance with the provisions of this Act.

(3.) In case an agreement to unite is dissolved between any local authority not having an asylum and a local authority which has an asylum and is in receipt of an annual fixed payment as remuneration for any expenses incurred for the benefit of the local authority making the payment, such last-mentioned local authority may raise such a sum of money for compensation to the local authority receiving the payment as may be agreed upon and approved by the visiting committee by whom the union is dissolved.

(4.) Upon the dissolution of an agreement to unite the visiting committee may divide the real and personal property held for the purposes of the agreement among the several local authorities, between whom the agreement existed, in the proportion in which they contributed thereto or are interested therein, or in such proportions as the visiting committee, with the consent of a Secretary of State, think fit. And a sum of money of such amount, and to be raised by any of the local authorities parties to the agreement in such proportions as the committee, with the consent of a Secretary of State, approve, may be awarded to any local authority instead of a share or part of a share in such property.

(5.) Any money to be raised under this section may be raised in the same manner and by the same means as other moneys appointed to be raised for the purposes of this Part of this Act.

Cancellation of Contracts.

268. *Power to cancel contract.*]—(1.) Where any lands contracted to be purchased or taken in exchange by a visiting committee are found unsuitable, or are not required, the committee, or any committee appointed in their place, may, with the consent of a Secretary of State, and upon payment of such sum, if any, as a Secretary of State approves, procure a release from the contract and execute a release to the other contracting party.

(2.) The consideration, if any, for such release, and all ex-

penses in relation to the contract and release, shall be raised in the same manner as if the same were payable in respect of the purchase-money of lands for the purposes aforesaid.

Admission of Pauper Lunatics from other Counties or Boroughs.

269. *Power to contract for reception of lunatics.*—(1.) A visiting committee (in this section called the contracting committee) may contract with the manager of a licensed house, or subject as in this section provided with any other visiting committee (in this section called the receiving committee), for the reception into that house, or into the asylum of the receiving committee, of all or any of the pauper lunatics of the local authority for which the contracting committee is acting, or for the use and occupation of the whole or any part of the house, upon such terms as may be agreed.

(2.) Where a contract between a visiting committee and the subscribers to a hospital for the reception of pauper patients into the hospital was subsisting on the twenty-sixth of August one thousand eight hundred and eighty-nine, such contract shall continue in force, and on its expiration a new contract may be entered into with such subscribers subject to the provisions of this section.

Contracts by Town Councils and Subscribers to a Hospital.—The following additional provision was made by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), viz.:—

17. Where a contract between the council of a borough and the subscribers to a hospital for the reception of pauper lunatics into the hospital was subsisting on the twenty-sixth day of August one thousand eight hundred and eighty-nine, such contract, unless determined by the parties or one of them, shall be deemed to have continued in force since that date, and may be renewed subject to the same conditions and with the same consequences as if the contract had been entered into by a visiting committee on behalf of the borough.

(3.) A contract between a visiting committee and any other visiting committee or the manager of a licensed house or the subscribers to a hospital for the reception of the lunatics of the local authority for which the contracting committee is acting (hereinafter called a reception contract) shall not be made for more than five years, but such contract may be renewed subject to the provisions of this section.

(4.) Where a reception contract has been made, whether before or after the passing of this Act, on behalf of a borough with the visiting committee of an asylum, and the contract is determinable by the parties thereto, or either of them, the contract shall not be determined without the consent of a Secretary of State.

(5.) A reception contract shall not be carried into effect until approved by a Secretary of State, and any reception contract may be determined by a Secretary of State.

(6.) A reception contract with the manager of a licensed house shall determine if the house ceases to be licensed.

(7.) A reception contract shall not exempt the local authority for which the contracting committee is acting from the requirements of this Act as regards asylum accommodation if a Secretary of State determines the contract, although the term for which the contract was entered into has not expired.

(8.) Except as in this section provided a visiting committee shall not *after the commencement of this Act* enter into a reception contract with subscribers to a hospital.

The italicised words were repealed by the S. L. R. Act, 1908.

(9.) Where a reception contract has been made by a visiting committee, the local authority for whom the visiting committee acts shall, while the contract subsists, defray out of the county or borough fund so much of the weekly charge agreed upon for each pauper lunatic as in the opinion of the visiting committee represents the sum due for the accommodation, not exceeding one-fourth of the entire weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic is chargeable.

(10.) Where a reception contract has been entered into by the visiting committee of an asylum with the subscribers to a hospital or the manager of a licensed house, the hospital or house may be visited by any members for the time being of the committee of the asylum.

270. *Cases where asylum is more than sufficient for pauper lunatics.*—(1.) Where it appears to the visiting committee of an asylum that the asylum is more than sufficient for the pauper lunatics who for the time being can be lawfully received, the committee may by resolution permit any other pauper lunatics to be received into the asylum.

(2.) A resolution under this section may require that no pauper lunatic be admitted thereunder without an undertaking by the minute of the guardians of the union to which the lunatic is chargeable for the payment of the expenses of maintenance of the lunatic, and of his burial if he dies in the asylum, as well as for his removal within six days after notice from the manager of the asylum.

(3.) A resolution under this section may be rescinded or varied.

Admission of Private Patients.

271. *Provisions as to private patients in asylums.*—
(1.) Private patients may be received into any asylum upon such terms as to payment and accommodation as the visiting committee think fit. All enactments as to the conditions on which such lunatics may be received into hospitals or licensed houses shall be applicable to private patients received into such asylums.

(2.) An account of the amount, by which the sums charged for private patients received in the asylum exceed the weekly charges for pauper lunatics sent from or settled in any place, parish, or borough which has contributed to provide the asylum, shall be made up to the last day of each year, and the surplus, if any, after carrying to the building and repair funds such sums, and providing for such outgoings and expenses as the visiting committee consider proper, shall be paid to the treasurer of the local authority to which the asylum belongs, or in the case of an asylum belonging to several local authorities, to their respective treasurers in the proportions in which such local authorities or the justices of the counties and boroughs whose powers have been transferred to them have contributed to the asylum, and shall be applied as part of the county or borough fund.

Approval of Secretary of State.

272. *Mode of obtaining approval of Secretary of State.*—
For the purpose of procuring the approval of a Secretary of State to any agreement, contract, or plan requiring approval under this Act, the agreement, contract, or plan, with an estimate of the probable cost of carrying it into effect, shall be submitted to the Commissioners, and to the Secretary of State, and the Commissioners shall make such inquiries as they think fit, and shall report thereon to the Secretary of State, who may approve the agreement, contract, or plan, with or without modification, or may refuse his approval.

Provisions for raising Expenses.

273. The expenses to be paid and contributed by a local authority for the purposes of this Act shall be paid by the treasurer of the local authority out of the county or borough fund as the case may be to the treasurer of the asylum to which such local authority either alone or jointly pays or contributes.

Borrowing Powers.

274. *Power to borrow.*—(1.) For the purpose of paying any money payable under this Act, or for repaying any moneys borrowed under this Act or any former Act, authorising borrowing for purposes of asylum accommodation, the local authority may with the consent of the Local Government Board, and subject to the provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 41), and the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), according as the same respectively are applicable to the local authority, borrow on the security of the county or borough fund, and of any revenue of the local authority, or on either such fund or revenues or on any part of the revenues, such money as the local authority requires.

(2.) The Public Works Loan Commissioners may, if they see fit, make any loan for the purposes of this Act to the local authority upon the security of any fund or revenues applicable to the purposes of this Act.

Rules and Regulations.

275. *General rules and regulations to be framed.*—(1.) The visiting committee of an asylum shall within twelve months after the completion of the asylum prepare and submit to a Secretary of State general rules for the government of the asylum, and such rules when approved by a Secretary of State shall be printed and observed.

(2.) The general rules of every asylum may be altered and varied with the approval of a Secretary of State.

(3.) The visiting committee shall also make regulations (not inconsistent with the general rules) setting forth the number and description of officers and servants and their respective duties and salaries.

(4.) The regulations may provide that any number of beds in such part of the asylum as the committee think fit shall be reserved for the cases specified in the regulations, and in that case the asylum shall for the purposes of this Act, as respects the admission of cases not within the class for which beds are reserved, be deemed full when there are no vacant beds except those so reserved, but the committee may, if they think fit, fill any reserved beds.

(5.) The regulations may also provide for the exclusion of any persons afflicted with any malady which the visiting committee deem contagious or infectious or coming from a place in which such a malady may be prevalent, and for the absence for a period not exceeding four days of a patient from the asylum by permission of the manager.

(6.) The committee shall also determine the diet of the patients.

Officers of Asylums.

276. Officers of asylum.]—(1.) The visiting committee of every asylum shall appoint:—

- (a) A chaplain, who shall be in priest's orders, and shall be licensed by the bishop of the diocese;
- (b) A medical officer, who shall reside in the asylum and shall not be the clerk or treasurer of the asylum;
- (c) A superintendent of the asylum, or, if there is more than one division, a superintendent of each division of the asylum, who shall be the resident medical officer or one of the resident medical officers of the asylum, or of the division of which he is appointed superintendent, unless a Secretary of State authorise the committee to appoint some other person than a medical officer to be superintendent;
- (d) A clerk;
- (e) A treasurer;
- (f) Such other officers and servants as they think fit.

(2.) The visiting committee may appoint a minister of any religious persuasion to attend patients of the religious persuasion to which the minister belongs.

(3.) The committee may remove any person appointed under this section, and if the office of chaplain, medical officer, superintendent, clerk, or treasurer becomes vacant, the committee shall appoint a person to fill the vacancy subject to the restrictions affecting the original appointment, and they may in their discretion fill any vacancies among other officers and servants of the asylum.

(4.) The committee may also appoint a visiting physician or surgeon to the asylum.

(5.) The salaries, wages, and remuneration of every person appointed under this section shall be fixed by the committee.

277. The chaplain.]—(1.) The licence of the chaplain of an asylum shall be revocable by the bishop.

(2.) The chaplain, or his substitute approved by the committee, shall perform in the chapel of the asylum, or in some other convenient place belonging to the asylum, divine service according to the rites of the Church of England on every Sunday, Christmas-day, and Good-Friday. He shall also perform divine service, and such other services according to the rites of the Church of England as the committee direct, at such times as they appoint.

(3.) If a patient is of a religious persuasion differing from that of the Established Church, a minister of his persuasion, at

the request of the patient or his friends, may, with the consent of the medical officer and under such regulations as he approves, visit the patient.

278. Books and accounts.]—(1.) The clerk of the asylum shall keep all books and documents which the visiting committee are required to keep or direct to be kept.

(2.) He shall also keep an account of the receipts and expenditure on account of the asylum.

(3.) Before the thirtieth day of September in each year, or such other date as the Local Government Board appoint, he shall send an abstract of the account for the previous year, ending on the thirty-first day of March, or such other date as the Local Government Board appoint, to the Local Government Board, and to the Commissioners.

(4.) The abstract shall contain such particulars and be in such form as the Local Government Board direct.

(5.) Within one month from the receipt of the abstract a copy thereof shall be laid before both Houses of Parliament, if Parliament is then sitting, and if not, within one month from the commencement of the next session.

