The law of hospitals, infirmaries, dispensaries, and other kindred institutions whether voluntary or rate-supported / by Arthur Turnour Murray.

THE LAW OF HOSPITALS

A. TURNOUR MURRAY

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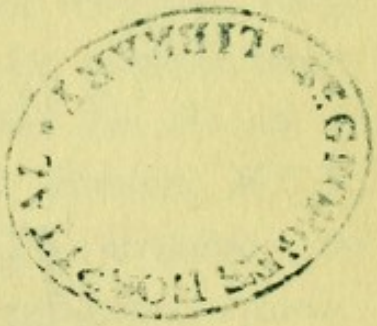
INFIRMARIES, DISPENSARIES, AND OTHER KINDRED INSTITUTIONS WHETHER VOLUNTARY OR RATE-SUPPORTED

BY

ARTHUR TURNOUR MURRAY

OF LINCOLN'S INN, BARRISTER-AT-LAW

B.A. UNIV. COLL. OXON.



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PREFACE

THE object of this book is to bring together into one volume the many legal questions which affect all kinds of medical institutions. The law at present is scattered and difficult to find, and it is hoped that the want of a comprehensive work on the subject is to some extent supplied in the following pages.

The arrangement in Articles under headings arranged in alphabetical order seemed the simplest and best adapted for the purpose, and, with the help of the Index, may be found convenient.

Acknowledgments and thanks are due to the following, amongst others: to Mr. Leonard Syer Bristowe, Judge of the High Court in the Transvaal, for valuable assistance derived from his *Legal Handbook for the use of Hospital Authorities;* to Sir Henry Burdett, K.C.B., for useful information contained in his *Hospitals and Asylums of the World*, and other well-known works; and lastly to Mr. Halford Gay Burdett, of the Inner Temple, with whose collaboration some of the book in its early stages was written, for his material help and friendly interest, and especially for his kind encouragement to the writer to finish the task alone.

A. TURNOUR MURRAY.

April 1908.

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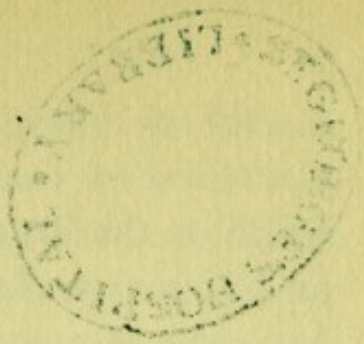


THE LAW OF HOSPITALS

INTRODUCTION

Ancient Meaning of "Hospital."—The word "hospital" in its ancient and strictly legal sense was "a corporate foundation, endowed for the perpetual distribution of the founder's charity, in the lodging and maintenance of a certain number of poor persons, according to the regulations and statutes of the founder. Such institutions were not necessarily connected either with medicine or surgery, and in their original establishment had no necessary reference either to sickness or accident; though it was not uncommon, in ancient times, to found hospitals for lepers and other diseased persons" (Grant on *Corporations* (1850), p. 567; see also *Philips* v. *Bury*, 1788, 2 T.R. 353). In this sense the word is used in some old Acts of Parliament, and the same meaning survives in certain ancient institutions, such as Christ's Hospital and Heriot's Hospital, which are educational not medical establishments.

Modern Meaning of "Hospital."—In its modern meaning a hospital is an institution "for the care of the sick or wounded or of those who require medical treatment" (Murray's *New English Dictionary*; see also per Bruce J. in *Moses* v. *Marsland*, 1901, 1 Q.B. 668, 671). In this sense there is no difference between a hospital and an infirmary; for example, Poor-law infirmaries are

merely workhouse hospitals. A hospital is generally distinguished from a dispensary, the main purpose of which is the distribution of medicine (per Lord Watson in *Dilworth* v. *Stamps Commissioners*, 1899, A.C. 99, 107), but some dispensaries accommodate in-patients, and in most hospitals there is an out-patient department.

Meaning in Modern Acts of Parliament.—In a recent case Channell J. remarks: "My attention has properly been drawn to the word 'hospital,' but it does not seem to me to be necessary to decide whether in these Acts of Parliament [House Tax Act, 1808, and Income Tax Act, 1842] the latter word has its older and wider meaning, or whether it is used only in the modern and restricted sense. No doubt it is now generally used solely in the sense of an institution for the relief of the sick, suffering from physical ailments or physical injuries. No great while ago, at any rate in the time of Lord Coke, the word included institutions for the relief or alleviation of mere poverty, and certainly of the aged" (*Mary Clark Home* v. *Anderson*, 1904, 2 K.B. 645, 652; see also *Colchester* v. *Kewney*, 1867, 1 Ex. 368, 377, affirmed 2 Ex. 253).

Meaning in Poor Removal Act, 1846.—An institution founded as a home for the treatment of epileptics, and partly endowed by the founder, but mainly supported by payments made by the inmates, was held to be a "hospital" within the Poor Removal Act, 1846 (*Ormskirk Union* v. *Chorlton Union*, 1903, 2 K.B. 498).

Meaning of "Hospital" in this Work.—The term "hospital" as used in this work is intended to include any institution the object of which is to treat medical and surgical cases, but institutions for the treatment of mental cases are not included.

Classification of Hospitals.—Hospitals may be classified either according to the mode in which they are

supported or according to the kind of illness which they relieve (*e.g.* see LYING-IN HOSPITALS).

As regards mode of support, they may be maintained either by voluntary gifts or by compulsory rates, while some are self-supporting.

In this work, those hospitals which are maintained by voluntary gifts—whether such gifts are permanent and in the nature of an endowment, or temporary as a casual contribution—are distinguished as Voluntary hospitals, while those maintained by a compulsory rate are called Rate-supported hospitals.

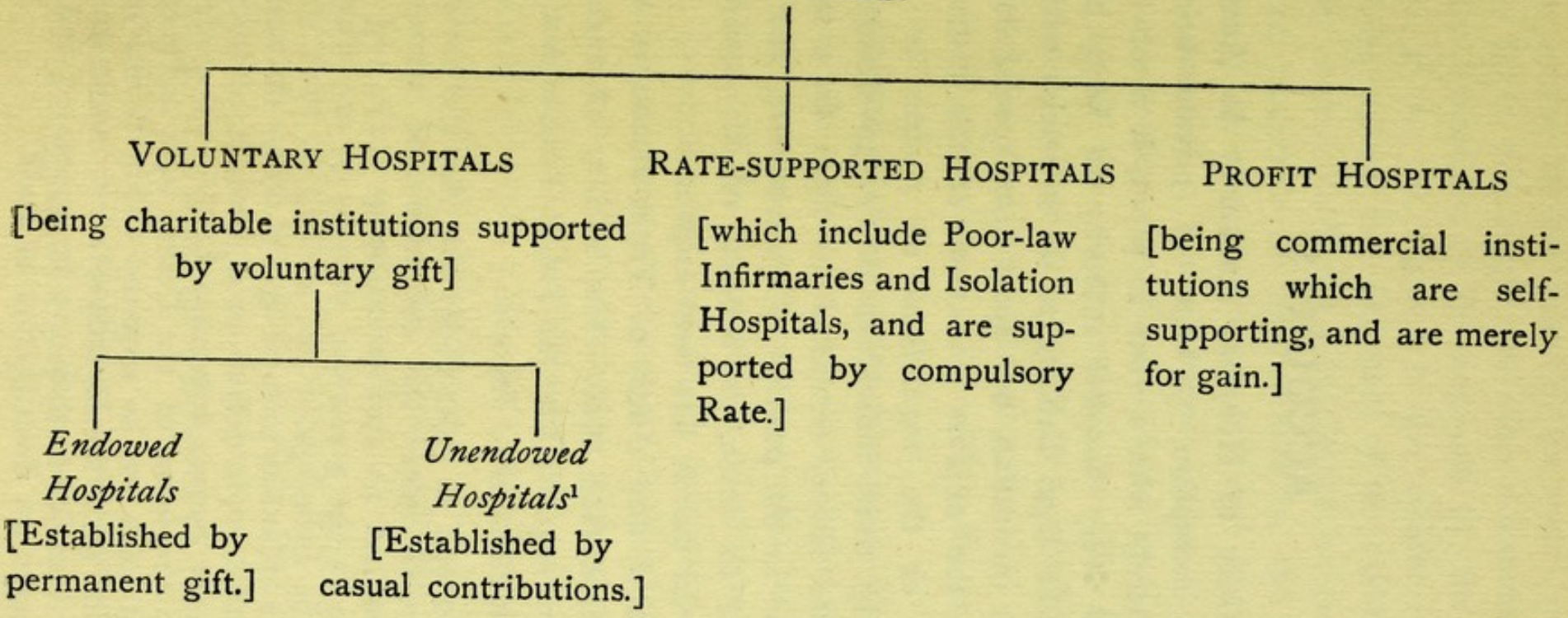
Voluntary Hospitals.—Voluntary hospitals, as the term is used in this work, may be either endowed or unendowed, although it should be mentioned that the term "voluntary," especially in London, is frequently used to mean "unendowed" as opposed to "endowed" hospitals. In both kinds, however, it is obvious that the means of support is voluntary, whereas in rate-supported hospitals it is compulsory. Moreover, endowed hospitals are often partly supported by casual contributions, while unendowed hospitals often become the recipients of an endowment (see further VOLUNTARY HOSPITALS).

Rate Hospitals.—Rate-supported hospitals do not owe their origin to individual benevolence, but are either part of the scheme of Poor-law relief or are designed to prevent epidemics and check the spread of infectious disease. The former kind include Poor-law infirmaries and dispensaries (see POOR-LAW INFIRMARIES); the latter include Infectious Disease or Isolation hospitals (see INFECTIOUS DISEASE HOSPITALS).

Profit Hospitals.—As regards institutions which are carried on for profit and receive no charitable funds, being entirely supported by the payments of patients, nothing need here be said, except that the respective

rights and duties of the proprietors and patients are solely determined by the contract entered into between them, any breach of which may entail liability to an action for damages, or furnish ground for an injunction. To this class belong the institutions called private dispensaries, carried on for profit by individual medical men. The mere fact that charitable hospitals receive payments from patients does not bring them within this class, if the object of such an institution is not profit, but the relief of the sick.

Subsidiary Institutions.—There are various institutions connected with the work of a hospital which may have been founded with it, or have gradually grown out of it, or are carried on with it, but are wholly distinct in origin and constitution. Such, for example, are Medical Schools, Convalescent Homes, and the Samaritan Fund, each of which will be found under their proper headings in this work. They may have arisen either from private benevolence, or be mere commercial ventures, or they may represent a department of the hospital to which they belong. They may be endowed or unendowed, and if endowed would be subject to the jurisdiction of the Charity Commission in the same way as endowed hospitals.



[1] In London the great hospitals are often divided into two classes: (*a*) the endowed hospital; (*b*) the unendowed or "voluntary" hospital; but, as above mentioned, the term "voluntary" hospital is in this work used in the larger sense, and includes endowed as well as unendowed hospitals.

ACCOUNTS

General Duty of Hospital Authority to Account. —With the exception, perhaps, of private hospitals carried on merely with a view to profit, it is obviously the duty of every hospital authority to keep proper accounts. The legal liability to do so varies with the nature of the institution, but apart from special liability arising from the express provisions of the instrument creating it, or the regulations of statute or other legal authority, those individuals or the governing body who distribute money entrusted to them for a specific purpose stand in the position of trustees, and, like other trustees, have to render an account of the manner in which the trust money has been expended.

Investigation and Audit of Trust Accounts under Public Trustee Act, 1906.—The liability of trustees to account is now regulated by the Public Trustee Act, 1906, whereby it is enacted as follows:

"**13.** (1) Subject to rules under this Act and unless the Court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees, or, in default of agreement, by the public trustee or some person appointed by him: Provided that (except with the leave of the Court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit, and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit."

The section further provides for access of the auditor to the books of account and other documents (sub-s. 2), for the inspection of the accounts by the beneficiaries (sub-s. 3), for the removal of the auditor (sub-s. 4), for the remuneration and expenses of the auditor (sub-s. 5), for any obstruction to the investigation or audit (sub-s. 6), for the procedure on applications to the High Court (sub-s. 7), for penalties to be imposed upon any person wilfully making a false statement (sub-s. 8).

A construction may be placed by the Court upon the meaning of the word "trust" in this section which would not include every fiduciary relation; but it is apprehended that the administration of money given to a hospital involves a trust within the meaning of the Act.

Limitation of Action for Account.—No provision is made by the Act as to the limit of the period beyond which an account would not be carried back; but, apart from fraud or fraudulent breach of trust, retention of the trust money by the trustee, or conversion of it to his own use, a trustee now enjoys all the rights and privileges of any statute of limitation to the like extent as if he had not been a trustee (Trustee Act, 1888, s. 8; and see *How* v. *Winterton*, 1896, 2 Ch. 626, and Tudor on *Charities* (1906), 4th ed. pp. 238-42).

Private Hospitals for Profit.—Private hospitals belonging to one or more individuals, and conducted with the view to earning a profit, are in this matter a law to themselves; and so long as they accept no outside support, but merely receive payments from the patients themselves, are in no different position from an ordinary trading concern.

If, however, being seven or more persons (Companies Act, 1862, s. 6), they convert the business into a company

incorporated under the Companies Acts, 1862 to 1907, they must comply with the provisions of the Companies Act, 1900, ss. 21 and 22, and the Act of 1907, s. 19, as to audit. By the last Act a penalty is imposed for a wilful false statement in any balance-sheet (s. 28). The articles of association as to accounts must also be observed (compare Companies Act, 1862, Schedule I., Table A [revised 1906], Articles 103-9 inclusive).

Private Charitable Hospitals. — Private hospitals carried on from charitable and benevolent motives without a view to profit may or may not be liable to account according to the nature of their constitution. For example, if a number of persons choose to conduct such an institution at their own expense, and without asking for outside support, there would be no liability to account except as among themselves. If such persons became incorporated under s. 23 of the Companies Act, 1867 (see INCORPORATION), the liability to account would be limited to its members, subject, however, to the provisions as to audit of the Companies Acts, 1900 (ss. 21 and 22) and 1907 (s. 19).

Public Hospitals: Voluntary and Rate-supported.— Public hospitals—that is to say, (1) hospitals which appeal to the public for voluntary contributions and which we call voluntary hospitals, or (2) hospitals which are supported by compulsory contributions in the form of a rate, and which we call rate-supported or rate hospitals—stand in a different position, and must be separately considered.

Voluntary Hospitals. — Voluntary hospitals, as explained elsewhere (see INTRODUCTION), may be either (*a*) supported entirely by voluntary contributions and have no endowment, or (*b*) may be endowed.

Unendowed voluntary hospitals are entirely exempt

from the jurisdiction of the Charity Commissioners (see VOLUNTARY HOSPITALS), and therefore merely stand in a fiduciary position to their subscribers, and are only liable to account in the same way as trustees have to account to their beneficiaries; whereas hospitals with an endowment are subject to the restrictions imposed by the Charitable Trusts Acts.

Finance Committee.—The accounts of a voluntary hospital are generally placed under the direction of the finance committee, who are responsible to the governing body for the manner in which they are kept, and also advise as to the best means of checking expenditure. Ultimately the governing body is, of course, responsible to the whole body of subscribers for the proper administration of the hospital funds.

Uniform System of Hospital Accounts.—The precise mode in which the accounts of unendowed voluntary hospitals should be kept is not prescribed by law; but it is obvious that a uniform system is desirable as rendering it easier to compare expenditure, and so suggest economies in the different departments.

Introduction of Uniform System. — The system of accounts now adopted by many voluntary hospitals was originated in 1868 in the Queen's Hospital, Birmingham, by Sir Henry Burdett, K.C.B., and was later introduced by him to the Metropolitan Hospital Sunday Fund, and has since been adopted with some modification by the King Edward's Hospital Fund for London, and by the Hospital Saturday Fund.

Adoption by Colonies.—The system, which was gradually introduced into other English hospitals, has met with approval in some of our Colonies. Thus Mr. Francis T. Short, the Inspector of Charities for the Government of Victoria, writes on June 30, 1902:

"During last year it was considered desirable to introduce into our charitable institutions the Uniform System of Accounts instituted by Sir Henry Burdett, which is in force in the leading hospitals of Great Britain. This system is a great improvement upon that formerly in force in this State, and affords a ready means of checking any tendency in expenditure. This system has recently been introduced into the public charities of Queensland, and it would be matter for congratulation were the other States to follow in this direction, so that the expenditure of kindred institutions could be readily compared" (see *Uniform System of Accounts*, by Sir Henry Burdett, K.C.B.: Scientific Press, London).

Adoption by King Edward's and Sunday and Saturday Funds.—The system which was finally adopted by the three great distributing Funds, namely, King Edward's Fund and the Sunday and Saturday Funds, was the result of the recommendations of a joint committee appointed to consider the report of Mr. J. G. Griffiths, F.C.A., who reported on October 11, 1905. The report of the committee was made on October 6, 1906, and the agreed alterations took effect on January 1, 1907 (*The Uniform System of Hospital Accounts*, as revised and adopted by King Edward's Hospital for London, the Metropolitan Hospital Sunday Fund, and the Hospital Saturday Fund, December 1, 1906: Geo. Barber, 23, Furnival Street, Holborn, E.C.).

Outline of the Uniform System.—The system revised and adopted by the three Funds deals with the following accounts:

I. Income and Expenditure Account.
II. Balance-sheet.
III. Statistical Tables comparing the Financial Statistics for the year with those of the previous year.
IV. Washing Return where the washing is done on Hospital premises.

There is also an Index of Classification showing under what sub-heads of the Expenditure Account each item should fall.

On pp. 12-16 is a specimen of Income and Expenditure Account and Balance-sheet for one year. (See further Burdett's *Uniform System*, mentioned above.)

Effect of Adoption by these Funds.—The importance of the adoption by these Funds of the Uniform System lies in the power which they claim of enforcing the system on all hospitals claiming any benefit from the Fund. The Funds now insist on hospital accounts being made up on one plan, so as to be able to point out in what departments economies might be effected.

Thus "the Committee would recommend the authorities of the three Funds to decide not to entertain the application of any institution to participate in their grants unless these lists are cast and agreed" (see extract from Hospital Secretaries' Report, at p. 21 of *Uniform System of Hospital Accounts* of December 1, 1906, above-mentioned).

Can Fund Authorities insist on Uniform System?—Some question may be raised on the power in law of the Fund authorities to insist upon a hospital adopting the Uniform System as a condition to its participating in a grant, and the answer will depend upon the constitution of each Fund, the express or implied powers conferred upon it, and generally upon its fiduciary position as trustee of money held by it for a specific purpose.

Generally speaking, a donor to any such Fund who does not attach special conditions to his gift leaves the distribution to the discretion of the committee, and such a gift cannot be regarded as a donation to all hospitals amongst which the Fund is distributable, but rather to such of those hospitals and in such proportions as the committee may in their discretion (honestly exercised) select.

INCOME AND EXPENDITURE ACCOUNT

DR.

INCOME.	£	s.	d.	£	s.	d.	£	s.	d.
A. ORDINARY.									
I. **Annual Subscriptions** (see page) ...									
II. **Donations** (see page)									
Boxes (see page)									
III. **King Edward's Hospital Fund for London**									
IV. **Hospital Sunday Fund**									
V. **Hospital Saturday Fund**									
VI. **Congregational Collections** (apart from Hospital Sunday Fund)									
VII. **Workmen's Collections** (apart from Hospital Saturday Fund)									
VIII. **Entertainments**									
IX. **Invested Property.**									
Dividends									
Rents									
Income Tax Returned									
Interest on Deposit or Current Account									
X. **Nursing Institution.**									
Private Nurses									
Nurses' and Probationers' Fees									
XI. **Patients' Payments.**									
In-Patients									
Out-Patients									
XII. **Other Receipts.**									
Total Ordinary Income £									

CR.

EXPENDITURE	£	s.	d.	£	s.	d.	£	s.	d.
A. MAINTENANCE.									
I. Provisions.									
1. Meat									
2. Fish, Poultry, &c.									
3. Butter, Bacon, &c.									
4. Eggs									
5. Milk									
6. Bread, Flour, &c.									
7. Grocery									
8. Vegetables and Fruit									
9. Malt Liquors									
10. Aërated Water and Ice									
II. Surgery and Dispensary.									
1. Drugs, Chemicals, Disinfectants, &c. ...									
2. Dressings, Bandages, &c.									
3. Instruments and Appliances									
4. Wines and Spirits									
5. Sundries									
III. Domestic.									
1. Renewal and Repair of Furniture ...									
2. ,, ,, Bedding and Linen ...									
3. Renewal and Repair of Hardware, Crockery, Brushes, &c.									
4. Washing done off Hospital premises (*average weekly number of articles*)[1]									
5. Cleaning and Chandlery									
6. Water									
7. Fuel and Lighting—									
(a) Coal									
(b) Gas									
(c) Electric Current									
(d) Oil, Wood, &c.									
8. Uniforms (Nurses', Porters', &c.) ...									
9. Sundries									
IV. Establishment.									
1. Insurance									
2. Renewal and Repairs									
3. Annual Cleaning									
4. Garden									
V. Salaries, Wages, &c.									
1. Medical									
2. Dispensing									
3. Nursing									
4. Other Officers									
5. Mechanics, &c.									
6. Porters									
7. Domestic Servants									
8. Scrubbers									
9. Pensions									
VI. Miscellaneous.									
1. Printing and Stationery									
2. Postages									
3. Advertisements									
4. Sundries									
Total Cost of Maintenance £									

[1] In cases where the whole or any part of the washing is done on Hospital premises insert "*See* Return on p. ," or "*See also* Return on p. ," as the case may be.

INCOME AND EXPENDITURE ACCOUNT

DR.

INCOME.	£	s.	d.	£	s.	d.	£	s.	d.
B. EXTRAORDINARY.									
I. **Legacies.**									
The Executors of									
II. **Festivals, Bazaars, &c.**									
For New Buildings or Equipment, or the Extinction of Debt incurred for such purposes									
Total Extraordinary Income				—	—	—			
Total Income							—	—	—
Balance, being excess of Total Expenditure over Total Income for the Year							—	—	—
							—	—	—
							£		

NOTE (when applicable).—The following provisions are not supplied to Patients by the Hospital :—

CR.

EXPENDITURE.	£	s.	d.	£	s.	d.	£	s.	d.
B. ADMINISTRATION.									
I. Management.									
1. Official Salaries									
2. Pensions									
3. Official Printing and Stationery ...									
4. Official Postage and Telegrams ...									
5. Official Advertisements									
6. Law Charges									
7. Auditors' Fee									
8. Sundries									
II. Finance.									
1. Appeals									
2. Commission									
3. Festivals, Bazaars, &c.									
Total Cost of Administration									
Total Cost of Maintenance and Administration									
C. RENT, RATES AND TAXES.									
I. Rent									
II. Rates and Taxes									
Total Rent, Rates and Taxes									
Total Ordinary Expenditure									
D. EXTRAORDINARY EXPENDITURE.									
I. Interest									
II. Contributions to other Institutions ...									
III. Festivals, Bazaars, &c., for new buildings or equipment, or the extinction of debt incurred for such purposes.									
Total Extraordinary Expenditure									
Total Expenditure									
Balance, being excess of Total Income over Total Expenditure for the Year									
							£		

BALANCE SHEET, DECEMBER 31, 19 .

	£ s. d.	£ s. d.
1. To Sundry Creditors—		
(To include all Tradesmen's unpaid accounts and accrued liabilities.)		
2. ,, Loans to Hospital—		
(To be detailed)		
3. ,, Capital Accounts—		
(*a*) For Special Purposes ...		
(*b*) For Buildings and Equipment ...		
(*c*) For General Purposes ...		
4. ,, Unexpended Income Balances of Special Funds—		
(To be detailed.)		
5. ,, Income and Expenditure Account[1]**—**		
Balance at January 1, 19 ...		
Add:		
Excess for the Year to December 31, 19 ...		
	£	

[1] NOTE.—This Account will be stated on the other side should it show a deficit.

	£ s. d.	£ s. d.
1. By Cash at Bank and in Hand—		
(*a*) Generally on Account of the Hospital ...		
(*b*) On account of Special Funds (separating Uninvested Capital from Unexpended Income Balances) ...		
2. ,, Sundry Debtors—		
3 ,, Investments on Capital Accounts—		
(*a*) For Special Purposes ...		
(*b*) For Buildings and Equipment		
(*c*) For General Purposes ...		
4. ,, Land, Buildings, and Equipment of the Hospital—		
(Stated separately where practicable.)		
Expenditure from 19 , to 19 ...		
Expenditure during the Year ending 19 ...		
	£	

Incorporation of King Edward's Hospital Fund for London.—The King Edward's Hospital Fund for London was originated in 1897 under the title of the Prince of Wales's Hospital Fund for London, and became known by its present title as from January 1, 1902. It has since been incorporated by an Act passed on July 26, 1907, called the King Edward's Hospital Fund for London Act, 1907 (7 Ed. VII. Ch. lxx.). The president is His Royal Highness the Prince of Wales, and the president, governors, and general council form the corporation, with power to take and hold land without any further licence in mortmain (s. 2).