(6.) The treasurer and every officer of an asylum who receives or expends money or goods on account of the asylum shall keep accounts of his receipts and expenditure.

(7.) This section shall not affect any order made by the Local Government Board before the commencement of this Act.

279. Accounts of county asylums.] . . .

This section was repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), and the following provision substituted therefor, viz.:—

18. The provisions of the Local Government Act, 1888, relating to the accounts of county councils and their officers, and to the audit of such accounts, shall apply to the accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof.

Pensions.

280—282. . . .

These sections were repealed by the Asylum Officers' Superannuation Act, 1909 (9 Edw. 7, c. 48), the text of which statute is printed at length p. 312, *et seq., post.*

PART X.—EXPENSES OF PAUPER LUNATICS.

Weekly Expenses.

283. Weekly sum to be fixed.]—(1.) Every visiting committee shall fix a weekly sum, not exceeding fourteen shillings, for the expenses of maintenance and other expenses of each pauper lunatic in the asylum, and of such amount that the total

of such weekly sums shall be sufficient to defray such expenses and also the salaries of the officers and attendants of the asylum, and such weekly sum may from time to time be altered.

See also sect. 12 of the Asylum Officers Superannuation Act, 1909 (9 Edw. 7, c. 48), p. 316, *post*, which provides that the total of the weekly sums shall be sufficient to pay all superannuation allowances or gratuities in addition to the above-named expenses and salaries.

(2.) If fourteen shillings a week is found insufficient for the purposes aforesaid, the local authority to whom the asylum belongs, may by order direct such addition to be made to the weekly sum as to the local authority seems necessary, and every such order shall be signed by the clerk of the local authority, and forthwith published in a local newspaper.

(3.) A committee may fix a greater weekly sum, not exceeding fourteen shillings, to be charged in respect of pauper lunatics other than those sent from or settled in a parish or place within the county or borough to which the asylum belongs.

(4.) Any excess created by the payment of such greater weekly sum may, if the visiting committee think fit, be paid over to a building and repair fund, to be applied by the committee to the altering, repairing, or improving the asylum, and the committee shall annually submit to the local authority a detailed statement of the manner in which such fund has been expended.

284. *Uniform charge where more than one asylum.*—Where there is more than one asylum under the management and control of a visiting committee, the committee may, subject to any direction given by the local authority, provide that a uniform charge shall be made for the maintenance of lunatics in the several asylums, and that for that purpose any surplus arising on the accounts of one asylum shall be applied to meet the deficit arising on the accounts of another asylum.

Medical Fees and other Expenses.

285. *Payment of medical fees and other expenses.*—(1.) Whenever a justice directs a lunatic or alleged lunatic, whether a pauper or not, to be examined by a medical practitioner under the provisions of this Act, the justice directing the examination, or any other justice having jurisdiction in the place where the examination took place, may make an order upon the guardians of the union named in the order for payment of such reasonable remuneration to the medical practitioner and of all such other reasonable expenses in and about the examination and the inquiry, whether an order for the reception of the alleged lunatic in an institution for lunatics or

workhouse ought to be made, and also if an order is made for payment of such reasonable expenses of carrying the order into effect as the justice thinks proper.

(2.) The guardians upon whom an order is made under this section may recover any sums paid thereunder against the lunatic or alleged lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

Liability for Expenses of Maintenance.

286. *Chargeability of pauper lunatic.*]—(1.) Where a pauper lunatic is sent to an institution for lunatics, or where a lunatic in an institution for lunatics becomes a pauper, he shall be deemed to be chargeable to the union from which he was sent, until it has been established, as by this Act provided, that the lunatic is settled in some other union, or that it cannot be ascertained in what union the lunatic was settled, and the manager of the institution shall forthwith give to the authority liable for his maintenance notice that the lunatic has become destitute.

Removal of Lunatic becoming a Pauper.—With reference to the subject of chargeability the following provisions of the Lunacy Act, 1891 (44 & 45 Vict. c. 65), are incorporated:—

19.—(1.) Where a lunatic in a hospital or licensed house becomes a pauper, the manager of the hospital or house may, after having given notice to the authority liable for the maintenance of the lunatic of his intention so to do, apply to a justice of the peace having jurisdiction in the place where the hospital or house is situate for an order for the removal of the lunatic, and such justice may, if he thinks fit, make an order for the removal of the lunatic to an institution for lunatics to which pauper lunatics for whose maintenance the authority is liable may legally be sent and for the reception of the lunatic therein, and such institution shall be named in the order, and the manager of the hospital or house shall forthwith cause the lunatic to be removed to the institution named in the order. In the case of such removal the original reception order shall remain in force, and shall authorise the classification of the lunatic as a pauper lunatic in the institution to which he is removed.

(2.) The costs of obtaining an order under this section and of the removal of the lunatic shall be repaid to the manager who obtains the order by the authority liable for the maintenance of the lunatic, and any justice having jurisdiction in the place where the hospital or house from which the lunatic was removed is situate shall have power to fix the amount of such costs and to order such authority to repay the same. The provisions of section three hundred and fourteen of the principal Act shall apply to every such order for the repayment of costs.

Payment of expenses as to Lunatics becoming Paupers.]—22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers.

(2.) Every pauper lunatic who is chargeable to a union shall,

while he resides in an institution for lunatics, be deemed for the purposes of his settlement to be resident in the union to which he is chargeable.

287. Orders for maintenance of lunatics.]—(1.) The justice by whom any pauper lunatic is sent to any institution for lunatics under this Act, or any two justices of the county or borough in which the institution for lunatics where any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or any two justices, being visitors of such institution, may make an order upon the guardians of the union to which the lunatic is chargeable, for payment to the treasurer, or manager of the institution, of the reasonable charges of the lodging, maintenance, medicine, clothing, and care (in this Act referred to as the expenses of maintenance) of such lunatic.

(2.) Any such order may be retrospective or prospective, or partly retrospective and partly prospective.

(3.) An order under this section shall not be subject to appeal.

288. Inquiry into settlement.]—Any two justices for the county or borough in which an institution for lunatics where a pauper lunatic is or has been confined is situate, or to which such institution being an asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, may, at any time, inquire into the settlement of the pauper lunatic.

289. Adjudication as to settlement.]—If satisfactory evidence can be obtained as to such settlement in any union, such justices shall, by order, adjudge the settlement, and order the guardians of the union to pay to the guardians of any other union the expenses incurred in or about the examination of the lunatic and the bringing him before a justice or justices, and his removal and conveyance to or from any institution for lunatics (in this Act referred to as the incidental expenses), and all moneys paid by such last-mentioned guardians to the treasurer or manager of the institution for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of such order, and, if the lunatic is still in confinement also to pay to the treasurer or manager of the institution the reasonable expenses of the future maintenance of such lunatic.

290. If settlement cannot be ascertained a pauper lunatic may be made chargeable to a borough or county.]—(1.) If a pauper lunatic is not settled in the union from which he was sent to an institution for lunatics, and his settlement cannot be ascertained, and the lunatic was sent from a quarter sessions

borough which is free from contributing to the payment of the expenses of pauper lunatics chargeable to the county in which the borough is situate, or from a place not in such a borough, then the relieving officer of the union shall give to the clerk of the local authority within whose area the lunatic is found, ten days' notice to appear before two justices having jurisdiction within such area, at a time and place to be appointed in the notice.

(2.) Upon the appearance of the clerk of the local authority, in person or by deputy, or in case of non-appearance upon proof of due service of the notice, any two or more such justices may inquire into the circumstances of the case, and adjudge the pauper lunatic to be chargeable to the local authority, and may order the treasurer of the local authority to pay to the guardians of any union the incidental expenses of the lunatic, and all moneys paid by such guardian to the treasurer or manager of the institution for lunatics for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of the order, and if the lunatic is still in confinement, to pay to such treasurer or manager the expenses of the future maintenance of the lunatic.

(3.) Such justices may direct such further inquiries as they think fit to ascertain the union in which any pauper lunatic is settled, and delay their adjudication until after such further inquiries.

(4.) Every local authority to whom a pauper lunatic is adjudged to be chargeable may at any time thereafter inquire as to the union in which the lunatic is settled, and may procure him to be adjudged to be settled in any union.

291. *Provision for reimbursement of expenses of a lunatic afterwards adjudged to be settled in a union.*—If after a pauper lunatic has been sent to an institution for lunatics, and has been adjudged chargeable to a local authority, the local authority procure the lunatic to be adjudged to be settled in a union, any two justices of the county or borough in which the institution where the lunatic is confined is situate, or from any part of which the lunatic was sent for confinement, or any two justices, being visitors of the institution, may make an order upon the guardians of the union for payment to the treasurer of the local authority of all expenses of maintenance of the lunatic paid by such treasurer to the treasurer or manager of the institution, and incurred within twelve months previous to the order, and, if the lunatic is still in confinement, also for payment to such treasurer or manager of the expenses of the future maintenance of the lunatic.

292. *Orders as to lunatic paupers.*—(1.) Justices by this Act authorised to make orders for payment of expenses upon

guardians of unions, may make such orders, although the union is not within the jurisdiction of the justices.

(2.) Orders as to the settlement or chargeability of pauper lunatics and for payment of expenses may be obtained by the guardians of any union.

293. *Order for maintenance to extend to any place where the lunatic is.*]—An order for payment of the future expenses of maintenance of a lunatic shall extend to the payment of such expenses to the treasurer or manager of any institution for lunatics to which he is removed or in which he is for the time being confined.

294. *The costs of pauper lunatics who are irremovable.*]—All incidental expenses and expenses of maintenance of a lunatic removed to an institution for lunatics who would at the time of his removal have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision of the Poor Removal Act, 1846 (9 & 10 Vict. c. 66), as amended by subsequent Acts, shall be paid by the guardians of the union wherein the lunatic has acquired such exemption, and no order shall be made in respect of such lunatic under any provision contained in this or any other Act upon the guardians of the union in which the lunatic is settled while the above-mentioned expenses are to be paid and charged as herein provided.

295. *Charges may be paid without orders of justices.*]—The guardians upon whom an order might be made under this Act for the payment of any money may pay the same without an order, and may charge the same to such account as they could have done if an order had been made.

296. *The liability of relations of pauper not to be affected.*]—The liability of any relation or person to maintain any lunatic shall not be taken away or affected, where such lunatic is sent to or confined in any institution for lunatics, by any provision herein contained concerning the maintenance of such lunatic.

297. *Expenses of removal, discharge, and burial.*]—The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the lunatic is chargeable, or the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

298. *Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act.*]—The provisions of this Act for the payment of expenses in relation to pauper

lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorising their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by a justice under this Act, or under an order made by two or more Commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent.

Application of Lunatic's Property.

299. *Power to recover expenses against lunatic's estate.*—

(1.) If it appears to any justice that a lunatic, chargeable to any union, or local authority, has any real or personal property more than sufficient to maintain his family, if any, such justice may by order direct a relieving officer of the union, or the treasurer or some other officer of the local authority, to seize so much of any money, and to seize and sell so much of any other personal property of the lunatic, and to receive so much of the rents of any land of the lunatic as the justice may think sufficient to pay the expenses of maintenance and incidental expenses respectively incurred or to be incurred in relation to the lunatic.