Objects of the Fund.—The objects of the corporation are to administer the King Edward's Hospital Fund for London as existing at the passing of the Act; to hold all lands, money, securities, and other property real and personal belonging to the Fund; to obtain from public benevolence by means of subscription, donation, bequest, or otherwise a continuance of the Fund; to invest any money so obtained and hold investments of the same; to execute any special trusts in connection with money or property held or obtained by the corporation (not being inconsistent with the purposes of the Act); to apply the capital and the income of the funds and property of the corporation, or any part thereof, subject to any such trusts and to the provisions of the Act, in or towards the support, benefit, or extension of the hospitals of London or some or any of them (whether for the general or any special purposes of such hospitals), and to do all such things as may be incidental or conducive to the attainment of the foregoing objects (s. 3).

Meaning of "Hospitals of London."—In the Act the expression "hospitals of London" means and includes the following institutions, namely, "Such present or future

hospitals, convalescent homes, nursing homes, nursing institutions, lying-in institutions, dispensaries, medical missions, societies for the provision of surgical or medical aid or appliances, and institutions for the rest, relief, or cure of sick persons as shall be situate within the county of the city of London or the Metropolitan Police District as existing at the passing of this Act, or as the same may be hereafter extended, or being situate beyond such county or district shall afford medical or surgical treatment or rest, relief, or cure to patients all or some of whom are persons usually resident or carrying on their vocation in life within such county or district" (s. 4).

It may be noted that this definition is very wide, and is not in terms confined to voluntary hospitals, and does not extend to institutions for the relief of mental cases.

The president for the time being is invested with some special powers, including the power to determine whether any institution falls within the definition of "hospitals of London" (s. 7 (3)).

Accounts of the Fund.—The president and council may make rules for the administration of the Fund and for the keeping of regular books of account. The accounts of the Fund are to be annually audited by an auditor nominated by the President of the Local Government Board, who is authorised to fix his remuneration, which is to be paid out of the Fund (s. 8).

Accounts of Hospitals with Endowment.—Endowed voluntary hospitals which, as regards their endowments, are not only responsible to their founder but fall under the jurisdiction of the Charity Commission, are liable to account in accordance with the following provisions of the Charitable Trusts Acts.

Trustees to keep Accounts.—The Charitable Trusts Act, 1853, s. 61, provides that—

"**61.** The trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity."

Annual Returns of Accounts by Trustees.—The Charitable Trusts Act, 1855, s. 44, provides that—

"**44.** The trustees or administrators of every charity shall prepare and make out and transmit to the board an account of the endowments then belonging to the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personalty the existing investment or employment thereof, and in what names such investments are made; and such trustees or administrators shall also, on or before the 25th day of March next after the acquisition of any endowment not included in the foregoing account, prepare and make out in like manner and transmit to the board a similar account of such last-mentioned endowment, and in case of any alienation, or charge or transfer, of any real or personal estate of the charity, shall on or before the 25th day of March then next following transmit to the board an account of such alienation, charge or transfer, and such trustees or administrators shall also, on or before the 25th day of March in every year, or such other day as may be fixed for that purpose by the board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto (that is to say):

(1) An account of the gross income arising from the endowment, or which ought to have arisen therefrom during the year ending on the 31st day of December then last, or on such other day as may have been appointed for this purpose by the Board;

(2) An account of all balances in hand at the commencement of the year and of all money received during the same year on account of the charity;

(3) An account for the same period of all payments;

(4) An account of all money owing to or from the charity, so far as conveniently may be;

which accounts shall be certified under the hand of one or

more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any ; and the said trustees or administrators shall, within fourteen days after the day appointed for making out such accounts, deliver or transmit a copy thereof to the Commissioners at their office in London, and in the case of parochial charities shall deliver another copy thereof to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book ; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said board may seem fit; and any person may require."

It is further provided by s. 45 of the 1855 Act that—

"45. The board may from time to time make such orders as they may think fit in relation to the delivery or transmission of the said accounts, and the forms of such accounts, and such orders shall be executed by all trustees and persons from whom the accounts to which they relate are required."

Forms of account will be supplied on application to the Charity Commission (see Tudor on *Charities* (1906), 4th ed. pp. 933 *et seq.* for order of July 29, 1884, and forms of account thereunder).

Audit of Accounts of Trustees of Endowment.—It should be observed that while the accounts required from trustees of charities are to be audited by the auditor of the charity, if any (Charitable Trusts Act, 1855, s. 44, *supra*), the Board have no power to compel an audit, although such a power was recommended by the Select Committee of the House of Commons appointed in 1835 (see Tudor on *Charities* (1906), 4th ed. p. 23). Power is given to the Treasury to audit the accounts of the official trustees of charitable funds (see Charitable Trusts Act, 1887, s. 4 (3)).

Audit of Accounts of Voluntary Hospitals.—"Much attention has been directed to the audit of the accounts

of voluntary hospitals in recent years. In the result, it is now customary to appoint a firm of chartered accountants to audit the books and accounts, but experience shows it is desirable, in the best interests of the hospitals, to associate with them one of the governors as co-auditor, who is thus able to examine and pass the accounts with an accurate knowledge of the requirements and technicalities which it is desirable to bear in mind when preparing such documents for publication" (Burdett's *Hospitals and Asylums of the World* (1893), vol. iii. p. 897).

Duty of Auditor.—The strict duty of an auditor of a public body is not merely to see whether there are vouchers justifying each item of expenditure. He is not only justified, but bound to go further than that, and should satisfy himself that such expenditure is not contrary to the duty of such body, or in any other way illegal or improper (*Thomas* v. *Devonport Corporation*, 1900, 1 Q.B. 16; *R.* v. *Roberts*, 1908, 1 K.B. 407). These cases were decided with regard to an auditor of a local authority, but may, however, be applicable to the governing body of a public hospital. If so, it is obvious that such auditor should be selected by reason of his familiarity with the needs and expenses of hospitals.

Accounts of Rate-supported Hospitals.—The forms of account of rate-supported hospitals, whose accounts are audited by a district auditor, are regulated by various statutory orders, as mentioned below.

Accounts of Isolation Hospitals.—Thus, the accounts of infectious disease hospitals outside London formed under the Isolation Hospital Acts, 1893 and 1901 (set out under INFECTIOUS DISEASE HOSPITALS), are regulated by the Local Government Board Order of August 22, 1899, as amended by the Local Government Board Order of June 2, 1903.

Accounts of Joint Hospital Boards.—The accounts of a joint hospital board formed under the Public Health

Act 1875, ss. 131 and 279 (see INFECTIOUS DISEASE HOSPITALS), are regulated by the Local Government Board Order of December 23, 1892.

Accounts of Guardians of Unions outside London.—The accounts of guardians of the poor of unions and separate parishes outside London are regulated by the Local Government Board Order of April 28, 1890, the forms of which include expenses of workhouse infirmaries and outdoor relief—*e.g.* drugs, medicines, and medical and surgical appliances, and maintenance of paupers in hospitals.

Accounts of Guardians of Unions in London.—So the accounts of guardians of the poor of unions and separate parishes in London are regulated by the Local Government Board Order of December 12, 1890.

Accounts of Local Authorities generally.—Other Local Government Board Orders have from time to time been made under s. 3 of the District Auditors Act, 1879, regulating the form of financial statement to be prepared and submitted to the district auditor by county councils, boroughs, and other local authorities, which incidentally deal with hospital expenses (see *R.* v. *Roberts*, 1908, 1 K.B. 407).

AMBULANCES

Meaning of "Ambulance."—The word "ambulance" is derived from the French *hôpital ambulant*, which means a moving hospital which follows an army, so as to afford the speediest possible succour to the wounded.

History of Ambulances.—Ambulances came into general use during the Crimean War, and form part of the hospital organisation in war (see NAVAL AND MILITARY HOSPITALS). The meaning of the word has since been extended to every appliance or vehicle suitable for carrying sick or wounded persons.

The British Ambulance Association of St. John of Jerusalem was founded in 1878, and similar organisations exist all over the world for the purpose of rendering "first aid" and conveying injured persons to a permanent hospital.

Local Authority outside London may provide Ambulances.—In districts outside London any local authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination (Public Health Act, 1875, s. 123).

The power given by this section is now extended by s. 50 of the Public Health Act, 1907, as follows:

"**50.** The local authority may provide and maintain an ambulance for use in any case of accident, or other sudden or urgent disability, together with suitable attendants, and means of traction and other requisites; and may allow

the ambulance to be used by any other local authority or person subject to such terms and conditions as may be agreed upon."

This section only extends to those districts to which it has been applied by order of the Local Government Board or of the Secretary of State (s. 2).

Local Government Board Memorandum as to Use of Ambulances.—A memorandum of the Local Government Board for local arrangements relating to infectious disease dated December 1876 contains the following remarks:

"For the conveyance of patients who are sick with infectious disease, special carriages, which are known by the name of 'ambulances,' are necessary. Such carriages may be provided by sanitary authorities under s. 123 of the Public Health Act, 1875. The following points have to be attended to in the provision and use of such carriages:

"1. If the ambulance be intended only for journeys of not more than a mile, it may be made so as to be carried between two people, or it may be on wheels and to be drawn by hand. If a distance be above a mile, the ambulance should be drawn by a horse. Every ambulance on wheels should have easy carriage-springs.

"2. In the construction of an ambulance, special regard should be had to the fact that after each use it has to be cleansed and disinfected. The entire interior, and the bed-frame and bed, should be of materials that can be washed. The ambulance should be such that the patient can lie full length in it; and the bed-frame and bed should be movable, so that the patient can be arranged upon the bed before being taken out of his house.

. . . . . .

"4. With an ambulance there should always be a person specially in charge of the patient; and a horse ambulance should have a seat for such person inside the carriage.

"5. After every use of an ambulance for infectious disease, it should be cleansed and disinfected to the satisfaction of a medical officer.

"6. Both in very populous districts and in districts which are of a very wide area, it may often happen that more than one ambulance will be wanted at one time; and in any district, if more than one infectious disease

is prevailing, there will be an evident sanitary advantage in having more than one ambulance for use."

Ambulances attached to Isolation Hospitals.—The Isolation Hospitals Act, 1893, provides that every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connection with the system of telegraphs (s. 13).

Ambulances in London.—The law as to ambulances in London is governed by the Public Health (London) Act, 1891, which enacts that—

"A sanitary authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of carrying therein any person so suffering to a hospital or other place of destination" (s. 78).

Metropolitan Asylum Board.—A similar power is given to the Metropolitan Asylum Managers (s. 79). For information as to the London system, see Article INFECTIOUS DISEASE HOSPITALS, pp. 111, 112.

Whether only for Infectious Cases.—It would seem that in London the local authorities have no express powers to provide ambulances for the conveyance of patients other than those who are suffering from infectious disease. As to those districts outside London to which the Public Health Act, 1907, is applicable, the power to provide such ambulances is given (s. 50); but in London the need is felt for powers to convey medical and surgical cases in suitable vehicles, and so save much unnecessary suffering. It is not clear that in the case of paupers such powers are not already possessed by the guardians of the poor, but the case of the Metropolitan Asylum Board is more doubtful. It is understood that the question of express powers is being considered by the Government.

BUILDING

Building Provisions in Gift of Land to Hospital.—An assurance of land for the benefit of a hospital may contain provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and other provisions of a like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land (Mortmain Act, 1888, s. 4).

In cases, therefore, where a hospital has acquired land subject to such provisions the hospital authority should strictly comply with them.

Where Land subject to no Restrictions. — Where, however, the hospital holds land subject to no restrictions as to building and have money in hand for the purpose, it is only necessary to comply with the statutory or local regulations as to buildings generally or public buildings in particular.

Form of Building Contracts.—In settling the form of a building contract, whether in London or elsewhere, it is well to insert a provision that the builder shall comply with all statutory enactments, rules or orders, and local by-laws, orders, or regulations applicable to the works, and indemnify the hospital against all penalties incurred by reason of any non-compliance therewith.

Building Restrictions under Public Health Acts affecting Area outside London. — In districts outside London the provisions of the Public Health Acts, 1875 to

1907, must be complied with. They mostly affect new buildings only, and do not authorise interference with old or existing buildings.