(2.) If any trustee, or the bank, or any other society or person having possession of any property of a lunatic, shall pay or deliver to a relieving officer of a union, or to the treasurer or other officer of the local authority to which respectively a lunatic is chargeable, any money or other property of the lunatic, to repay the charges in this section mentioned, whether pursuant to an order under this section, or without an order, the receipt of such relieving officer, treasurer, or officer shall be a good discharge.

300. *Order by county court judge.*—An order may be made by a judge of county courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the county court.

Appeals.

301. *Persons aggrieved by refusal of an order may appeal to the sessions.*—(1.) Any person aggrieved by the refusal

of an order by any justice or justices as to any matter within the jurisdiction of a justice or justices under this Part of this Act, may appeal to a Court of quarter sessions upon giving to the justice or justices against whom the appeal is made fourteen clear days' notice of appeal.

(2.) The determination of the Court upon the appeal shall be final.

302. *Party obtaining order of adjudication to send copy thereof and statement of grounds.*—The guardians of any union, and the clerk of a local authority, obtaining any order under this Act adjudging the settlement of any lunatic to be in any union, shall, within a reasonable time after the date of the order, send or deliver, by post or otherwise, to the guardians of the union in which the lunatic is adjudged to be settled, a copy of the order, and also a statement in writing under the hand of the clerk to the guardians, or under the hand of the clerk of the local authority, as the case may be, stating the description and address of the guardians or clerk obtaining the order, and the place of confinement of the lunatic, and setting forth the grounds of the adjudication, including the particulars of any settlement relied upon in support thereof; and on the hearing of any appeal against the order the respondents shall not give evidence of any other grounds in support of the order than those set forth in such statement.

303. *Appeal against order of adjudication.*—If the guardians of any union feel aggrieved by any order adjudging the settlement of a lunatic, they may appeal to the quarter sessions for the county or borough on behalf of which the order has been obtained, or in which the union obtaining the order is situate, or, in case such union extends into several counties, then to the next quarter sessions for the county or borough in which the institution for lunatics where the lunatic is or has been confined is situate, and such sessions, upon hearing the appeal, shall have full power finally to determine the matter.

304. *Copy of depositions to be furnished on application.*—(1.) The clerk to the justices making an order adjudging the settlement of a lunatic, or the clerk of the peace in the case hereinafter provided for, shall keep the depositions upon which the order was made, and shall, within seven days after application by any party authorised to appeal against the order, furnish a copy of the depositions to the applicant.

(2.) The person applying for a copy of the depositions shall pay for the same at the rate of twopence for every folio of seventy-two words.

(3.) No omission or delay in furnishing a copy of the depositions shall be a ground of appeal against the order.

(4.) On the trial of any appeal no such order shall be quashed or set aside either wholly or in part on the ground that the depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order or grounds on which the same was made.

(5.) If the justices who make any such order have no clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the quarter sessions whereof the appeal lies, and the party obtaining such order shall, in the statement of the grounds of adjudication, state that the justices have no clerk.

305. *No appeal if notice not given within a certain time.*]—No appeal shall be allowed against any such order if notice in writing of the appeal is not sent or delivered by post or otherwise to the party on whose application the order was obtained within twenty-one days after the sending or delivery, as hereinbefore directed, of a copy of the order, and such statement as hereinbefore mentioned, unless within the twenty-one days a copy of the depositions has been applied for by the party intending to appeal, in which case a further period of fourteen days after the sending of such copy shall be allowed for giving notice of appeal.

306. *Grounds of appeal to be stated.*]—In every case where notice of appeal against such order is given the appellant shall, with the notice, or fourteen days at least before the first day of the sessions at which the appeal is to be tried, send or deliver by post or otherwise to the respondent a statement in writing under his hand, or where the appellants are the guardians of a union, under the hand of the clerk to the guardians, of the grounds of such appeal; and the appellant shall not, on the hearing of any appeal, give evidence of any other grounds of appeal than those set forth in such statement.

307. *As to the sufficiency of statement of grounds of adjudication or appeal.*]—(1.) Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail, unless the Court is of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.

(2.) In all cases where the Court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, the Court may, if it thinks fit, cause any such state-

ment to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to the Court appears just.

308. *Power for Court to amend order on account of omission or mistake.*—(1.) If, upon the trial of any appeal against any such order, or upon the return to a writ of certiorari, any objection is made on account of any omission or mistake in drawing up the order, and it is shown to the satisfaction of the Court that sufficient grounds were proved before the justices making the order to authorise the drawing up thereof free from the omission or mistake, the Court may, upon such terms as to payment of costs as it thinks fit, amend the order and give judgment as if no omission or mistake had existed.

(2.) No objection on account of any omission or mistake in any such order brought up upon a return to a writ of certiorari shall be allowed, unless the omission or mistake has been specified in the rule for issuing such writ of certiorari.

309. *Power of Court as to costs.*—(1.) Upon every such appeal the Court before whom the same is brought may, if it thinks fit, order the party against whom the same is decided to pay to the other such costs and charges as may to the Court appear just, and shall certify the amount thereof.

(2.) If either of the parties to the appeal have included in the statement of grounds of adjudication or of appeal sent to the opposite party any grounds in support of the order or of appeal which, in the opinion of the Court determining the appeal, are frivolous and vexatious, such party shall be liable, at the discretion of the Court, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds.

310. *Decision upon appeal to be final.*—The decision of the Court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any Court by means of a writ of certiorari or mandamus or otherwise.

311. *Abandonment of orders.*—(1.) In any case in which an order has been made as aforesaid, and a copy thereof sent as herein required, the party who has obtained the order, whether any notice of appeal against the order has been given or not, and whether any appeal has been entered or not, may

abandon the order, by notice in writing under the hand of such party, or, where the order has been obtained by the guardians of a union, under the hand of the clerk to the guardians, to be sent by post or delivered to the appellant or the party entitled to appeal, and thereupon the order and all proceedings consequent thereon shall be void, and shall not be given in evidence, in case any other order for the same purposes is obtained.

(2.) In all cases of such abandonment the party abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of the order and of all subsequent proceedings thereon.

(3.) The proper officer of the Court before whom the appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain the costs, at any time, whether the Court is sitting or not, upon production to him of the notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the guardians, or clerk abandoning the order, as the distance between the parties shall in his judgment require; and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said Court.

312. *Guardians and officers interested to have access to the lunatic.*]—In every case of an inquiry, or appeal as to the union in which a pauper lunatic is settled, the guardians, clerks of the guardians, and relieving officers of every union interested in the inquiry or appeal, and every person duly authorised by them respectively, and the clerk of the local authority interested in the inquiry or appeal, and every person duly authorised by him, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic to examine him as to the premises.

313. *Sect. 31 of 42 & 43 Vict. c. 49 not to apply.*]—The provisions of section thirty-one of the Summary Jurisdiction Act, 1879, shall not apply to appeals under this Part of this Act.

Recovery of Expenses.

314. *Money ordered to be paid may be recovered by distress or action.*]—(1.) If the treasurer of any local authority, upon whom any order of justices for the payment of money under the provisions of this Act is made, refuses or neglects for twenty days after due notice of such order to pay the money, the money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the

treasurer so refusing or neglecting, by warrant under the hands of any two justices authorised to make the order for payment of the money, or by an action at law, or by any other proceeding in a Court of competent jurisdiction, against the treasurer.

(2.) If the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such Court.

(3.) In case of any such action or proceeding no objection shall be taken to any default or want of form in any order for reception or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication has not been appealed against, or if appealed against has been affirmed.

PART XI.—PENALTIES, MISDEMEANOURS, AND PROCEEDINGS.

315. *Lunatics not to be detained except in accordance with Act.*—(1.) Every person who, except under the provisions of this Act, receives or detains a lunatic, or alleged lunatic, in an institution for lunatics, or for payment takes charge of, receives to board or lodge, or detains a lunatic or alleged lunatic in an unlicensed house, shall be guilty of a misdemeanour, and in the latter case shall also be liable to a penalty not exceeding fifty pounds.

(2.) Except under the provisions of this Act, it shall not be lawful for any person to receive or detain two or more lunatics in any house unless the house is an institution for lunatics or workhouse.

(3.) Any person who receives or detains two or more lunatics in any house, except as aforesaid, shall be guilty of a misdemeanour.

316. *Neglect to send notices on admission a misdemeanour.*—The manager of any hospital or licensed house, and any person having charge of a single patient who omits to send to the Commissioners the prescribed documents and information upon the admission of a patient, or to make the prescribed entries, and give the prescribed notices upon the removal, discharge, or death of a patient, shall be guilty of a misdemeanour, and in the case of a single patient shall also be liable to a penalty not exceeding fifty pounds.

317. *Misstatements.*—(1.) Any person who makes a wilful misstatement of any material fact in any petition, statement of particulars, or reception order under this Act, shall be guilty of a misdemeanour.

(2.) Any person who makes a wilful misstatement of any

material fact in any medical or other certificate, or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanour.

(3.) A prosecution for a misdemeanour under this section shall not take place except by order of the Commissioners, or by the direction of the Attorney-General or the Director of Public Prosecutions.

318. *False entries.*—Any person who in any book, statement, or return, knowingly makes any false entry as to any matter as to which he is by this Act or any rules made under this Act required to make any entry, shall be guilty of a misdemeanour.

319. *Notice to coroner of death.*—If the manager of an institution for lunatics, or the person having charge of a single patient, omits to send to the coroner notice of the death of a lunatic within the prescribed time, he shall be guilty of a misdemeanour.

320. *Penalty for non-compliance with the Act and rules.*—Any person who makes default in sending to the Commissioners or any other person any return, report, extract, copy, statement, notice, plan, or document, or any information within his knowledge or obtainable by him, when required so to do under this Act or any other Act relating to lunacy, or any rules made under this Act or in complying with the said Acts or rules, shall for each day or part of a day during which the default continues be liable to a penalty not exceeding ten pounds, unless a penalty is expressly imposed by this or any other Act for such default: Provided that all or any part of the cumulative penalties may be remitted by the Court in any case in which it is made to appear to the satisfaction of the Court that the original default or its continuance during any period of time arose from mere accident or oversight, and not from wilful or culpable neglect on the part of the person sued.

321. *Obstruction.*—(1.) Any person who obstructs any Commissioner or Chancery or other visitor in the exercise of the powers conferred by this or any other Act, shall for each offence be liable to a penalty not exceeding fifty pounds, and shall also be guilty of a misdemeanour.

(2.) Any person who wilfully obstructs any other person authorised under this Act by an order in writing under the hand of the Lord Chancellor or a Secretary of State to visit and examine any lunatic or supposed lunatic, or to inspect or inquire into the state of any institution for lunatics, gaol, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person autho-

rised under this Act by any order of the Commissioners to make any visit and examination or inquiry in the execution of such order, shall (without prejudice to any proceedings, and in addition to any punishment to which such person obstructing the execution of such order would otherwise be subject) be liable for every such offence to a penalty not exceeding twenty pounds.

322. *Illtreatment.*—If any manager, officer, nurse, attendant, servant, or other person employed in an institution for lunatics or any person having charge of a lunatic, whether by reason of any contract, or of any tie of relationship, or marriage, or otherwise, illtreats or wilfully neglects a patient, he shall be guilty of a misdemeanour, and, on conviction on indictment, shall be liable to fine or imprisonment, or to both fine and imprisonment at the discretion of the Court, or be liable on summary conviction for every offence to a penalty not exceeding twenty pounds nor less than two pounds.

323. *Penalties for permitting escape and for rescue.*—If any manager, officer, or servant of an institution for lunatics wilfully permits, or assists, or connives at the escape or attempted escape of a patient, or secretes a patient, he shall for every offence be liable to a penalty not exceeding twenty pounds nor less than two pounds.

324. *Abuse of female lunatic.*—If any manager, officer, nurse, attendant, or other person employed in any institution for lunatics (including an asylum for criminal lunatics), or workhouse, or any person having the care or charge of any single patient, or any attendant of any single patient, carnally knows or attempts to have carnal knowledge of any female under care or treatment as a lunatic in the institution, or workhouse, or as a single patient, he shall be guilty of a misdemeanour, and, on conviction on indictment, shall be liable to be imprisoned with or without hard labour for any term not exceeding two years; and no consent or alleged consent of such female thereto shall be any defence to an indictment or prosecution for such offence.

325. *By whom proceedings to be taken.*—(1.) Except as by this Act otherwise provided, proceedings against any person for offences against this Act may be taken—

- (a) By the secretary of the Commissioners upon their order for any offence;
 - (b) By the clerk of the visitors of any licensed house for an offence committed within their jurisdiction;
 - (c) By the clerk of the visiting committee of an asylum for any offence by any person employed therein;
- and such proceedings shall not abate by the death or removal

of the prosecuting secretary or clerk, but the same may be continued by his successor, and in any such proceedings the prosecuting secretary or clerk shall be competent to be a witness.

(2.) Except as by this Act otherwise provided, it shall not be lawful to take such proceedings except by order of the Commissioners, or of visitors having jurisdiction in the place where the offence was committed, or with the consent of the Attorney-General or Solicitor-General.

326. Recovery and application of penalties.]—All penalties enforceable under this Act shall be recovered summarily according to the provisions of the Summary Jurisdiction Acts, and shall be paid—

- (a) When recovered by the secretary of the Commissioners, to such secretary;
- (b) When recovered by the clerk of the visitors of a licensed house, to the clerk of the peace for the county or borough, to be applied in the same way as money received for licences granted by the justices of the county or borough;
- (c) When recovered by a clerk of the visiting committee of an asylum, to the treasurer of the asylum for the purposes thereof;
- (d) In all other cases to the treasurer of the county or borough for which the convicting justices acted.

327. Appeals.]—Any person aggrieved by an order of justices under this Act, other than orders adjudicating as to the settlement of a lunatic pauper and providing for his maintenance, may appeal to a Court of quarter sessions, subject to the conditions and regulations of the Summary Jurisdiction Acts.

328. Secretary of State may direct prosecution.]—A Secretary of State on the report of the Commissioners or visitors of any institution for lunatics may direct the Attorney-General to prosecute on the part of the Crown any person alleged to have committed a misdemeanour under this Act.

329. Evidence upon prosecution.]—(1.) Where any person is proceeded against under this Act on a charge of omitting to transmit or send any copy, list, notice, statement, report or other document required to be transmitted or sent by such person, the burden of proof that the same was transmitted or sent within the time required shall lie upon such person; but if he proves by the testimony of one witness upon oath that the copy, list, notice, statement, report or document in respect of which the proceeding is taken was properly addressed and put into the post in due time, or (in case of documents required to

be sent to the Commissioners or a clerk of the peace or a clerk to guardians) left at the office of the Commissioners or of the clerk of the peace or clerk to guardians, such proof shall be a bar to all further proceedings in respect of such charge.

(2.) In proceedings under this Act, where a question arises whether a house is or is not a licensed house or registered as a hospital, it shall be presumed not to be so licensed or registered unless the licence or certificate of registration is produced, or sufficient evidence is given that a licence or certificate is in force.

330. *Protection of persons putting the Act in force.]—*

(1.) A person who before the passing of this Act has signed or carried out or done any act with a view to sign or carry out an order purporting to be a reception order, or a medical certificate that a person is of unsound mind, and a person who after the passing of this Act presents a petition for any such order, or signs or carries out or does any act with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act, or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care.

(2.) If any proceedings are taken against any person for signing or carrying out or doing any act with a view to sign or carry out any such order, report, or certificate, or presenting any such petition as in the preceding sub-section mentioned, or doing anything in pursuance of this Act, such proceedings may, upon summary application to the High Court or a judge thereof, be stayed upon such terms as to costs and otherwise as the Court or judge may think fit, if the Court or judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

331. *Actions by persons detained as lunatics.] . . .*

This section has been repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), which enacts as follows:—

1. Where . . . any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution, or intended execution, of any Act of Parliament or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:—

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage within six months next after the ceasing thereof.

(b) Wherever in any such action a judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client.

(c) Where the proceeding is an action for damages, tender of amends

before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs to be taxed as between solicitor and client as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(d) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any Department of the Government against any local authority or officer of a local authority.

332. *Commissioners and visitors may summon witnesses.*]—

(1.) The Commissioners, or any two of them, and also the visitors of any licensed house, or any two of them, may, as they see occasion, require, by summons, under the common seal of the commission, if by the Commissioners, and if by two only of the Commissioners or by two visitors, then under the hands and seals of such two Commissioners or two visitors, as the case may be, any person to appear before them to testify on oath touching any matters respecting which such Commissioners and visitors respectively are by this Act authorised to inquire (which oath such Commissioners or visitors are hereby empowered to administer).

(2.) Every person who does not appear pursuant to the summons, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, on being convicted thereof before a Court of summary jurisdiction, for every such neglect or refusal be liable to a penalty not exceeding fifty pounds.

(3.) Any two or more Commissioners or visitors may, if they think fit, examine on oath any person appearing before them as a witness, without having been summoned.

(4.) Any Commissioners or visitors who summon a person to appear and give evidence, may direct the secretary of the Commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance, the same to be considered as expenses incurred in the execution of this Act, and to be taken into account and paid accordingly.

PART XII.—MISCELLANEOUS PROVISIONS, DEFINITIONS, REPEAL.

333. *Indemnity to bank and others.*]—This Act, and every order purporting to be made under this Act, shall be a full indemnity and discharge to the bank and every other company and society and their respective officers and servants, and all

other persons respectively, for all acts and things done or permitted to be done pursuant thereto, or pursuant to the rules under this Act, so far as relates to any property in which a lunatic is interested either in his own right, or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same.

334. *Meaning of word "commission" in other Acts extended.*]—Where in any Act of Parliament, order or rule of Court, or instrument, reference is made to a commission of lunacy, or the inquisition thereon, the general commission and the inquisition, or certificate operating as an inquisition, and the issue and verdict thereon respectively in this Act mentioned, shall be deemed to be included in the reference.

335. *Pension of lunatic payable by public department.*]—When any sum in respect of pay, pension, superannuation, or other allowance, or annuity under the control or management of any public department, is payable to any person, in respect either of service as a civil servant or of military or naval service or of provision for a widow or child of a person employed in civil, military, or naval service, and the person to whom the sum is payable is certified by a justice or minister of religion, and by a medical practitioner, to be unable by reason of mental disability to manage his or her affairs, the public department may pay so much of the said sum as the department may think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part thereof, as the department may think fit, for or towards the maintenance and benefit of the wife or husband and relatives of the disabled person, and the department shall be discharged from all liability in respect of any sums so paid.

336. *Reception orders before Act.*]—In the case of orders made before the commencement of this Act for the reception of private patients, the person who signed the reception order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who before the commencement of this Act has signed an order for the reception of a private patient, as if the order had been made after the commencement of this Act upon a petition presented by him.

337. *Power to amalgamate the lunacy departments.*]—
(1.) The Lord Chancellor may, if it seems expedient to him so to do, by order under his hand, amalgamate the office of the

Masters and their staff, and the office of the Chancery Visitors and their staff, and may amalgamate such offices, or either of them, with the office of the Commissioners, and may give such directions as he may think fit for the reconstitution of the Commissioners, and for the exercise and performance of the powers and duties of the Commissioners, and of the officers and staff amalgamated respectively under any order under this section.

(2.) In the event of any such amalgamation, the Lord Chancellor may, with the concurrence of the Treasury, fix the qualifications and salaries of the members of the amalgamated office and of the staff attached thereto, and may, with such concurrence, increase or diminish the number of such members and staff.

(3.) An order under this section shall not be made so as to prejudice the rights of the Masters, visitors, and Commissioners respectively holding office at the passing of this Act.

(4.) The Lord Chancellor may by order direct that such proportion as he may consider reasonable of the expenses incurred in carrying any such amalgamation into effect, including the cost of providing office accommodation, shall be paid out of the percentage charged on the incomes of lunatics.

338. Power to make rules.]—(1.) It shall be lawful for the Commissioners, with the approval of the Lord Chancellor, by rules, to prescribe the books to be kept in institutions for lunatics and houses for single patients, and the entries to be made therein, and the returns, reports, extracts, copies, statements, notices, plans, documents, and information to be sent to the Commissioners or any authority or person, and the persons by whom, the times within which, and the manner in which, such entries, returns, reports, extracts, copies, statements, notices, plans, documents, and information are to be made and sent; and also by rules to prescribe forms for the purposes aforesaid in addition to or in substitution for any forms now in use.

(2.) Subject to the preceding sub-section, the Lord Chancellor may make rules *in lunacy* for carrying this or any other Act relating to lunacy into effect, and also for regulating costs in relation thereto.

The italicised words were repealed by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), and the following provision was incorporated, viz.:—

27.—(2.) The power to make rules under section three hundred and thirty-eight, sub-section (2), of the principal Act shall extend to all applications under the principal Act and this Act, and also to applications in the Chancery Division of the High Court in cases where such applications are also made under the principal Act.

(3.) Where by any Act already passed or hereafter to be

passed any application in lunacy is directed or authorised to be made by petition, or in any other specified manner, the Lord Chancellor may by rule direct in what manner the application is to be made.

(4.) The Lord Chancellor and a Secretary of State respectively may by rules provide for preventing interference or delay in the exercise of the ordinary jurisdiction of the judges of county courts and magistrates respectively by the transfer of petitions and notices or otherwise as such rules may direct.

(5.) Subject to any rules made under this section, the existing rules shall, so far as applicable, continue in force.

(6.) All rules made under the provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(7.) A rule under the provisions of this section shall not come into operation until the expiration of one month after the same has been made and issued.

This sub-section was repealed by sect. 1 (3) of Rules Publication Act (56 & 57 Vict. c. 66).

339. Forms.]—Subject to rules made under this Act, the forms in the Second Schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient.

NOTE.—It has not been considered necessary to print these forms.

340. Savings as to criminal lunatics, &c.]—(1.) Save as in this Act otherwise expressly provided this Act shall not extend to criminal lunatics.