The principal provisions are as follows:

Drainage of Houses.—(1) The local authority may enforce the drainage of undrained houses (Public Health Act, 1875, s. 23). (2) May require houses to be drained into new sewers (Public Health Act, 1875, s. 24). (3) In an urban district no new house may be erected without effectual drainage (Public Health Act, 1875, s. 25). (4) No new house may be erected in an urban district over a sewer without the consent of the authority (Public Health Act, 1875, s. 26).

Paving Expenses. — (5) The local authority in an urban district may compel the paving, etc., of streets, and recover the expenses from the abutting owners (Public Health Act, 1875, s. 150; see also ss. 151, 152, and Public Health Act, 1890, s. 41). These sections are superseded by the provisions of the Private Street Works Act, 1892, which are much more comprehensive, in cases where this latter Act has been adopted.

Hospitals when "extra commercium."—The doctrine of exempting land which is *extra commercium* and subject in perpetuity to the burden of a public right has not yet been extended to the land of a voluntary hospital. A public pleasure ground is not exempt as *extra commercium* (*Herne Bay Council* v. *Payne*, 1907, 2 K.B. 130).

Building Line.—(6) The 1875 Act also gives power to the urban authority to regulate the line of buildings in any street (s. 155; see also s. 3 of the Public Health (Buildings in Streets) Act, 1888, repealing s. 156 of the Public Health Act, 1875).

By-laws as to Buildings. — (7) The urban authority may make by-laws respecting "new buildings," and

especially for the deposit of plans by persons intending to lay out streets or construct buildings (Public Health Act, 1875, ss. 157, 158, and 159; see also Public Health Act, 1890, ss. 23 and 33, and the Act of 1907, Part II.).

Safety Exits.—(8) The Public Health Act, 1890, s. 36, contains an important provision as to the means of ingress to and egress from places of public resort, which it is conceived applies to medical schools and to some at least of our large hospitals, having regard to the definition of "place of public resort," which is as follows:

"**36.** (6) For the purposes of this section the expression 'place of public resort' means a building used or constructed, or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition-room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used or constructed or adapted to be used, either ordinarily or occasionally, for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

"Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this part of this Act."

London Building Acts, 1894 to 1905.—The whole area of the administrative county of London is governed as to existing and new buildings by the London Building Acts, 1894 to 1905.

Public Buildings.—Besides the general provisions affecting all buildings the Acts confer special powers for regulating "public" buildings.

Hospital is a Public Building.—The expression "public building" includes a building used or constructed or adapted to be used as a "hospital" (London Building Act, 1894, s. 5 (27)).

The London Building Act, 1894, contains the following special provisions as to public buildings:

Construction of Public Buildings.—S. 78: "Notwithstanding anything in this Act, every public building, including the walls, roofs, floors, galleries, and staircases, and every structure and work constructed or done in connection with or for the purposes of the same, shall be constructed in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the tribunal of appeal, and save so far as respects the rules of construction every public building shall throughout this Act be deemed to be included in the term building, and be subject to all the provisions of this Act in the same manner as if it were a building erected for a purpose other than a public purpose.

"No public building shall be used as such until the district surveyor or the tribunal of appeal shall have declared his or their approval of the construction thereof.

"After the district surveyor shall have so declared his approval, or shall certify that it has been constructed as directed by the tribunal of appeal, any work affecting or likely to affect the building shall not be done to, in, or on the building without the approval of the district surveyor or such certificate as aforesaid."

Conversion of Houses into Public Buildings.—S. 79: "Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building, such conversion or alteration shall be carried into effect, and the public building thereby formed, including the walls, roofs, galleries, and staircases thereof, shall be constructed in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the tribunal of appeal, and the provisions of this Act shall apply to such alteration or conversion as though it were the construction of a public building."

Home for Defective Children—Whether a Public Building.—In *Moses* v. *Marsland*, 1901, 1 Q.B. 668, the question arose whether a building which was being altered by the Metropolitan Asylum District Managers and con-

verted into a home for defective children, from which they could attend special Board schools, was a "public building" within the meaning of the London Building Act, 1894.

It was contended that the "home" was really a "hospital," and therefore within the definition, but the Court held that the word "hospital" was there used in its narrower and popular sense as a place for the treatment of the sick and infirm, and not in its older and wider meaning (see INTRODUCTION), that this home was not a home for treatment and was not a "public building" within the Act.

CHILDREN'S HOSPITALS

Parent and Child.—In treating children as patients it is necessary to bear in mind the general rules of law which govern the relation of parent to child, and define the rights of custody and control vested in a guardian.

Right to Custody of Child.—Generally speaking, the right of a parent or guardian to the custody of a child lasts until the child attains twenty-one or marries under that age; but in the case of males over fourteen and of females over sixteen the wish of the child may be taken into account. The rights of a guardian other than a parent would seem not to be so absolute as that of the father in his life-time or of the mother after his death. (See *Agar-Ellis*, 1883, 24 Ch.D. 317; Guardianship of Infants Act, 1886; Custody of Children Act, 1891.)

Custody of Illegitimate Child.—Although the mother of an illegitimate child has not the legal rights of a guardian, yet her desire as to its custody will be primarily considered by the Court (*Barnardo* v. *McHugh*, 1891, A.C. 388). She cannot contract herself entirely out of such rights as she has with respect to the child (*Humphrys* v. *Polak*, 1901, 2 K.B. 385).

Adoption by Poor-law Guardians.—In certain cases poor-law guardians may adopt a pauper child until the age of eighteen years, and vest in themselves the rights and powers of the parent (see Poor Law Act, 1899; *Wantage* v. *Bristol*, 1907, 1 K.B. 68).

Precautions on Admission of Child Patient.—Before admitting a child as a patient (except in an emergency) the parent or guardian should be consulted and his or her wishes as to treatment ascertained and consent to any necessary operation obtained (see OPERATIONS).

Hospital stands "in loco parentis."—Following the analogy of schools and other institutions, a hospital upon receiving a child under its care would stand *in loco parentis* as against third persons; but the fact that a children's hospital stands *in loco parentis* does not render such hospital liable to the local authority under the Public Health Act, 1875, s. 132, for expenses incurred by reception of the child into an infectious disease hospital, where the child was sent by the children's hospital (*Isle of Thanet Joint Hospital Board* v. *Farquhar*, 1904, 2 L.G.R. 1310). As to isolation hospitals, see Isolation Hospitals Act, 1893, s. 19, in article INFECTIOUS DISEASE HOSPITALS.

Criminal Offences against Child Patient.—In the case of wilful injury, criminal negligence, or assault, children are specially protected by the Prevention of Cruelty to Children Act, 1904.

Dissection of Body of Child without Parent's Consent.—By American law a father may maintain an action against a hospital for the dissection of the body of his infant child without his consent (*Burney* v. *Children's Hospital*, 1897, 61 Am. Rep. 273; 169 Mass. 57). As to the English law on this subject generally, see DEATH IN HOSPITAL.

CONTRACTS

Where Hospital Authority is a Corporation.—Where the hospital authority is a corporation no special difficulty arises, the general law as to contracts by corporations being applicable. Thus, an agreement made by a committee or official on behalf of the corporation is binding on the corporate body, so long as such agreement is not beyond the power of the body on whose behalf it is made. No individual liability is incurred.

Liability of Officials of Unincorporated Hospitals.—In the case of hospitals which are not incorporated different considerations arise, as there is no legal entity or person representing the hospital. Here an agreement made by an individual or committee is primarily binding on such individual or committee, who must look to the funds of the hospital for their indemnity.

Evidence rebutting this primary liability may, however, be produced to show that the person employed or the tradesman who supplied goods agreed to trust to payment out of the available funds of the hospital itself and to no other source (see *Pink* v. *Scudamore*, 1831, 5 Car. & P. 71 ; *Burls* v. *Smith*, 1831, 5 M. & P. 735 ; *Glenester* v. *Hunter*, 1831, 5 Car. & P. 62).

Subscribers not Personally Liable.—Subscribers or donors to a hospital do not, by virtue of such subscription or donation, incur any personal liability for work done or goods supplied by the direction of the managing committee ; for members of a committee have no authority

to pledge the personal credit of those who have supplied the fund for carrying on the hospital, and their right of indemnity is limited to such fund (see *Flemyng* v. *Hector*, 1836, 2 M. & W. 172 ; *Wise* v. *Perpetual Trustee Co.*, 1903, A.C. 39).

"Ultra Vires" Contract.—An official who purports to bind his hospital, whether the hospital is incorporated or unincorporated, by an agreement which is in excess of the powers conferred by the hospital rules, is personally liable without any right to recoupment out of the hospital funds for loss incurred.

Profit out of Contracts.—Hospital officials not only lose their right of indemnity against the funds of the institution if they make contracts in excess of their powers, but are also liable to repay any profit they make out of any contract. Even if not expressly forbidden by the rules, it is by law a breach of trust for any fiduciary to make profit out of his trust, besides being, of course, an immoral act. Thus a governor cannot take a lease to himself of the hospital property (*A.-G.* v. *Clarendon*, 1810, 17 Ves. 491, 500).

CONVALESCENT HOMES

Convalescent Home connected with Hospital.—A form of institution connected with a hospital is that known as a Convalescent Home, to which patients are sent to complete their cure, and so make room in the hospital for more urgent cases. These institutions are sometimes maintained out of the general funds of the hospital, as in the case of St. Bartholomew's Hospital, and, if regarded merely as a department of the hospital, there seems nothing improper in so applying the funds. No question can arise where contributions are made to the hospital with an express direction by the donor to apply them in aid of their convalescent home.

Special Endowment.—They are also sometimes established by a special endowment, in which case they come under the jurisdiction of the Charity Commissioners (see VOLUNTARY HOSPITALS).

Separate Institution.—They may also exist as separate institutions not in connection with any particular hospital, and in this form are sometimes established by friendly societies (see FRIENDLY SOCIETIES).

Surgical Convalescents.—Convalescent Homes do not, as a rule, admit applicants whose cases require surgical supervision. This want is now supplied by the "Home of Recovery" which is affiliated to some of the great London hospitals, whose representatives are members of the managing committee.

COTTAGE HOSPITALS

What are Cottage Hospitals?—A work relating to hospitals might perhaps be considered incomplete if it contained no reference to cottage hospitals, although their legal status is not essentially different from that of larger institutions. Cottage or village hospitals are in fact merely models on a smaller scale of the large general hospitals, and are generally established in rural districts and conducted on simpler lines.

Generally a Voluntary Institution.—This kind of hospital is generally a charitable institution supported by voluntary contributions, and seldom has any endowment, unless the purchase of the land on which it is built constitutes an endowment (see and compare *A.-G.* v. *Mathieson*, 1907, 2 Ch. 383; *Society for Teachers of Deaf & Whittle*, 1907, 2 Ch. 486; see VOLUNTARY HOSPITALS).

Payments by Patients.—The system of payments by patients is a special feature of cottage hospitals, distinguishing them from the large voluntary hospitals; and, besides being an important source of income, is defended on principle as checking the tendency to pauperism, which is encouraged by free medical relief. The receipt of payments from patients who can pay does not take away from the charitable character of the institution.

Payment by Poor-law Guardians.—In some districts an arrangement exists whereby the poor-law guardians pay for paupers who are admitted to the hospital (see, further, Burdett on *Cottage Hospitals* and on *Pay Hospitals*).

DEATH IN HOSPITAL

Matters to be dealt with on Death in Hospital.—On a death occurring in a hospital the authorities incur certain responsibilities. Certain formalities have to be attended to, and sometimes difficult questions of law have to be considered. The matters dealt with in the following article are arranged in the following order:

(1) Certificate of cause of death.
(2) Registration of death.
(3) Inquest.
(4) Post-mortem examination.
(5) Anatomical examination or Dissection.
(6) Burial.
(7) Cremation.

Certificate of Cause of Death.—In the case of the death of any person who has been attended in his last illness by a registered medical practitioner, that practitioner shall sign and give to the person "required to give information concerning the death" a certificate stating to the best of his knowledge and belief the cause of death, and such person shall, upon giving information concerning the death, or giving notice of the death, deliver that certificate to the registrar, and the cause of death as stated in that certificate shall be entered in the register, together with the name of the certifying medical practitioner (Births and Deaths Registration Act, 1874, s. 20).

It will be observed that it is the cause and not the

fact of death which is required to be certified by the medical practitioner; but the fact that death had taken place would seem to be necessarily implied in the certificate, and if the doctor was present when the death took place, he may incur the further obligation of giving information to the registrar himself concerning the death (see s. 10).

The obligation of the medical practitioner to certify the cause of death is a statutory one, and he can neither claim any fee for such certificate nor make the giving of it conditional upon holding a post-mortem examination. As to the special certificates required before cremation can lawfully take place, see the latter part of this article.