(2.) This Act shall not affect the provisions of the Idiots Act, 1886 (49 & 50 Vict. c. 25).

341. Definitions.]—In this Act, if not inconsistent with the context—

“Asylum” means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs:

“The Bank” means the Governor and Company of the Bank of England:

“Clerk,” in relation to a local authority, means, where the local authority is a county council, the clerk of the council, and where the local authority is a borough council, the town clerk of the borough:

“Commissioners” means the Commissioners in Lunacy:

“Contingent right,” as applied to lands, includes a con-

tingent and executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

“Convey” and “conveyance” include the performance of all formalities required to the validity of conveyances by married women and tenants in tail under the “Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance” (3 & 4 Will. 4, c. 74), and also surrenders and other acts which a tenant of copyhold lands can perform preparatory to or in aid of a complete assurance of such copyhold lands:

“County,” for the purpose of the powers exercisable by justices of a county, does not include a county of a city or county of a town (except the City of London), but includes any county, riding, division, part or liberty of a county having a separate Court of quarter sessions:

“County borough” has the same meaning as in the Local Government Act, 1888 (51 & 52 Vict. c. 41):

“Criminal lunatic” has the same meaning as in the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64):

“District asylum” means an asylum provided by two or more counties in union, or by any county or counties in union with any borough or boroughs:

“Dividends” includes interest and other annual produce:

“Guardians” means guardians appointed under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and the Acts amending the same, and includes guardians or other body of persons performing under any local Act the like functions as guardians under the Poor Law Amendment Act, 1834:

“Hospital” means any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients:

“Inquisition” includes an order, certificate, or verdict operating as an inquisition:

“Institution for lunatics” means an asylum, hospital, or licensed house:

“Justice” means a justice of the peace:

“Land” includes an undivided share of land:

“Lease” includes underlease:

“Lunatic” means an idiot or person of unsound mind:

- “Magistrate” means a stipendiary magistrate and any magistrate appointed to act at any of the police courts of the metropolis:
- “Manager” in relation to an institution for lunatics means the superintendent of an asylum, the resident medical officer or superintendent of a hospital, and the resident licensee of a licensed house:
- “Masters” means the Masters in Lunacy:
- “Medical officer” means, in the case of an asylum, the medical superintendent, or if the superintendent is not a medical practitioner the resident medical officer of the asylum, in the case of a hospital the superintendent, and in the case of a licensed house the resident medical practitioner, or if none the medical practitioner who visits the house as the medical attendant thereof:
- “Medical practitioner” means a medical practitioner duly registered under the Medical Act, 1858 (21 & 22 Vict. c. 90), and the Acts amending the same, and the Medical Act, 1886 (49 & 50 Vict. c. 48):
- “Mortgage” includes every estate, interest, or property in real or personal estate, which is a security for money or money’s worth:
- “Next of kin” includes heir at law, and the persons entitled under the statutes for the distribution of the estates of intestates:
- “Pauper” means a person wholly or partly chargeable to a union, county, or borough:
- “Paymaster-General” includes the Assistant Paymaster-General for Supreme Court business:
- “Prescribed” means prescribed by this Act or by any rules under this Act:
- “Private patient” means a patient who is not a pauper:
- “Property” includes real and personal property, whether in possession, reversion, remainder, contingency, or expectancy, and any estate or interest, and any undivided share therein:
- “Public department” means the Treasury, the Admiralty, and a Secretary of State, and any other public department of the Government:
- “Quarter sessions” includes general sessions:
- “Quarter sessions borough” means a borough having a separate Court of quarter sessions:
- “Reception order” means an order or authority made or given before or after the commencement of this Act for the reception of a lunatic, whether a pauper or not, in an institution for lunatics or as a single patient, and includes an urgency order:
- “Relative” means a lineal ancestor or lineal descendant, or

a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother:

“Stock” includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer, accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104):

“Transfer” includes assignment, payment, and other disposition, and the execution, and performance, of every assurance and act to complete a transfer:

“Trust” and “trustee” include implied and constructive trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage:

“Union” means any parish or union of parishes for which there is a separate board of guardians:

“Visiting committee” means a committee of visitors of an asylum appointed under this Act:

“Workhouse” includes an asylum provided for reception and relief of the insane under the Metropolitan Poor Act, 1867 (30 Vict. c. 6), and the managers of every such asylum shall exercise the powers and perform the duties by this Act conferred and imposed upon the guardians of the union to which a workhouse belongs.

Definition of “Seised” and “Possessed.”—These terms were defined by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), as follows:—

28. In the principal Act, the word “seised” shall include any vested estate for life or of a greater description, and shall extend to estates at law and in equity in possession or in futurity in any lands; and the word “possessed” shall include any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands.

342. Repeal.—*The Acts mentioned in the Fifth Schedule are hereby repealed to the extent set forth in the third column of the same schedule.*

Provided that this repeal shall not affect any jurisdiction or practice established, confirmed, or transferred, or salary or compensation or superannuation secured, by or under any enactment repealed by this Act.

The words above italicised were repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

THIRD SCHEDULE. Sect. 208.

PLACES WITHIN IMMEDIATE JURISDICTION OF COMMISSIONERS.

The cities of London and Westminster, the counties of London and Middlesex, and the following parishes and places; (that is to say,) Barnes, Kew Green, Mortlake, Merton, Mitcham, and Wimbledon, in the county of Surrey; Southend, in the county of Kent; and East Ham, Leyton, Leytonstone, Low Leyton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and also every other place, if any, within the distance of seven miles from any part of the cities of London or Westminster, or of the borough of Southwark.

FOURTH SCHEDULE. Sect. 240.

BOROUGHES THE COUNCILS OF WHICH ARE LOCAL AUTHORITIES UNDER THIS ACT.

| | |
|--------------------|-----------------------|
| Barnstaple. | † <i>Maidstone.</i> |
| Bedford. | †Newark. |
| †Berwick-on-Tweed. | Newbury. |
| †Bridgwater. | Newcastle-under-Lyme. |
| Bury St. Edmunds. | †New Sarum. |
| Cambridge. | New Windsor. |
| Colchester. | †Penzance. |
| Doncaster. | †Poole. |
| † <i>Dover.</i> | †Rochester. |
| Grantham. | †Scarborough. |
| Gravesend. | Shrewsbury. |
| Guildford. | Tiverton. |
| Hereford. | Warwick. |
| King's Lynn. | Wenlock. |
| London (City of). | †Winchester. |

The places marked with a † have ceased to be local authorities under the provisions in sect. 246 of the Lunacy Act, 1890.

The references to Dover and Maidstone were repealed as from the commencement of the Lunacy Act, 1890, by the Lunacy Act, 1891.

The City of London is a "county" within the meaning of that word as used in the Lunacy Act, 1890: *see* sect. 341.

ASYLUMS OFFICERS' SUPERANNUATION ACT,
1909.*

(9 EDW. 7, c. 48.)

An Act to provide for Superannuation Allowances to Officers and Servants employed in Public Asylums for the Insane in Great Britain and Ireland; and to make other relative provisions. [3rd December, 1909.

SUPERANNUATION.

1. *Division of officers and servants into classes.*—(1.) For the purposes of this Act the established officers and servants employed in asylums shall be divided into two classes. The first class shall consist of all those established officers and servants who have the care or charge of the patients in the usual course of their employment. The second class shall include all other established officers and servants.

(2.) The division of established officers and servants into classes shall be made by the visiting committee of each asylum, with the consent of the local authority, and the visiting committee shall affix in a conspicuous place in the asylum a notice with respect to such division into classes.

2. *Title of officers, servants, &c., to superannuation allowances, and scale thereof.*—Subject to the provisions of this Act—

(1.) Any established officer or servant of the first class who has been in the service of an asylum for not less than twenty years, and is not less than fifty-five years old, or who is permanently incapacitated for asylum duties after ten years' service by injury or illness, mental or bodily, medically certified and not attributable to his own misconduct, shall be entitled, on resigning or otherwise ceasing to hold office or employment, to receive during life or incapacity a superannuation allowance, the annual amount of which shall be computed at the rate of one fiftieth of his salary or wages and emoluments for each completed year of service:

(2.) Any established officer or servant of the second class who has been in the service of an asylum for not less than twenty years and is not less than sixty years old, or who is permanently incapacitated for asylum duties after ten years' service by injury or illness, mental or bodily, medically certified and not attri-

* See sect. 45 of the Mental Deficiency Act, 1913, p. 138, *ante*, as to the application of this Act to officers of certified institutions provided by local authorities.

butable to his own misconduct, shall be entitled, on resigning or otherwise ceasing to hold office or employment, to receive during life a superannuation allowance the annual amount of which shall be computed at the rate of one sixtieth of his salary or wages and emoluments for each completed year of service:

- (3.) The visiting committee of any asylum may, in computing the amount of superannuation allowance to any established officer or servant, take into account any peculiar professional qualifications or services or special circumstances entitling to consideration and, with the consent of a Secretary of State, add a number of years not exceeding ten to the number of years which the officer or servant has actually served in the aggregate:
- (4.) Where an established officer or servant of an asylum is injured—
- (a) in the actual discharge of his duty; and
 - (b) without his own default; and
 - (c) by some injury specifically attributable to the nature of his duty;
- and is permanently incapacitated for asylum duties as the result of such injury, the visiting committee of such asylum may grant to him such gratuity or special superannuation allowance as they may consider reasonable:

Provided that a superannuation allowance shall not in any case exceed two-thirds of the salary or wages and emoluments of the superannuated person, and a gratuity granted under this section shall not exceed one year's salary or wages and emoluments of the person to whom it is granted.

3. Duty of visiting committee in cases where superannuation allowances are granted on ground of incapacity.]—(1.) Where an established officer or servant is entitled to receive, or is granted a superannuation allowance, on the ground of incapacity for the performance of his duty, the visiting committee of the asylum shall, yearly or otherwise, until the power under this Act of requiring such officer or servant to serve again ceases, satisfy themselves that the incapacity continues, and, unless they resolve that such evidence is unnecessary, shall satisfy themselves by the evidence of a legally qualified medical practitioner selected by the visiting committee.

(2.) In the event of the incapacity ceasing before the time at which the officer or servant would if he had continued to serve have been entitled without a medical certificate to retire and receive a superannuation allowance for life, the visiting committee of the asylum may cancel his superannuation allowance and require him to serve again in the asylum at a rate of pay

and emoluments (if any) not less than the rate which he received before his retirement.

(3.) Where an established officer or servant so serves again, the provisions of this Act as to retirement and superannuation allowances, gratuities, and contributions shall apply as if he had not previously retired, save that the time which elapsed between his former retirement and the commencement of his service again shall not be reckoned as service.

4. *Power to grant gratuities to dependants in case of death of officer or servant.*]—It shall be competent for the visiting committee with the consent of the local authority to grant at their discretion, and on such terms as they think fit—

- (a) In the case of an established officer or servant dying while in the service of the asylum who, if he had retired at the time of his death, would have been entitled to a superannuation allowance, a gratuity to his widow or children; and
- (b) In the case of an established officer or servant dying (whilst in the service of the asylum) to whom, if he had survived, a special superannuation allowance might have been granted, an annual allowance or a gratuity to his widow or children:

Provided that a gratuity granted under this section shall not exceed his total contributions, or one year's salary or wages and emoluments, whichever is the larger amount, and that an annual allowance granted under this clause shall not exceed two-thirds of his salary or wages and emoluments.