Registration of Death.—The person "required to give information to the registrar concerning the death," within the meaning of s. 20 of the 1874 Act, is one of the following persons: (*a*) the nearest relatives of the deceased present at the death or in attendance during the last illness; (*b*) in default, any other relative dwelling or being in the same sub-district as the deceased; (*c*) in default of such relatives, any person present at the death; (*d*) the occupier of the house in which, to his knowledge, the death took place; (*e*) in default, any inmate of such house; and (*f*) the persons causing the body of the deceased person to be buried (1874 Act, s. 10).

It is the duty of one of the persons above mentioned to give information within five days after the death and to sign the register in the presence of the registrar (s. 10). The limit of five days is extended to fourteen days if a written notice of the occurrence of the death, accompanied with the certificate of death, is given to the registrar (s. 12). The information required for registration comprises the date, cause, place of death, name,

sex, age, description of deceased, and signature, description, and residence of informant (1874 Act, s. 47).

Death to be Registered Gratis.—It is the duty of the registrar to inform himself carefully of every death which happens within his sub-district, and upon receiving personally from the informant, at any time within twelve months after the date of any death, information of the particulars required to be registered concerning the death from any person required to give the same, forthwith in the prescribed form and manner to register the death, and the said particulars (if not previously registered) without fee or reward from the informant, except that if, in pursuance of a written requisition, he registers the same at the residence of the person making such requisition, or at the house where the deceased died, he shall, unless the death took place in a *public institution*, be entitled to the appointed fee (1874 Act, s. 14). "Public institution" here includes a hospital (see s. 48).

Duty of Hospital Authority to inform Registrar.—The hospital authority as "occupier of the house" (see s. 10, mentioned above) may, in default of others, be under the obligation of giving notice of death and other information to the registrar if the death occurs within the hospital and if no inquest is necessary.

Inquest.—Where an inquest is held, a medical certificate of the cause of death need not be given to the registrar, but the certificate of the finding of the jury furnished by the coroner is sufficient (1874 Act, s. 20), the duty of informing the registrar devolving on the coroner (s. 16).

When Necessary. — Where a coroner is informed (1) that the dead body of a person is lying within his jurisdiction, and (2) that there is reasonable cause to suspect (*a*) that such person has died a violent or unnatural death, or (*b*) has died a sudden death of which

the cause is unknown, or (*c*) that such person has died in prison (see PRISON INFIRMARIES) or in such place or under such circumstances as to require an inquest in pursuance of any Act, the coroner, whether the cause of death arose within his jurisdiction or not, shall, as soon as practicable, issue his warrant for summoning not less than twelve nor more than twenty-three good and lawful men to appear before him at a specified time and place, there to inquire as jurors touching the death of such person (Coroners Act, 1887, s. 3 (1)).

What is a Dead Body?—The term "dead body" in this Act would, according to the modern practice of coroners, appear to include almost any human remains; but a difficulty might arise if different parts of the same body were found in different places and within the jurisdiction of different coroners.

Where a body is found dead in the sea or any creek, river, or navigable canal within the flowing of the sea where there is no deputy coroner for the jurisdiction of the Admiralty of England, the inquest shall be held only by the coroner having jurisdiction in the place where the body is first brought to land (Coroners Act, 1887, s. 7 (1)).

Still-born Child.—A coroner has no jurisdiction to hold an inquest on a still-born child, as it is not a "person" within the meaning of the statute; but this does not preclude the holding of an inquest on the body of a dead child if there is reason to doubt whether the child was not, in fact, born alive. If, however, it was proved at such inquest that the child was still-born, the coroner would have no jurisdiction to inquire into or act upon evidence of concealment of birth, although this is a criminal offence, whether the child was born alive or not (see Offences against Person Act, 1861, s. 60. As to the burial of a still-born child, see later in this article).

When should Hospital inform Coroner?—It is a criminal offence to dispose of or bury a body upon which an inquest ought to be held (*R.* v. *Price*, 1884, 12 Q. B. D. 247); and the hospital authority should at once give notice to the coroner in every case where it is likely that an inquest will be required. Death from heart failure while under an anæsthetic would be such a case, even though the cause of death is perfectly well known. Another case would be where a person is brought dead to a hospital and no certificate of cause of death can be obtained. The practice of coroners is, it is believed, not quite uniform.

Medical Witness and Post-mortem Examination.—Where it appears to the coroner that the deceased was attended at his death or during his last illness by any legally qualified medical practitioner, the coroner may summon such practitioner as a witness; otherwise the coroner may summon as a witness any legally qualified practitioner who is at the time in actual practice in or near the place where the death happened (Coroners Act, 1887, s. 21 (1)). The coroner may direct such medical witness to make a post-mortem examination of the body of the deceased unless it is alleged upon oath that such medical witness caused the death of the deceased by improper or negligent treatment (s. 21 (2)).

Jury may require Post-mortem Examination.—If a majority of the jury sitting at an inquest are of opinion that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses brought before them, they may require the coroner in writing to summon as a witness some other legally qualified medical practitioner named by them, and further to direct a post-mortem examination of the deceased, with or without an analysis of the contents of the stomach or intestines, to be made by

such last-mentioned practitioner, and that whether such examination has been previously made or not, and the coroner shall comply with such requisition, and in default shall be guilty of a misdemeanour (s. 21 (3)).

Fee to Medical Witness.—A medical witness is entitled to a fee of one guinea where there is no post-mortem examination, and of two guineas for making a post-mortem examination and attending to give evidence thereon ; but is entitled to no fee for making a post-mortem examination without the previous direction of the coroner (s. 22 (1)). These provisions might be applicable to cases where a person is brought dead to a hospital and one of the medical staff was summoned as a witness.

No Fee to Medical Officer of Hospital.—Where, however, an inquest is held on the body of a person who has died in a public hospital, infirmary, or other medical institution, or in a building or place belonging thereto or used for the reception of the patients thereof, whether the same be supported by endowments or by voluntary subscriptions, the medical officer whose duty it may have been to attend the deceased person as a medical officer of such institution as aforesaid shall not be entitled to such fee or remuneration (s. 22 (2)).

Non-attendance of Medical Witness.—A medical witness who fails to obey a summons of a coroner is liable to a fine of £5, and even to further penalties, for the statutory powers conferred upon the coroner are in addition to, and not in derogation of, any other powers he may possess at common law (see ss. 19 and 23).

Removal of Body for Post-mortem Examination.—Where a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a post-mortem examination, the coroner may order the removal of a

dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest (Coroners Act, 1887, s. 24, re-enacting part of s. 143 of the Public Health Act, 1875, which part is repealed by the later Act).

Local Authority outside London may provide Places for Post-mortem Examinations.—In districts outside London any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place (Public Health Act, 1875, s. 143).

Similar Power to Sanitary Authority in London.—In London any sanitary authority may, and if required by the County Council shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building. Any such building may be provided in connection with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary (Public Health (London) Act, 1891, s. 90).

Sanitary Authorities in London may unite for providing Buildings for Post-mortem Examinations.—So also any sanitary authorities may, with the approval of the County Council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the

contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon (Public Health (London) Act, 1891, s. 91).

Places for Holding Inquests in London.—In London it is the duty of the County Council to provide and maintain proper accommodation for the holding of inquests, and they may by agreement with a sanitary authority provide and maintain the same in connection with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, on such terms as may be agreed on with the authority (Public Health (London) Act, 1891, s. 92; see also *post*, pp. 173, 174).

What is a Post-mortem Examination?—A post-mortem examination generally involves the cutting up or dissection of the body. There is, however, a popular distinction between the meaning of the two phrases "post-mortem examination" and "dissection." The first is generally applied to an examination made merely in order to ascertain the cause of death; the second to an examination with the view of studying and adding to the knowledge of the different parts of the human body.

Anatomical Examination of Human Body.—It has been seen that a coroner has power to direct a post-mortem examination in a proper case and when an inquest is held; but a post-mortem or anatomical examination of a human body, except when directed by a competent legal authority, is now placed under severe restrictions, even though the object may be merely to ascertain the cause of death. It will be seen that the practice in some hospitals of making a post-mortem examination without the consent of the relations of a patient who has died in the institution is of doubtful legality.

Dissection at Common Law.—"The practice of anatomy is lawful and useful, though it may involve an unusual means of disposing of dead bodies and though it certainly shocks the feelings of many persons" (per Stephen J., *R.* v. *Price*, 1884, 12 Q.B.D. at p. 252).

Prior to the Anatomy Acts, presently mentioned, this practice continued unchecked, so much so that bodies were dug out of graves to furnish the hospitals with subjects for dissection. In *R.* v. *Lynn*, 1788, 2 T.R. 733, however, it was held to be a misdemeanour to disinter a body even for the purpose of dissection.

Anatomy Act, 1832.—The Anatomy Act, 1832, which is called "An Act for regulating Schools of Anatomy," was at length passed, and the serious state of affairs which occasioned it, is sufficiently shown by the preamble, which is as follows:

"Whereas a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of treating and curing such diseases, and of healing and repairing divers wounds and injuries to which the human frame is liable, cannot be acquired without the aid of anatomical examination: And whereas the legal supply of human bodies for such anatomical examination is insufficient fully to provide the means of such knowledge: And whereas, in order further to supply human bodies for such purposes, divers great and grievous crimes have been committed, and lately murder, for the single object of selling for such purposes the bodies of the persons so murdered: And whereas therefore it is highly expedient to give protection, under certain regulations, to the study and practice of anatomy, and to prevent, as far as may be, such great and grievous crimes and murder as aforesaid: Be it therefore enacted—"

Licences to practise Anatomy to be granted.—The Home Secretary in England, the Chief Secretary for Ireland in Ireland, and the Secretary for Scotland in Scotland may (1) grant licences to practise anatomy to any fellow

or member of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine in any part of the United Kingdom, or to any professor or teacher of anatomy, medicine, or surgery, or to any student attending any school of anatomy, on application from such party for such purpose, countersigned by two of His Majesty's justices of the peace acting for the county, city, borough, or place wherein such party resides, certifying that, to their knowledge or belief, such party so applying is about to carry on the practice of anatomy (s. 1).

Inspectors of Schools of Anatomy to be appointed.—(2) May respectively appoint not fewer than three persons to be inspectors of places where anatomy is carried on, and at any time after such first appointment, may appoint, if they shall see fit, one or more other person or persons to be an inspector or inspectors as aforesaid (s. 2).

District to be allotted to each Inspector.—(3) May direct what district of town or country, or of both, and what places where anatomy is carried on, situate within such district, every such inspector shall be appointed to superintend, and in what manner every such inspector shall transact the duties of his office (s. 3).

Inspectors to make Returns and to inspect Places where Anatomy is practised.—Every inspector has to make a quarterly return to the Secretary of State or Chief Secretary of every deceased person's body that during the preceding quarter has been removed for anatomical examination to every separate place in his district where anatomy is carried on, distinguishing the sex and, so far as is known at the time, the name and age of each person whose body was so removed as aforesaid (s. 4); and has power to visit and inspect, at any time, any place within his district, notice of which place has been given, as is

hereinafter directed, that it is intended there to practise anatomy (s. 5).

Salaries to Inspectors.—A salary not exceeding £100 a year and allowance for expenses are payable to each inspector and chargeable on the Consolidated Fund (s. 6).

When Persons having Lawful Custody of Body may permit Anatomical Examination.—Any executor or other party having lawful possession of the body of any deceased person, and not being an undertaker or other party entrusted with the body for the purpose only of interment, may permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination (s. 7).

Where Person directs Anatomical Examination of his own Body.—If any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this Act authorised to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, and, in case of any such nomination as aforesaid, shall request and permit any party so authorised and nominated as aforesaid to make such examination, unless

the deceased person's surviving husband or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination (s. 8).

Whether Hospital can dissect Body without Consent of Relations.—These last two sections are of special importance to hospitals where dissection is practised. It will be observed that the statute imposes no obligation on the "executor or other party having lawful possession of the body" to inquire whether the relations object to the body being dissected, or even to notify to them that a post-mortem examination will be made; and enacts that where the deceased during his last illness directs that his body be examined anatomically, it is the duty of "the party having lawful possession of the dead body" to direct such examination to be made unless his near relations require it to be buried without such examination.

It seems unlikely that the Legislature intended to give to the party having possession of the body, who might be a stranger to the deceased, the arbitrary power of directing dissection, without any kind of notice to his relations, and it should not be too readily assumed from the absence of express provision that there is no legal obligation to give such notice.

In either case the right of objecting is given to the near relations, and the function of the executor or person having possession of the body is to act in accordance with their wishes.

At the same time the point, as a question of law, is not clear, and it would be better for the husband or wife or other near relative, if he or she so desire, immediately on death, to require the body to be interred without dissection.

On the other hand the hospital authority should make

it a rule that no body should be dissected until every reasonable effort had been made to communicate with the persons entitled to object. Such a course would spare the feelings of relations and prevent a public statement like the following (the accuracy of which is not vouched for by the present writer):

"Recently a woman was admitted into one of the great London hospitals to undergo an operation for a certain complaint. When the operation had proceeded but a little way, it was found that the cause of illness was more serious than had been thought. It was impossible successfully to carry the operation through; it would have meant the patient's death. The conditions were quite clear to the operating surgeons; there was not a suggestion of mystery about them. In spite of every attention the woman died, and arrangements were made at home for her interment. When the body was taken home it was found that a complete post-mortem examination had been made, and the body afterwards closed up. The consent of the relatives had not been sought; it would never have been granted, seeing that the conditions were already known to the doctors responsible for the case. The discovery has caused grief and consternation in the circle which it affects" (*Evening Standard and St. James's Gazette*, November 2, 1907).

Who is the "Party having Lawful Possession" of the Body?—The Act, it will be observed, mentions the "party having lawful possession" of the body, but gives no definition of the phrase, and does not state the circumstances under which a person, other than an executor, becomes lawfully entitled to such possession.

It is clear that the executor is so entitled (*Williams* v. *Williams*, 1882, 20 Ch. D. 659), and, on this ground, could obtain a peremptory mandamus against a gaoler who, under the old law, endeavoured to obtain it on account of a debt (*R.* v. *Scott*, 1842, 2 Q.B. 248 note, and *R.* v. *Fox*, 1841, 2 Q.B. 246).

In the absence of any executor the husband or wife, or the nearest known relative, is perhaps entitled to possession, if he or she is prepared to bear the expense of burial. In the absence both of executor and relatives it would appear that the person in whose house the deceased dies is in lawful possession of the body.

When is Hospital in Lawful Possession?—For example, if a poor person dies in a hospital without having, during his life, expressed a wish not to be dissected, and without leaving any executor or known relative, the dead body would be in the lawful possession of such hospital, and the hospital would, it seems, be entitled before burial to use the body for purposes of dissection. It has been held that in this case the duty of burial falls upon the hospital (*R.* v. *Stewart*, 1840, 12 A. & E. 773).

It is often difficult to obtain a sufficient number of bodies for anatomical examination without payment. It should be remembered that, as there is no property in a dead body, it cannot lawfully be the subject of bargain or sale, and that it is an indictable offence to take a dead body from a grave and dispose of it for gain and profit (see *R.* v. *Gilles*, 1820, Russ. & Ry. 366, note *b*, and see also *R.* v. *Lynn*, 1788, 2 T.R. 733).

Disposal of Body of Pauper dying in Workhouse.—In order to obtain the body of a pauper who has died in the workhouse, application should be made to the guardians, and not to the master, for the master is merely a servant of the guardians. It was, however, held in *R.* v. *Feist*, 1858, D. & D. C.C.R. 590, that the master had legal possession of the body, but the decision is of uncertain authority. In this case the master of a workhouse was indicted for disposing for the purpose of dissection for gain and profit to himself of the dead bodies of paupers who died in the workhouse. It

appeared that, in collusion with the undertaker, the bodies were shown to the relatives in coffins, but that other coffins were substituted at the funeral, the bodies being taken to Guy's Hospital for dissection. It was held that the regulations of the Anatomy Act, 1832, had been complied with inasmuch as he had the lawful custody of the bodies, and the relatives did not require burial without dissection. This decision would, however, probably not be followed, either on the ground that the master was a servant or agent of the guardians and had no authority to dispose of the body, or on the ground that the consent of the relatives was fraudulently obtained.

Officer of Workhouse cannot receive Money for Dissection of Pauper.—A similar case is not likely now to arise, having regard to the Poor-law Amendment Act, 1844, which was not cited in *R.* v. *Feist* (above). By s. 31 of that Act, it is enacted that—

"It shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish division or parish chapelry or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding £5."

No Property in a Dead Body.—In English law a distinction is drawn between the right to possession as opposed to property, for there is no property in a dead body (*Williams* v. *Williams*, 1882, 20 Ch. D. 659).

American Law of Property in Dead Bodies.—The American law on the subject seems to be that bodies

of the dead belong to the surviving relatives, in the order of inheritance, like other property, and that such relatives, and not the executor or administrator, have the right to the custody and burial thereof (see *Renihan* v. *Wright*, 1890, 21 Am. Rep. 249; 125 Indiana 536). So in an action by a widow for the unlawful dissection of her husband it was held that, while there is no property in the dead body of a human being, in the commercial sense of the term, yet those who are entitled to its possession and custody for the purpose of burial have legal rights in it which the law recognises and protects, and any interference with such rights is an actionable wrong (*Larson* v. *Chase*, 1891, 28 Am. Rep. 370; 47 Minnesota 307).

It follows, therefore, that before the body is buried there is a right vested in the husband or wife or next-of-kin to possession for the purpose of burial or other legal disposition of it, so that a father upon the body of whose deceased minor child an autopsy has been performed without his consent may maintain an action (see *Burney* v. *Children's Hospital*, 1897, 61 Am. Rep. 273; 169 Mass. 57).

Anatomy Act, 1832, s. 9: Body not to be removed for Dissection from Place where Person died without a Certificate.—The Anatomy Act, 1832, further provides that in no case can the body of any person be removed for anatomical examination from any place where such person may have died until after forty-eight hours from the time of such person's decease, nor until after twenty-four hours' notice, to be reckoned from the time of such decease, to the inspector of the district, of the intended removal of the body, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place of death, nor unless a certificate stating in what manner such person came by

his death shall previously to the removal of the body have been signed by the physician, surgeon, or apothecary who attended such person during the illness whereof he died, or if no such medical man attended such person during such illness, then by some physician, surgeon, or apothecary who shall be called in after the death of such person to view his body, and who shall state the manner or cause of death according to the best of his knowledge and belief, but who shall not be concerned in examining the body after removal; and that in case of such removal, such certificate shall be delivered, together with the body, to the party receiving the same for anatomical examination (s. 9).

Professors, Surgeons, and Others may receive Bodies for Dissection.—Any member or fellow of any college of physicians or surgeons, or any graduate or licentiate in medicine, or any person lawfully qualified to practise medicine in any part of the United Kingdom, or any professor, teacher, or student of anatomy, medicine, or surgery having a licence may receive or possess for anatomical examination, or examine anatomically, the body of any person deceased, if permitted or directed so to do by a party who had at the time of giving such permission or direction lawful possession of the body, and who had power, in pursuance of the provisions of this Act, to permit or cause the body to be so examined, and provided such certificate as aforesaid were delivered by such party together with the body (s. 10).

Certificate to accompany Body, and to be transmitted to Inspector.—Every party so receiving a body for anatomical examination after removal shall demand and receive, together with the body, a certificate as aforesaid, and shall, within twenty-four hours next after such removal, transmit to the inspector of the district such

certificate, and also a return stating at what day and hour and from whom the body was received, the date and place of death, the sex, and (as far as is known at the time) the Christian and surname, age, and last place of abode of such person, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place to which the body is removed, and shall enter or cause to be entered the aforesaid particulars relating thereto, and a copy of the certificate he received therewith, in a book to be kept by him for that purpose, and shall produce such book whenever required so to do by any inspector so appointed as aforesaid (s. 11).

Notice to Secretary of State of Places where Anatomy to be practised.—No person may carry on or teach anatomy at any place, or at any place receive or possess for anatomical examination, or examine anatomically, any deceased person's body after removal of the same, unless such person, or the owner or occupier of such place, or some party by the Act authorised to examine bodies anatomically, shall, at least one week before the first receipt or possession of a body for such purpose at such places, have given notice to the Secretary of State of the place where it is intended to practise anatomy (s. 12).

How Bodies are to be removed for Dissection. Provision for Interment.—Every such body removed for the purpose of examination shall, before such removal, be placed in a decent coffin or shell, and be removed therein; and the party removing the same, or causing the same to be removed as aforesaid, shall make provision that such body, after undergoing anatomical examination, be decently interred in consecrated ground, or in some public burial ground in use for persons of that religious

persuasion to which the person whose body was so removed belonged; and a certificate of the interment of such body shall be transmitted to the inspector of the district within six weeks after the day on which such body was received as aforesaid (s. 13).

Period for Transmission to Inspector of Certificate of Interment extended.—The Secretaries of State may vary the period limited by the above section as to the time within which certificates of interment were to be transmitted to the inspectors of districts (Anatomy Act, 1871, s. 2).

By an order dated April 28, 1900, the period as to England has been extended to "twelve months after the day on which such body shall have been received."

By an order dated June 14, 1900, the period as to Scotland has been extended to "such period, not exceeding twelve months, as the inspector of anatomy for Scotland may from time to time or in any case require."

By an order dated April 16, 1890, the period as to Ireland has been extended to "nine months after the day on which such body shall have been received."

Licensed Persons not Liable for having in their possession Human Bodies.—No member or fellow of any college of physicians or surgeons, nor any graduate or licentiate in medicine, nor any person lawfully qualified to practise medicine in any part of the United Kingdom, nor any professor, teacher, or student of anatomy, medicine, or surgery having a licence to practise anatomy, is liable to any prosecution, penalty, forfeiture, or punishment for receiving or having in his possession for anatomical examination, or for examining anatomically, any dead human body, according to the provisions of this Act (s. 14).

Act not to prohibit Post-mortem Examination.—The Act further provides that nothing therein shall be

construed to extend to or to prohibit any post-mortem examination of any human body required or directed to be made by any competent legal authority (s. 15).

Repeal of s. 16 as Obsolete.—Formerly the bodies of murderers might be dissected by direction of the Court (9 Geo. IV. c. 31, ss. 4 and 5), and in a case decided while this Act was in force it was held that to sell the dead body of a capital convict for dissection, where dissection was no part of the sentence, was a misdemeanour (*R.* v. *Cundick*, 1822, D. & R. N.P.C. 13). This Act was repealed by s. 16 of the Anatomy Act, 1832, which section was repealed by the Statute Law Revision Act, 1891, as being obsolete.

Limitation of Actions under the Act.—Any action against any person for any thing done in pursuance of the Act shall be commenced within six calendar months next after the cause of action accrued; and the defendant in every such action may, at his election, plead the matter specially, or the general issue not guilty, and give the Act and the special matter in evidence at any trial to be had thereupon (s. 17).

Penalties for Offences against this Act.—Any person offending against the provisions of the Act in England or Ireland shall be deemed and taken to be guilty of a misdemeanour, and, being duly convicted thereof, shall be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding £50, at the discretion of the Court before which he shall be tried; and any person offending against the provisions of the Act in Scotland shall, upon being duly convicted of such offence, be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding £50, at the discretion of the Court before which he shall be tried (s. 18).

Burial.—Dead bodies may be disposed of in this country either by burial or cremation. The law as to cremation, so far as it is of a special nature, will be considered later, but some of the general law as to burial is still applicable to cremation.

A coroner, upon holding an inquest (but not otherwise), may by order under his hand authorise the body to be buried before registry of death (Coroners Act, 1887, s. 18 (6)). Such order or, where no inquest is held, the registrar's certificate, shall be delivered to the person who buries or performs the burial service. In default, such person must give notice to the registrar within seven days after burial (Births and Deaths Registration Act, 1874, s. 17).

Still-born Child.—Before burial of a still-born child there must be produced to the person in control of the burial ground (*a*) a written certificate that such child was not born alive, signed by a registered medical practitioner who was in attendance at the birth, or has examined the body of such child, or (*b*) a declaration signed by some person who would, if the child had been born alive, have been required to give information concerning the birth (see LYING-IN HOSPITALS), to the effect that no registered medical practitioner was present at the birth, or that his certificate cannot be obtained, and that the child was not born alive, or (*c*) if there has been an inquest, an order of the coroner.

As to the cremation of the remains of a still-born child, see later.

Burial of Pauper.—Upon the death in hospital of a person without means, the duty of burial falls upon the hospital, in default of any other person being willing to bear the expense (see *R.* v. *Stewart*, 1840, 12 A. & E. 773). The poor-law guardians have power to bury "the body of any poor person which may be within their

parish or union," but are under no legal obligation to do so (Poor Law Act, 1844, s. 31). They are, of course, bound to provide for the burial of a pauper dying in the workhouse or poor-law infirmary (see General Order, July 24, 1847, Art. 208, No. 16).