5. *Forfeiture for fraud, &c.*]—An established officer or servant who is dismissed or resigns or otherwise ceases to hold office in consequence of any offence of a fraudulent character or of grave misconduct, shall forfeit all claim to any superannuation allowance under this Act in respect of his previous service, provided that the visiting committee of the asylum in which he was last employed may in special cases, if they see fit, return a sum equal to the amount of all or part of his aggregate contributions under this Act.

6. *Reckoning service.*]—Subject as herein-after provided all services by an established officer or servant in an asylum shall be aggregated and reckoned for the purposes of this Act, whether the services have been continuous or not, and whether they have been rendered at one or more asylums: Provided that, where an officer or servant of an asylum has removed to another asylum, not being an asylum provided by the same local authority, his services in the first asylum shall not be so aggregated and reckoned unless they amount to at least two years' service, and, in the case of an officer or servant who has

removed to another asylum after the commencement of this Act, unless he has removed with the written sanction of the visiting committee of the asylum from which he removed.

7. *Case of subsequent appointment.*]—If an established officer or servant, in receipt of superannuation allowance under this Act, is appointed to any office or employment by any authority to which this Act applies, or to an office or employment remunerated out of money provided by Parliament, or out of a county or borough rate or fund, or out of any parochial, district, or other rate, he shall not, while holding that office or employment, receive more of the superannuation allowance than, together with the remuneration of that office or employment, is equal to the remuneration of the office or employment in respect of which the superannuation allowance was awarded.

Any such person on ceasing to hold such office or employment shall be entitled to revert to and receive the full amount of his original superannuation allowance from the visiting committee which granted it.

CONTRIBUTION.

8. *Obligation of officers and servants to contribute.*]—Subject to the provisions of this Act, every established officer and servant employed in an asylum shall contribute annually, for the purpose of this Act, a percentage amount of his salary or wages and emoluments, according to the scale laid down in this Act, such amount to be from time to time deducted from the salary or wages payable to him and to be carried to and to form part of the fund from which the superannuation allowances are to be paid.

9. *Scale of contributions.*]—The percentage amounts to be deducted annually for the purposes of this Act shall be as follows (that is to say):—

In the case of officers and servants with less than five years' service at the passing of this Act, two per cent. of the salary or wages and emoluments for each year;

In the case of officers and servants with more than five and less than fifteen years' service at the passing of this Act, two and a half per cent. of the salary or wages and emoluments for each year;

In the case of officers and servants with more than fifteen years' service at the passing of this Act, or appointed after the passing of this Act, three per cent. of the salary or wages and emoluments for each year.

10. *Return of contributions in certain cases.*]—(1.) An established officer or servant who has not become entitled to a superannuation allowance, and who loses his office or employ-

ment by reason of reduction of staff, or of any other cause whatever other than his own misconduct or voluntary resignation, shall be entitled to receive the aggregate amount of his contributions under this Act.

(2.) The visiting committee of an asylum may, if they think fit, repay to any female officer or servant leaving to be married after not less than three years' service, the amount of her contributions under this Act, provided that within three months after leaving she produces to the visiting committee her marriage certificate.

(3.) If an officer or servant who has received his contributions under this section subsequently obtains a fresh office or employment in an asylum, he shall not be entitled to reckon his service before obtaining such fresh office or employment towards a superannuation allowance under this Act, unless, upon obtaining such fresh office or employment, he repays the amount so received to the visiting committee from whom he received it.

MISCELLANEOUS.

11. Provision for retiring officers and servants in certain cases.]—When an established officer or servant of the first class has attained the age of fifty-five, or an established officer or servant of the second class has attained the age of sixty, and the visiting committee of the asylum in which he is employed are of opinion that his retirement would be expedient in the interests of the service, it shall be competent for them to require him to retire upon payment to him of the superannuation allowance to which he may be entitled under this Act:

Provided that nothing in this section shall prejudice the existing right of any visiting committee to dismiss any officer or servant employed in an asylum, or to reduce him to a lower rate of pay, or shall prevent his claim to superannuation allowance from being refused in any case where under this Act a claim to superannuation allowance is forfeited.

12. Payment of allowances and gratuities.]—Every superannuation allowance or gratuity under this Act shall be paid by the visiting committee of the asylum in which the officer or servant to whom, or to whose widow or children, the superannuation allowance or gratuity is payable was employed at the time of his superannuation or death, and shall be paid out of the fund out of which the salary or wages and emoluments of the officer or servant is or has been paid, and the weekly sum fixed by the visiting committee under sect. 283 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5), shall be of such amount that the total of such weekly sums shall be sufficient to pay all such superannuation allowances or gratuities in addition to the

expenses of maintenance and salaries payable out of such sums under that section:

Provided that, where an established officer or servant of an asylum has removed to some other asylum under such circumstances as entitle him to aggregate his services in such first mentioned asylum with his services in such last mentioned asylum and in due course becomes entitled to and is awarded a superannuation allowance, the visiting committee in whose service he then is shall be entitled to call upon the other visiting committee or committees with whom he shall have served, and they shall contribute a proportionate part of the superannuation allowance to such officer or servant reckoned according to the service and pay of such officer or servant during his service in such asylum, and the said proportionate part shall be settled by agreement between the visiting committees, or in default of agreement, by the Secretary of State.

13. *Saving of liabilities in respect of contributions to allowances.*]—Where, by virtue of any award made under sect. 62 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), or sect. 244 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5), any liability is imposed on any county council or the council of any county borough to contribute to any superannuation allowances granted to any officer or servant of an asylum, such liability shall, unless and until otherwise provided by subsequent award, agreement, or otherwise, continue in the same manner and to the same extent as if this Act had not been passed: Provided that any sums payable under any such award in respect of superannuation allowances granted under this Act shall be paid to the visiting committee of any such asylum in lieu of the county council or the council of any county borough to whom the same would otherwise be payable.

14. *Assignment.*]—The following provisions shall have effect with respect to every superannuation allowance, allowance, and gratuity (in this section referred to as a "grant") payable by the visiting committee of an asylum to any person (in this section referred to as the "pensioner"):

- (1.) Every assignment of and charge on a grant, and every agreement to assign or charge a grant, shall, except so far as made for the benefit of the family of the pensioner, be void, and on the bankruptcy of the pensioner the grant shall not pass to any trustee or other person acting on behalf of the creditors:
- (2.) Where any parochial relief is given to a pensioner or to anyone whom he is liable to maintain, the visiting committee of an asylum may pay the whole or any part of the grant to the guardians or other authority giving the relief, and the same, when so paid, may

be applied in repayment of any sums expended in such relief, and, subject thereto, shall be paid or applied by the guardians or other authority to or for the benefit of the pensioner:

- (3.) If the pensioner neglects to maintain any person whom he is liable to maintain, the visiting committee of an asylum may in their discretion pay or apply the whole or any part of the grant to or for the benefit of that person:
- (4.) If the pensioner appears to the visiting committee of an asylum to be insane or otherwise incapacitated to act, the visiting committee of the asylum may pay so much of the grant as the visiting committee of the asylum think fit to the institution or person having the care of the pensioner, and may pay the surplus (if any) or such part thereof as the visiting committee think fit for or towards the maintenance and benefit of the wife or relatives of the pensioner:
- (5.) On the death of a pensioner to whom a sum not exceeding one hundred pounds is due on account of a grant, then, if the visiting committee of the asylum so direct, probate or other proof of the title of the personal representative of the deceased may be dispensed with, and the sum may be paid or distributed to or among the persons appearing to the visiting committee of the asylum to be beneficially entitled to the personal estate of the deceased pensioner, or to or among any one or more of those persons, or, in case of the illegitimacy of the deceased pensioner, to or among such persons as the visiting committee of the asylum may think fit, and the visiting committee of the asylum, and any officer of the visiting committee making the payment, shall be discharged from all liability in respect of any such payment or distribution:
- (6.) Any sum payable to a minor on account of a grant may be paid either to the minor or to such person and on such conditions for the benefit of the minor as to the visiting committee of the asylum seems expedient:
- (7.) Where a payment is made to any person by the visiting committee of an asylum in pursuance of this section, the receipt of that person shall be a good discharge for the sum so paid:
- (8.) The visiting committee of an asylum may, with the consent of the Secretary of State, make rules with respect to declarations to be taken for any purpose relating to grants payable by them, and, while any such rules so made are in force, a person shall not be entitled to receive any sums in respect of a grant

payable by such visiting committee until any declaration required by those rules has been made. Any person who makes a wilful misstatement of material fact in any such declaration shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour not exceeding three calendar months.

15. *Appeal in cases of dispute.*]—In the case of any dispute as to the right to superannuation allowance of any officer or servant of an asylum, or as to the amount of the superannuation allowance to which any such officer or servant is entitled, such dispute shall be determined by the Secretary of State, whose decision shall be final.

16. *Salary or wages and "emoluments."*]—The salary or wages and emoluments of an established officer or servant shall, for the purpose of computing the amount of a superannuation allowance or gratuity, be calculated according to the average amount of his salary or wages and emoluments during the ten years ending on the quarter day which immediately precedes the day on which he ceases to hold his office or employment, or, in the case of an officer or servant with less than ten years' service, on the average amount during his whole period of service; and the expression "emoluments" includes all fees, poundage and other payments made to any established officer or servant as such for his own use, and also the money value of any apartments, rations, or other allowances in kind appertaining to his office or employment.

The annual money value of all such fees, poundage and other payments, apartments, rations, or other allowances in kind shall be set out in a schedule to be prepared by the visiting committee of every asylum and affixed in a conspicuous place in the asylum.

17. *Interpretation.*]—(1.) In this Act, if not inconsistent with the context,—

"Asylum" means (1) an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs; (2) a Metropolitan Asylums Board asylum for imbeciles;

"Established officer or servant" means such officer or servant employed in a permanent capacity as has the care or charge of the patients or whom the visiting committee of an asylum shall by resolution determine to be an established officer or servant;

"Local authority" means the local authority by which an asylum is provided, or, in the case of an asylum provided by two or more local authorities, those local authorities,

and, in the case of an asylum provided by the Lancashire Asylums Board, that Board.

(2.) In the case of an asylum provided or maintained by the Lancashire Asylums Board, for references in this Act to the visiting committee of an asylum there shall be substituted references to that Board, or a visiting committee appointed by that Board, as the case may be.

(3.) In the case of an asylum for imbeciles provided or maintained by the Metropolitan Asylums Board, for references in this Act to the visiting committee of an asylum there shall be substituted references to the board of managers of the Metropolitan Asylums District, and for references to the Secretary of State there shall be substituted references to the Local Government Board.

18. *Application to Scotland.*] . . .

19. *Application to Ireland.*] . . .