By the Burial Act, 1852, s. 49, as amended by s. 7 of the Burial Act, 1853, the fees in pauper burials at the expense of any hospital or infirmary are assimilated to those at the expense of a union or parish, where the burial takes place in "cemeteries established under the authority of Parliament," as to the meaning of which phrase see *R.* v. *Maude and others*, Manchester J.J., 1855, 5 E. & B. 702, from which it seems that only cemeteries established under special Acts are intended.

Burial of Person dying of Infectious Disease.—The disposal of the dead bodies of persons who have died from any of the infectious diseases which require notification is regulated in the case of deaths outside London by the Public Health Act, 1875, s. 142, and the Infectious Diseases (Prevention) Act, 1890, and in London by the Public Health (London) Act, 1891 (see INFECTIOUS DISEASE HOSPITALS).

Cremation.—Dead bodies may also be disposed of by cremation. To burn a dead body, instead of burying it, is not a misdemeanour, unless it is so done as to amount to a public nuisance (*R.* v. *Price*, 1884, 12 Q.B.D. 247) or to evade an inquest which ought to be held (*R.* v. *Stephenson*, 1884, 13 Q.B.D. 331).

Cremation Act, 1902.—Cremation is now governed by the Cremation Act, 1902, and the Cremation Regulations made thereunder dated March 31, 1903.

No Crematorium within 200 yards of House.—No crematorium may be constructed nearer to any dwelling-house than 200 yards, except with the consent, in writing, of the owner, lessee, and occupier; nor within 50 yards

of any public highway; nor in the consecrated part of the burial-ground of any burial authority (Cremation Act, 1902, s. 5).

Meaning of "Crematorium."—The word "crematorium" in this Act means any building fitted with appliances for the purpose of burning human remains (s. 2).

Expenses of Cremation are Funeral Expenses.—Expenses properly incurred in or in connection with the cremation of a deceased person are to be deemed to be part of the funeral expenses of the deceased (s. 9).

Coroner's Jurisdiction preserved.—S. 10 of the Act provides that nothing therein is to interfere with the jurisdiction of any coroner under the Coroners Act, 1887. The coroner's power (see Coroners Act, 1887, s. 18 (6)) would, however, appear to be limited by the Regulations, which provide that where an inquest is necessary no cremation shall be allowed unless the inquest has been held and a certificate has been given by the coroner in the form prescribed (Regulation 8).

Coroner's Certificate.—This certificate should show that the coroner held an inquest, what the verdict of the jury was, by whom medical evidence was given, and should conclude with a statement by the coroner that he was satisfied from the evidence that the cause of death was [*stating it*] and that no circumstance existed which could render necessary any further examination of the remains or any analysis of any part of the body (see Cremation Regulations, 1903, Form E).

Restrictions on Cremation.—The conditions under which cremation may take place are set out in Regulations 3 to 8, and briefly summarised are to the effect that cremation is forbidden (1) except in a crematorium of the opening of which notice has been given to the Secretary of State; (2) where it is known that the

deceased has left a written direction to the contrary; (3) where the remains have not been identified; (4) until the death has been registered, except in the case of an inquest; (5) unless a formal application stating particulars required confirmed by statutory declaration has been made (this application should be made by an executor or nearest relative, or a satisfactory reason given if made by any other person); (6) unless (*a*) either a certificate in the prescribed form has been given by the medical attendant and a confirmatory certificate by a qualified medical practitioner, or (*b*) a post-mortem examination has been made by an expert appointed by the cremation authority or the medical referee and a formal certificate given, or (*c*) an inquest has been held and a certificate given by the coroner.

DISPENSARIES

What is a Dispensary?—A dispensary may be called a species of hospital in so far as it is a place in which sick or injured persons are medically treated; but is distinguishable as its main purpose is the distribution of medicine to out-patients, and it does not as a rule provide bed or board or nursing accommodation for in-patients (see *Dilworth* v. *Stamp Commissioners*, 1899, A.C. 99, 107).

Every large hospital has its out-patient department, which may be called its dispensary; and an inquiry is being instituted by King Edward's Fund into the out-patient system of London voluntary hospitals.

Free Dispensaries.—Besides poor-law institutions there are free and provident dispensaries. Free dispensaries correspond with voluntary hospitals, and are mainly supported by charitable contributions, although a small charge is sometimes made to the patient.

Provident Dispensaries.—Provident dispensaries are generally founded by some friendly society and are supported by periodical payments made by the members, which payments are in the nature of an insurance fund entitling the members to medical relief.

Friendly Societies.—The relief of members in sickness is one of the main objects of a Friendly Society, and is given either by a money payment or more often by providing them with medical attendance and relief.

Medical Societies.—There are now a large number of medical societies called medical associations, medical in-

stitutions, medical aid societies, or provident dispensaries, the object of which is to provide medical attendance and medicine. Such societies are registered as friendly societies, and are subject to the provisions of the Friendly Societies Act. They are often constituted on a federal basis, as societies maintained by contribution from other societies, and governed by their delegates, and are the subject of express legislative enactment in s. 22 of the Friendly Societies Act, 1896, which is as follows :

"**Contributions from one Society to Another.**—(1) A registered society or branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered society or registered branch of a society, as provided in the rules of that first-named society or branch, without becoming a branch under this Act of that other society or branch.

"(2) This section shall in respect of contributing to the funds and taking part in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered trade union or branch of a registered trade union.

"(3) A registered society or trade union or branch shall not withdraw from contributing to the funds of any such medical society except on three months' notice to the society, and on payment of all contributions accrued or accruing due to the date of the expiration of the notice."

Power to subscribe to Hospitals.—Friendly societies and their branches are also expressly empowered by statute to subscribe to any hospital, infirmary, charitable or provident institution any annual or other sum which may be necessary to secure to members of the society or branch and their families the benefits of such hospital, infirmary, or other institution according to its rules (Friendly Societies Act, 1896, s. 37). This power to subscribe to hospitals being statutory need not be conferred by the

rules, but the rules should indicate out of what fund any such subscription should be made.

The words "according to its rules" at the end of the section refer to the rules of the hospital or institution. These rules prescribe the privileges of donors and annual subscribers, who, according to the amount given, may recommend so many in-patients or out-patients, but the rules are generally applicable to individuals, and not to societies or corporations. Where there is no express rule dealing with the case of a donation or subscription by a society, the hospital authorities should be asked to make a special regulation to meet the case.

Medical Officer of Friendly Society.—In cases where a friendly society appoints its own medical officer, he must be a person registered under the Medical Act, 1858 (see s. 36).

Negligence of Medical Officer.—If this condition is complied with it has been held that, apart from some rule or contract to the contrary, the society is not liable for any negligence on his part (*Barnes* v. *Lincoln Oddfellows, etc., Friendly Society*, 1895, 99 L.T. Jo. 217, a case decided by His Honour Judge Shortt).

Metropolitan Dispensaries.—Under the powers conferred by them under the Poor Law Amendment Act, 1834, and the Metropolitan Poor Act, 1867 (ss. 38 to 44), the guardians of the poor of the various unions and parishes in London have provided dispensaries for the relief of the sick poor out of the workhouse. In 1871 the Poor Law Board issued certain regulations as to the management of such dispensaries relating to (*a*) the dispensary visiting committee; (*b*) the duties of district medical officers; (*c*) the duties of the relieving officer; (*d*) the appointment of the dispenser; (*e*) the duties of the dispenser; and (*f*) the general duties of the guardians (Metropolitan Dispensaries Order, April 22, 1871).

GIFTS TO HOSPITALS

Gifts to Hospitals are "Charitable."—Gifts to hospitals are "charitable," and are therefore subject to the restrictions imposed on charitable assurances by the Mortmain Acts, 1888 and 1891, which now only impose restrictions on gifts of land and of personal estate directed to be laid out in land (see LAND).

Classification of Gifts.—Gifts may be either (1) in kind, (2) of money or stocks, shares, or securities, or (3) of land. They may also be classified according as they are made (*a*) during life, (*b*) by will.

Gifts in Kind.—Gifts in kind, such as chattels which pass by delivery, for example, food, clothing, furniture, and the like, may be freely given. Some articles, such as a picture or a statue, are subject to a permanent trust in the nature of an endowment.

Gifts of Money or Stocks, Shares, and Securities.—Gifts of money or stocks, shares, or securities may now also be freely given.

Money secured on Land.—Formerly "money secured on land or other personal estate arising from or connected with land" was considered as "land," and came within the restrictions of the Mortmain Acts, but this is now no longer law (see Mortmain Act, 1891, s. 3).

Money to be laid out in Land.—Money directed to be laid out in land is still subject to the following restrictions. In the case of gifts made during life restrictions are imposed by the Mortmain Act, 1888, s. 4, as if the

gift were an assurance of land. In gifts by will the money is held in trust for the hospital as if there had been no direction to lay it out in the purchase of land (Mortmain Act, 1891, s. 7).

Gifts of Land.—Gifts to hospitals of land are subject to restrictions according as they are made during life or by will.

Gifts of land during life are only valid if they comply with the conditions imposed by the Mortmain Act, 1888, as amended by the Mortmain Act, 1891.

Gifts of land by will are not invalid, but the land, except in certain cases, must be sold within a year from the donor's death (see Mortmain Act, 1891; see also the article LAND, in which the Mortmain Acts, 1888 and 1891, are set out).

General Conclusion as to Gifts to Hospitals.—The general conclusion to be drawn from the various enactments above referred to is as follows: (1) Chattels which pass by delivery, money or investments may be freely given to hospitals either during life or by will; (2) land or personal estate directed to be laid out in the purchase of land cannot be validly given during life unless all the conditions imposed by the Mortmain Act, 1888, are fulfilled; (3) any kind of property, whether real or personal estate, and either separately or together, may be given by will, and such property will be held for the benefit of the hospital, but (*a*) land may have to be sold, (*b*) a direction to purchase land will be ignored.

Form of Gift.—It follows that no precise form of gift by will is necessary so long as the intention is clearly expressed, and the subject-matter as well as the institution are accurately described. Thus, it is sufficient to say, "I [give —— [free of duty] to ——." In the case of a money gift, it is advisable to add "the receipt of the treasurer being a sufficient discharge for the same."

Secret Trust.—Before the Mortmain Act, 1891, came into force, land was sometimes devised to persons absolutely but subject to a secret trust in favour of a charity. Such attempts to evade the Statutes of Mortmain were nugatory (see *Russell* v. *Jackson*, 1852, 10 Ha. 204). In cases within the Mortmain Act, 1891, the trust would take effect as a devise of land, and would be subject to the same restrictions as an express devise. Secret trusts are of course otherwise enforceable in the case of a charity, and if uncertain as to object, a scheme will be settled (see further Tudor on *Charities*).

Doctrine of Cyprès.—According to what is known as the doctrine of cyprès, a charitable gift is not allowed to fail merely because there may be some uncertainty as to the particular institution which the testator intends to benefit.

Thus a testator gave his residue as follows: one-half to the Foundling Hospital, and the other half to the Lying-in Hospital, and if there should be more than one of the latter, then to such of them as his executor should appoint. The testator died without having appointed an executor. Lord Thurlow upheld the gift of the second half, and directed an inquiry as to which of the Lying-in Hospitals it should be paid (*White* v. *White*, 1778, 1 Bro. C.C. 12). This and similar cases proceed upon notions adopted from the Roman and civil law, which are very favourable to charities, that legacies given to public uses not ascertained shall be applied to some proper object (S.C. 1 Bro. C.C. 14).

General Charitable Intention indicated.—In another case a testator directed his trustees to set aside £10,000 for charitable purposes, and as to £4,000 part thereof in the establishment of a soup kitchen for the parish of Shoreditch, and of a cottage hospital adjoining thereto, in such manner as not to violate the Mortmain Acts.

It was ascertained that, no land being already in mortmain, this bequest could not be carried out. The Court held that there was a general intention to benefit the poor of Shoreditch, and directed a scheme for that purpose to be settled (*Biscoe* v. *Jackson*, 1887, 35 Ch. D. 460).

So a gift for a pest-house for poor persons afflicted with the plague was applied for the poor generally (*A.-G.* v. *Craven*, 1856, 21 Beav. 392).

Direction by Will to accumulate.—It may be noted that in the case of gifts by will where the testator directs an accumulation of the income of a capital sum of money for a specified period, and gives the same sum with its accumulations to a hospital, the hospital, whether incorporated or not, is entitled, like an ordinary individual, to stop the accumulation of the income and to call for payment of the capital (*Wharton* v. *Masterman*, 1895, A.C. 186).