20. *Repeals.*]—(1.) The enactments specified in the schedule to this Act are hereby repealed to the extent specified in the third column thereof, subject to this qualification, that this repeal shall not affect the payment of any superannuation allowance granted before the commencement of this Act.

Any established officer or servant employed in an asylum at the date of the commencement of this Act may, at any time within three months after the commencement of this Act, signify in writing to the visiting committee of the asylum his intention not to avail himself of the provisions of this Act, and in that event it shall not be obligatory on him, notwithstanding anything in this Act contained, to make any contribution, or submit to any deduction from his salary or wages, under this Act, nor shall he be entitled to receive any superannuation allowance, gratuity, or other benefit under this Act; but any such established officer or servant of an asylum who has given such notice as aforesaid shall remain subject to the provisions of the enactments repealed by this Act or, in the case of an officer or servant of the Metropolitan Asylums Board to the Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), with respect to the superannuation allowances of officers and servants in asylums as if this Act had not been passed. After the expiration of three months from the commencement of this Act, the Poor Law Officers' Superannuation Act, 1896, shall cease to apply to any established officer or servant employed in an asylum who has not, in the manner provided by this section, signified his intention not to avail himself of the provisions of this Act.

(2.) Any officer or servant of the asylum who is at the date of the commencement of this Act in the service of a visiting

committee of an asylum to which this Act applies, and who is not, or is not determined to be, an established officer or servant within the meaning of this Act, shall remain subject to the provisions of the enactments repealed by this Act with respect to the superannuation allowances of officers and servants in asylums as if this Act had not been passed.

21. *Short title and commencement of Act.*—This Act may be cited as the Asylums Officers' Superannuation Act, 1909, and, except in Scotland, shall come into operation on the first day of April nineteen hundred and ten.

SCHEDULE.

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|----------------------|-----------------------|--|
| * * * | * * * | * * * * |
| 53 Vict. c. 5 .. | Lunacy Act, 1890 | Sections two hundred and eighty, two hundred and eighty-one, and two hundred and eighty-two. |
| * * * | * * * | * * * * |

ELEMENTARY EDUCATION (DEFECTIVE AND EPILEPTIC CHILDREN) ACT, 1899.

(62 & 63 VICT. C. 32.)

An Act to make better provision for the Elementary Education of Defective and Epileptic Children in England and Wales.
[9th August, 1899.]

1. *Power to school authority to determine what children are defective or epileptic.*—(1.) A school authority may, with the approval of the Education Department, make such arrangements as they think fit for ascertaining—

- (a) what children in their district, not being imbecile, and not being merely dull or backward, are defective, that is to say, what children by reason of mental or physical defect are incapable of receiving proper benefit from the instruction in the ordinary public elementary schools, but are not incapable by reason of such defect of receiving benefit from instruction

in such special classes or schools as are in this Act mentioned; and

- (b) what children in their district are epileptic children, that is to say, what children, not being idiots or imbeciles, are unfit by reason of severe epilepsy to attend the ordinary public elementary schools.

(2.) The school authority, in making their arrangements under this section, shall provide facilities for enabling any parent, who is of opinion that his child ought to be dealt with under this Act, to present such child to the school authority to be examined, although he may not have been required so to do by that authority; and any school authority failing to provide such facilities shall be deemed to have acted in contravention of this Act.

The provisions of this section are, by sect. 31 (2) of the Mental Deficiency Act, 1913, to apply, with the necessary modifications, for the purposes of sect. 31 (1) of that Act (*see pp. 99, 100, ante*).

(3.) For the purpose of ascertaining whether a child is defective or epileptic within the meaning of this section, a certificate to that effect by a duly qualified practitioner approved by the Education Department shall be required in each case. The certificate shall be in such form as may be prescribed by the Education Department.

By sect. 6 of the Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), it is provided that in any legal proceedings by a local education authority, the production of a certificate made under the above sub-section "shall be sufficient evidence of the facts therein stated, unless the parent or guardian of the child referred to in the certificate requires the medical practitioner to be called as a witness; but it shall be lawful for the parent or guardian to give evidence in proof that the certificate is incorrect."

(4.) For the purpose of the exercise of the powers conferred by this section, it shall be the duty of the parent of any child who may be required by the school authority to be examined to cause the child to attend such examination, and any parent who fails to comply with such requirement shall be liable on summary conviction to a fine not exceeding five pounds.

2. *Power to provide for education of defective and epileptic children.*—(1.) Where a school authority have ascertained that there are in their district defective children, they make provision for the education of such children by all or any of the following means:—

The provisions of this sub-section do not apply to epileptic children. As to what are defective children, *see* sect. 1 (1) (a), *supra*.

- (a) by classes in public elementary schools certified by the Education Department as special classes; or
- (b) by boarding out, subject to the regulations of the Education Department, any such child in a house conveniently near to a certified special class or school; or
- (c) by establishing schools, certified by the Education Department, for defective children.

Approval in the case of new premises will only be accorded if the rules given in App. II. of the Regulations are complied with. The Regulations in force are dated 19th July, 1909.

(2.) Where a school authority have ascertained that there are in their district epileptic children, they may make provision for the education of such children by establishing schools, certified by the Education Department, for epileptic children.

(3.) The power conferred by this section shall include power to establish or acquire and to maintain certified schools, and to contribute, on such terms and to such extent as may be approved by the Education Department, towards the establishment, enlargement, or alteration, and towards the maintenance of certified schools.

See sect. 10 of the Act as to the limitation on the liability of the school authority to receive any child into a special class or school established by them.

See sect. 14 as to what is included in the expression "school."

(4.) A school authority may in respect of children resident in or whose permanent home is in their district and attending certified special classes or schools in the district of another school authority, contribute to that other authority the proportionate cost of the provision and maintenance of such special classes or schools.

See sect. 10.

(5.) The school authority, acting under this section, shall make provision for the examination from time to time of any child dealt with under this section, in order to ascertain whether such child has attained such a mental and physical condition as to be fit to attend the ordinary classes of public elementary schools; and the school authority shall make provision for such examination in the case of any child whose parent claims such examination of his child, provided that the parent shall not make such claim within less than six months after his child has been examined; and any school authority failing to make such provision as this sub-section requires shall be deemed to have acted in contravention of this Act.

(6.) The Education Department shall not certify any establishment established after the commencement of this Act for

boarding and lodging more than fifteen defective or epileptic children in one building or comprising more than four such buildings.

The Elementary Education Amendment Act, 1903 (3 Edw. 7, c. 13), provides machinery for the removal of the restriction created by this sub-section.

3. *Provision of guides or conveyances.*—A school authority may provide guides or conveyances for children who, in the opinion of the school authority, are by reason of any physical or mental defect, unable to attend school without guides or conveyances.

4. *Obligation of parent as to defective and epileptic children.*—(1.) The duty of a parent under sect. 4 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), to provide elementary instruction for his child shall, in the case of a defective or epileptic child over seven years of age in any place where a certified special class or school is within reach of the child's residence, include the duty to cause the child to attend such a class or school, and a parent shall not be excused from this duty by reason only that a guide or conveyance for the child is necessary.

By sect. 3 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), "the term 'parent' includes guardian and every person who is liable to maintain or has the actual custody of any child." In *Hance v. Burnett* (1881), 45 J. P. 54, the mother had the child living with her and under her control, the father being at sea. On a case stated by justices it was held that in the absence of the father, whether by desertion or in pursuit of his lawful calling, it might be for years or months, the person having the care and custody of the child was liable for neglect of the bye-laws. But if the child is only temporarily in the custody of another person the parent is liable: *School Board for London v. Jackson* (1880), 7 Q. B. D. 502; 50 L. J. M. C. 134; 30 W. R. 47.

By sect. 4 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), "It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing and arithmetic." By sect. 48 of that Act "a child means a child between the ages of five and fourteen years."

As regards a defective or epileptic child the obligation under sect. 4 (1) of the Act of 1899 extends to a child between the ages of seven and sixteen years: *see* sect. 11, *post*.

See sects. 11, 12, 37 and 38 of the Elementary Education Act, 1876, as to orders of Court for attendance of children at school, proceedings on disobedience to orders of Court for attendance at school.

By sect. 11 of the Act of 1876 "any of the following reasons shall be a 'reasonable excuse' for neglect to provide efficient elementary instruction: (1) that there is not within two miles, measured according to the nearest road, from the residence of such child, any public elementary school open which the child can attend; (2) that the absence of the child from school has been caused by sickness or any unavoidable cause." *See also Hewett v. Thompson* (1888), 58 L. J. M. C. 60; 60 L. T. 268.

(2.) In the case of an epileptic child whose age exceeds seven years, the school authority may, if they think fit, apply to a Court of summary jurisdiction for an order requiring the child to be sent to a certified school for epileptics, and if any parent fails to comply with the order, he shall be deemed to have failed to perform the duty prescribed by sect. 4 of the Elementary Education Act, 1876, and may be proceeded against accordingly.

This sub-section empowers justices to send epileptic children to certified schools which may be beyond reach of the homes of such children. See sect. 2 (3) as to maintenance of or contribution by a school authority to schools where children are boarded or lodged as well as taught. See note to preceding sub-section as to the duty of a parent under sect. 4 of the Elementary Education Act, 1876.

5. *Conditions and effect of grant of certificate to school for defective or epileptic children.*—The provisions of sect. 7 of the Elementary Education (Blind and Deaf Children) Act, 1893, respecting the conditions and effect of the grant of certificates to schools for blind or deaf children shall apply, with the necessary modifications to schools for defective or epileptic children established or proposed to be established under this Act, except that no requirement need be made as to the proportion of the expenses to be defrayed out of private sources.

By sect. 7 of the Act of 1893, as modified by this section:—“(1) a school shall not be certified by the Education Department as suitable for providing elementary education for [defective or epileptic] children—(a) if it is conducted for private profit; nor (b) unless it is either managed by a school authority, or the annual expenses of its maintenance are . . . audited and published in accordance with regulations of the Education Department; nor (c) unless it is open at all times to the inspection of His Majesty's Inspectors of Schools and of any visitors authorised by any school authority sending children to the school; nor (d) unless the requirements of this Act are complied with in the case of the school.

“(2) Every school so certified (in this Act referred to as a certified school) shall be deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876, and for the purposes of section eleven of that Act may, in the case of a [defective or epileptic] child, be treated as if it were a public elementary school.

“(3) A certificate granted in pursuance of this section shall be annual.”

Section eleven of the Act of 1876 makes provision as to orders of Court for attendance at school of children whose parents neglect to provide without reasonable excuse efficient elementary instruction.

6. *Powers and expenses of school authority.*—The provisions of sect. 5 of the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42) (relating to the powers and expenses of a school authority under that Act), shall apply, with the necessary modifications, to school authorities acting under this Act.

Sect. 5 of the Act of 1893, as modified by this section and by the

Education Act, 1902 (2 Edw. 7, c. 42), Sch. 3 (9); Sch. 4, Part 2, is as follows:—

“(1) For the performance of their duties under this Act a local education authority may, without prejudice to any other powers, exercise the like powers as may be exercised by them for the provision of school accommodation for their district, and the consent of the Local Government Board to exercise the power of borrowing for the purposes of this Act may be given in any case in which the exercise of that power appears to the Board expedient.

“(2) The expenses of a local education authority under this Act shall be paid out of the fund applicable to their general expenses. . . .”

7. *Grant from public money towards education of defective and epileptic children.*—Nothing in any Act of Parliament shall prevent the Education Department from giving aid from the parliamentary grant to a school in respect of education given to defective or epileptic children to such amount and on such conditions as may be directed by or in pursuance of the minutes of the Education Department in force for the time being.

The Regulations of the Board of Education now in force in regard to such grants are Regulations 9, 10, 19, 25 and 26 of 19th July, 1909.

8. *Contribution by parent.*—(1.) The parent of a defective or epileptic child shall be liable to contribute towards the expenses of the child incurred by a school authority under this Act in like manner and to the like extent as the parent of a blind or deaf child is liable to contribute under sect. 9 of the Elementary Education (Blind and Deaf Children) Act, 1893, and the provisions of that section shall apply accordingly.

By sect. 9 of the Act of 1893, as applied by this Act, “(1) Where a school authority incur any expense under this Act in respect of any [defective or epileptic] child, the parent of the child shall be liable to contribute towards the expenses of the child such weekly sum, if any, as, regard being had to the provisions of the Elementary Education Act, 1891, may be agreed on between the school authority and the parent, or, if the parties fail to agree, as may, on the application of either party, be settled by a Court of summary jurisdiction, and any sum so agreed on or settled may, without prejudice to any other remedy, be recovered by the school authority summarily as a civil debt.

“(2) It shall be the duty of the school authority to enforce any order made under this section, and any sum received by a school authority under this section may be applied by the school authority in aid of their general expenses.

“(3) A Court competent to make an order under this section may at any time revoke or vary any order so made.”

By sect. 15 of the Act of 1893 “the expression ‘expenses,’ when used in relation to a child, includes the expenses of and incidental to the attendance of a child at a school, and of and incidental to the maintenance and boarding out of the child while so attending and the expenses of conveying the child to or from the school.”

See sect. 14 of this Act, *post*, as to what is included in the expression “school.”

The provisions of the Act of 1891, sects. 2, 3 and 4, have reference

to the limit of fees to be charged in schools receiving fee grants. It must be also noted that under the Education Act, 1902 (2 Edw. 7, c. 42), sched. 3 (5), the following provision is to have effect (except in the case of the metropolis) in lieu of sect. 5 of the Elementary Education Act, 1891, viz.:—"The duty of a local education authority under the Education Acts, 1870 to 1902, to provide a sufficient amount of public school accommodation shall include the duty to provide a sufficient amount of public school accommodation without payment of fee in every part of their area."

In such cases, under the Elementary Education Act, 1891, a school is precluded from charging a fee for children between the ages of 3 and 15.

(2.) The parent of a defective or epileptic child shall not, by reason of any payment made under this Act in respect of the child, be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification.

The fact of payment of part only of a sum ordered to be paid by a parent makes no difference in regard to the relief afforded by this sub-section.

(3.) Payments under this Act shall not be made on condition of a child attending any certified school other than such as may be reasonably selected by the parent, nor refused because the child attends or does not attend any particular certified school.

9. *Contribution by guardians of the poor.*—The board of guardians of any poor law union may contribute such of the expenses of providing, enlarging, or maintaining any certified special class or school under this Act as are certified by the Education Department to have been incurred wholly or partly in respect of scholars taught at the class or school who are either resident in a workhouse or in an institution to which they have been sent by the guardians from a workhouse or boarded out by the guardians.

This provision applies to classes or schools provided or established by school authorities under the Act (sect. 2) as well as to those maintained by other agencies. See also sect. 10.

Sect. 12 makes reference to religious instruction in certified schools for defective and epileptic children.

10. *Limitation on liability of school authority.*—Nothing in this Act shall be construed as imposing a duty on a school authority to receive in a special class or school established by them any child—

- (a) who is resident in, or whose permanent home in their opinion is in, the district of another school authority; or
- (b) who is resident in a workhouse, or in any institution to which he has been sent by the guardians, from a workhouse, or boarded out by the guardians,

unless that other school authority or, as the case may be, the guardians are willing to contribute towards the expenses of the education and maintenance of the child such sum as may be agreed on between the authorities concerned.

See sect. 2 (4) as to contribution by a school authority to another school authority in such cases.

See also sect. 9 as to contributions by boards of guardians towards the expenses of providing, enlarging, or maintaining any certified special class or school under this Act.

11. *Period of education for defective and epileptic children.*—For the purposes of the Elementary Education Acts, 1870 to 1893, and of this Act, a defective or epileptic boy or girl shall be deemed to be a child until the age of sixteen years; and the period of compulsory education shall, in the case of such a child, extend to sixteen years, and the attendance of such a child at school may be enforced as if it were required by byelaws made under the Elementary Education Acts, 1870 to 1893, and any such child shall not, in accordance with such byelaws, be entitled to total or partial exemption from the obligation to attend school.

See also the Elementary Education (School Attendance) Act (1893) Amendment Act, 1899 (62 & 63 Vict. c. 13), s. 1.

12. *Religious instruction.*—The provisions regulating religious instruction in certified schools for defective and epileptic children shall be the same as those enacted by section eight of the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42).

By sect. 8 of the Act of 1893, “(1) If and so far as the school which a child is required in pursuance of this Act to attend is not a public elementary school, it must, in all matters relating to the religious instruction and observances of the child, be conducted in accordance with the rules applying to industrial schools, except that references in the Industrial Schools Act, 1866, and the rules made under it, to the Secretary of State shall be construed as references to the Education Department; and any school authority may provide and maintain for the purposes of this Act a school so conducted. (2) Every rule made under this section shall be forthwith laid before both Houses of Parliament. (3) In selecting a school under this Act the school authority shall be guided by the rules laid down in the Industrial School Act, 1866, and if a child is boarded out in pursuance of this Act, the school authority shall, if possible, arrange for the boarding out being with a person belonging to the religious persuasion of the child’s parent. (4) Where a child is required in pursuance of this Act to attend any school, the child shall not be compelled to receive religious instruction contrary to the wishes of the parent, and shall, so far as practicable, have facilities for receiving religious instruction and attending religious services conducted in accordance with the parent’s persuasion, which shall be duly registered on the child’s admission to the school.”

See sect. 7 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), and sect. 4 of the Education Act, 1902 (2 Edw. 7, c. 42), as to religious instruction in public elementary schools.

13. *Report to Parliament.*]—Every school authority shall make to the Education Department such returns as the Department may require; and the Department shall annually lay before both Houses of Parliament a report of their proceedings under this Act during the preceding year, and in that report shall give lists of the schools and classes to which they have granted or refused certificates under this Act during the year, with their reasons for each such refusal.

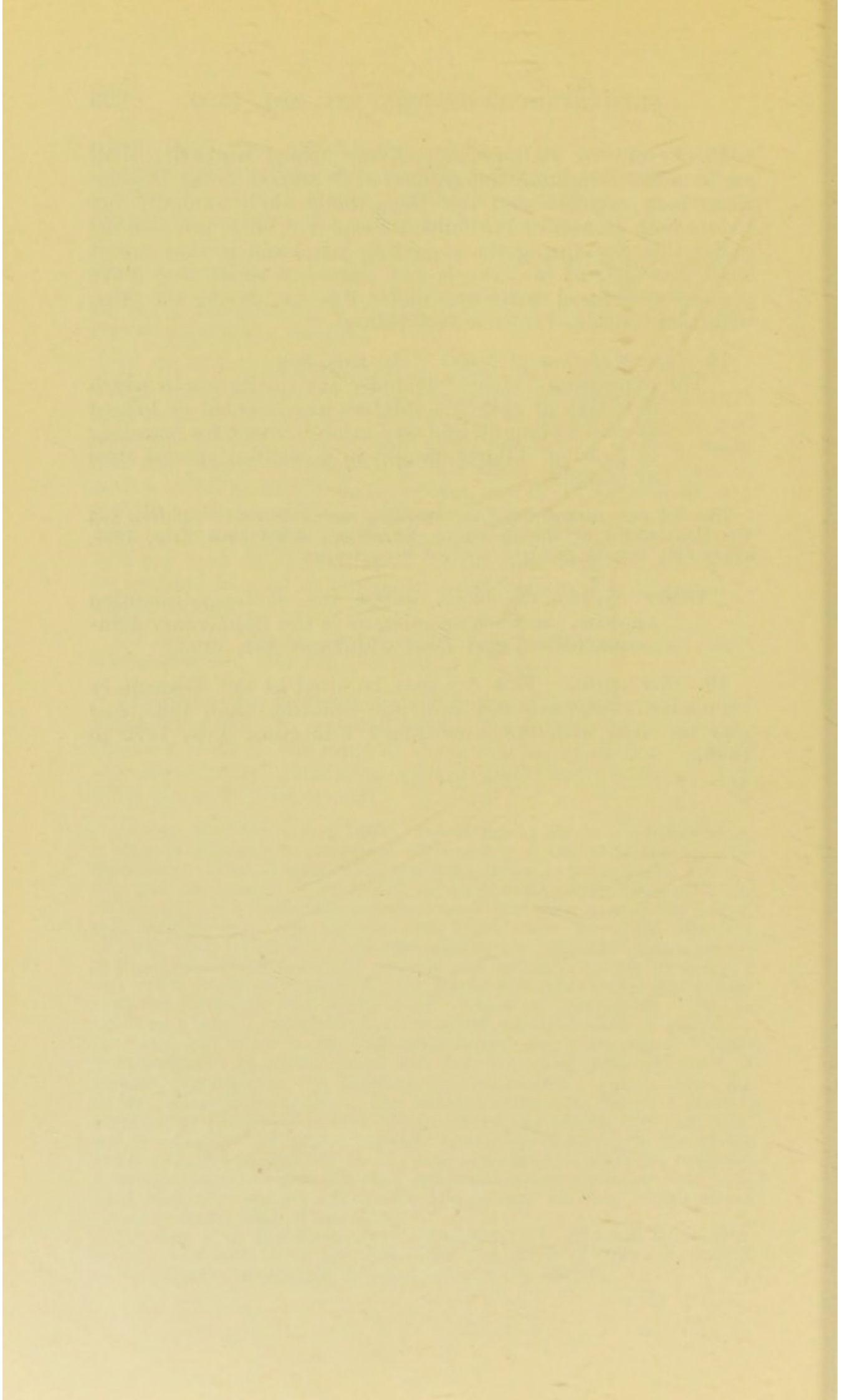
14. *Interpretation of terms.*]—In this Act—

The expression "school" includes any institution in which defective or epileptic children are boarded or lodged as well as taught, and any establishment for boarding or lodging children taught in a certified special class or school:

The Act only contemplates the boarding out of defective children and the Regulations of the Board of Education, dated 19th July, 1909, apply only to such children and not to epileptics.

Other expressions have, unless the contrary intention appears, the same meaning as in the Elementary Education (Blind and Deaf Children) Act, 1893.

15. *Short title.*]—This Act may be cited as the Elementary Education (Defective and Epileptic Children) Act, 1899, and may be cited with the Elementary Education Acts, 1870 to 1893.



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