Restriction as to Period of Accumulation.—This restriction on a testator's power of directing accumulation is distinct from that imposed by the Accumulation Acts, 1800 (Thellusson Act) and 1892, which affect the period during which accumulation may be directed by a testator or settlor (see *Travis*, 1900, 2 Ch. 541).

Intention to benefit Hospital carried out though Direction to accumulate Illegal.—A direction to accumulate beyond the legal period will not necessarily invalidate a gift to a hospital, but the Court will carry the testator's charitable intention into effect in accordance with the doctrine of cyprès (*Martin* v. *Maugham*, 1844, 14 Sim. 230; *Swain*, 1905, 1 Ch. 669).

Accumulations of Legacy follow Legacy.—Where money is bequeathed for a specific charitable object and is not so applied, but allowed to accumulate, the accumulations follow the destination of the original gift (*Forbes* v. *Forbes*, 1854, 18 Beav. 552).

INCORPORATION

Incorporation Formerly Essential to Foundation of Hospital.—At common law the founding of a "hospital" involved both incorporation and endowment, and it was held that incorporation should precede endowment (*Sutton's Hospital*, 1612, 10 Rep. 23*a*). But this law is not now applicable to the modern hospital, the meaning of which is distinct from the ancient sense of the word, which implied a corporate body (see INTRODUCTION). At the present time incorporation is not a necessary element in the foundation of a hospital, and when effected generally follows and does not precede endowment.

Advantages of Incorporation.—An unincorporated hospital is merely an association of persons the members of which are of necessity a fluctuating body, and can only sue or be sued in their individual capacity. The managing body may incur personal responsibility by entering into contracts for the benefit of the hospital with tradesmen and others (see CONTRACTS). These and other disadvantages generally induce the hospital authority to convert the hospital into a corporation.

Meaning of "Corporation."—What exactly is a corporation is not easy to define, as it is a creature of the imagination which, though non-existent, is yet immortal. It is sometimes spoken of as a legal entity. It is distinct from the members who compose it. It can sue and be sued in the corporate name, and possesses a corporate seal. Having no personality it can only be affected through

the property which is vested in it, for it can enter into valid contracts which bind such property.

Incorporation: How effected.—The incorporation of a hospital may be effected in any of the following ways: (1) By Royal Charter; (2) by special Act of Parliament; (3) under the Charitable Trustees Incorporation Act, 1872; (4) under 39 Eliz. c. 5; (5) under the Companies Act, 1867, s. 23; (6) under the Companies Acts, 1862 to 1907.

Incorporation by Royal Charter.—"A Royal Charter is a written instrument containing a grant by the Crown to persons therein designated, either of *jura regalia*, or other franchises or liberties, rights, powers, privileges, or immunities, or of chattels, or estates in land, or any of these, made in the form of letters patent with the great seal appended to it, and directed and addressed to all subjects of the Crown" (Grant on *Corporations*, p. 9).

Charter of Incorporation: How obtained.—Application for a charter of incorporation is made by petition to the King in Council. The petition and draft of the proposed charter are left at the Privy Council Office, and are then referred to a committee of the Council. Notice of such application is published in the *London Gazette*. A charter, if granted, is sealed with the great seal or with the wafer great seal.

College Charter Act, 1871.—Institutions in the nature of a college or university are also subject to the provisions of the College Charter Act, 1871, whereby "a copy of any application for a charter for the foundation of any college or university, which after the passing of this Act may be referred by Her Majesty in Council for the consideration and report of any committee of Her Majesty's Privy Council, shall, together with a copy of the draft of the charter applied for, be laid before both Houses of Parliament for a period of not less than thirty days before any such

report shall be submitted to Her Majesty" (s. 2). It is not clear what institutions come within this Act, which enacts that "college or university" shall include any institution in the nature of a college or university—medical schools probably, and possibly some hospitals are included.

Illegal Charters may be revoked.—"All charters or grants of the Crown may be repealed or revoked when they are contrary to law, or uncertain, or injurious to the rights and interests of third persons" (*R.* v. *Hughes*, 1866, L.R. 1 P.C. 81, 87).

It is therefore important to remove beforehand all possible objections and not to keep back any facts which might affect the granting of the charter, although having once been granted, the burden of proof is upon those who dispute its illegality (per Patterson J., *R.* v. *Boucher*, 1842, 3 Q.B. 641, 654).

Fees on Letters Patent.—As to amount of fees in respect of warrants for letters patent, see Lord Chancellor's Order, August 11, 1881. These fees are now collected not by means of stamps but in cash (see Treasury Order, June 30, 1891).

Distinctions between Corporations formed by Charter and by Statute.—As to some of the distinctions which exist between a corporation which has been formed by charter and that which has been formed by statute, see *A.-G.* v. *London County Council*, 1901, 1 Ch. 781, affirmed by H.L. 1902, A.C. 165.

Special Act of Parliament.—It is sometimes necessary to obtain a special Act, especially where powers are required which are not conferred by common law or any general statute; but it is not usually necessary merely for the purpose of incorporation.

When Special Act of Parliament required.—In cases where the general law is inapplicable and to

which the jurisdiction of the Court or the Charity Commission does not extend, it may be necessary to obtain a special Act of Parliament for the following purposes: (1) To incorporate a new hospital; or (2) to convert an existing hospital into a corporation; or (3) to vary the trusts of an existing hospital; or (4) to alter the general law in favour of the particular hospital.

What are Public Acts?—By the Interpretation Act, 1889, every Act passed after the year 1850 shall be a public Act, and shall be judicially noticed as such unless the contrary is expressly provided by the Act (s. 9).

Construction of Acts of Parliament.—Rules of construction are set out by the same Act which apply to all past and future Acts unless the contrary intention appears (s. 12).

Special Act incorporating Existing Hospital.—As an example of a special Act of Parliament incorporating an existing hospital, reference may be made to the Consumption Hospital Act, 1849, 12 & 13 Vict. c. lxxx.

Application to establish Infectious Disease Hospital.—In applying for a special Act to establish a hospital for infectious diseases the site must be specified (S.O. 5 and S.O. H.L. 139). An objection to a particular site is maintainable (*Edmonton, etc., Joint Hospital Provisional Order Confirmation Bill*, 1891, Rickards and Saunders, *Locus Standi* Reports 127; *Bolton Improvement Bill*, 1882, 3 Clifford and Rickards 134).

39 Eliz. c. 5, enabling Incorporation of "Hospitals."—This Act, which was made perpetual by stat. 21 Jac. 1, was passed to encourage the erection of hospitals, as it had been found that the charges of incorporation and of the licence in mortmain were so great as to deter men from undertaking these pious and charitable works (2 Inst. 722). The short effect of it is as follows:

Any person (except an infant, married woman, or lunatic) or corporation seised of land in fee simple might establish an incorporated "hospital," with power to purchase and hold land to the yearly value of £200. The "hospital" must upon its foundation be endowed with land of the clear yearly value of £10, and the deed of foundation must be enrolled in the Supreme Court.

It is doubtful whether this Act was intended to apply to or can be used in founding a modern hospital or infirmary for the treatment of sick persons. The power given is "to erect, found, and establish one or more hospitals, *maisons de dieu*, abiding places, or houses of correction . . . as well for the finding, sustentation and reliefe of the maimed, poore, needy or impotent people, as to set the poore to worke."

The old meaning of "hospital" must in this connection be borne in mind (see INTRODUCTION), and also the fact that the stat. 21 Jac. c. 1, which made the statute of Elizabeth perpetual, refers to it as "An Act for erecting of hospitales or abiding and working houses for the poor." Lord Coke, in a commentary on the statute of James, says: "*Nota.*—An Hospitall, is the generall word, and includes *Measons de dieu*, and abiding places for the poor, etc., also Houses of Correction, as here it appeareth" (2 Inst. 726). The word "hospital" here probably, therefore, means almshouse, work-house, or poor-house. In *Philpott* v. *St. George's Hospital*, 1859, 27 Beav. 107, Lord Romilly, M.R., refused to allow a gift of money for the erection of almshouses to be applied in the erection of buildings which included a wing as a hospital or infirmary for the almshouse people. If this decision was correct it is obvious that this ancient statute should be adopted with caution. It is suggested that it was merely a link in the chain of laws for relief of the poor.

Charitable Trustees Incorporation Act, 1872.—This Act provides that upon the application of trustees of any charity, for public charitable purposes, the Charity Commissioners may grant a certificate of registration as a corporate body to such trustees (s. 1). The words "public charitable purposes," mean all charitable purposes within 43 Eliz. c. 4, or as to which the Court of Chancery has jurisdiction; and "trustees" include the governors, managers, or other persons having the conduct or management of the charity (s. 14). Gifts to the charity before incorporation are to have the same effect as those made afterwards (s. 10). The Act, which clearly applies to voluntary or endowed hospitals, contains various other provisions which need not be set out here, as it is understood that it is seldom used. S. 13 as to enrolment is repealed by the Mortmain Act, 1888, and the preamble and the proviso at the end of s. 1 are repealed by the Statute Law Revision Act, 1893 (see Tudor on *Charities*).

Companies Act, 1867, s. 23.—Voluntary hospitals and similar institutions when carried on for charitable purposes, as distinct from profit hospitals, may be incorporated under the Companies Acts as a limited company, without the addition of the word "limited," and with other special privileges, upon obtaining a licence by the Board of Trade. The section is as follows:

"**23.**—Where any association is about to be formed under the principal Act [*i.e.* the Act of 1862] as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by licence, under the hand of one of the

Secretaries or Assistant Secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered. The licence by the Board of Trade may be granted upon such conditions, and subject to such regulations as the Board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said Board, be inserted in the memorandum and articles of association, or in both or one of such documents."

Form of Notice of Application for Licence.—The notice of an application for a Board of Trade licence under this section is generally in the following form :

Application for a Licence of the Board of Trade.

Notice is hereby given that in pursuance of the 23rd section of the Companies Act, 1867, application has been made to the Board of Trade for a licence directing an association about to be formed under the name of the —— Hospital, to be registered with limited liability without the addition of the word " limited " to its name.

The objects for which the association is proposed to be established are : [*state main objects shortly*].

The objects of the hospital are set out in full in the memorandum of association, a copy of which may be inspected at the offices of ——.

Notice is hereby further given that any person, company, or corporation objecting to this application may bring such objection before the Board of Trade, on or before the —— day of —— next, by a letter addressed to

the Comptroller of the Companies Department, Board of Trade, 8, Delahay Street, London, S.W.

Dated this —— day of —— 1907.

—— Secretary.

Alteration of Memorandum of Association.—If a company registered under this section desires to alter its memorandum of association, it should, in the first instance, apply to the Board of Trade, and then to the Court (see *St. Hilda's Incorporated College, Cheltenham*, 1901, 1 Ch. 556).

Incorporation of Profit Hospital under Companies Acts, 1862 to 1907.—Any hospital or other institution carried on as a trading concern for gain can of course be registered under the Companies Acts as an unlimited company, or as a company limited by shares or by guarantee upon complying with the provisions of the Acts. For the proper procedure reference should be made to the leading works on Company Law.

INFECTIOUS DISEASE HOSPITALS

Meaning of "Infectious Disease."—The term "infectious disease" is hardly capable of precise definition for the purposes of this work. The Legislature has conferred upon local authorities various powers for its prevention, and, as will be seen, enumerates a certain number of infectious diseases; but the list is by no means exhaustive, and power is given to add to their number. No definition is contained in the statutes themselves, and as the law for its prevention is mainly statutory, a strict definition might be misleading, as including diseases to which the statutes may not apply. A further difficulty arises from the fact that medical science is still undecided as to what diseases are or are not "infectious." Speaking generally, the term "infectious diseases," which is used as the title of this article, is deemed to include all diseases which may be conveyed from one person to another and which are known as infectious or contagious, and whether also epidemic or endemic.

Epidemic and Endemic Diseases.—Both epidemic and endemic diseases are infectious in the wider sense of the term. The distinction between them appears to be that an "epidemic" disease is "prevalent among a people or a community at a special time, and produced by some special causes not generally present in the affected locality," whereas an "endemic" disease is "habitually prevalent in a certain country, and due to permanent local causes" (*New English Dictionary*).

Special Statutory Powers for checking Epidemics.—Special statutory enactments are in force for checking epidemics which supplement the general law as to infectious disease. Regulations are issued by the Local Government Board and put in force by the local authorities (see Public Health Act, 1875, ss. 130, 134–40; Public Health (London) Act, 1891, ss. 82–7. The powers conferred by ss. 130, 134, 135, and 140 are extended to London by the Public Health (London) Act, 1891, s. 113). Regulations of the Local Government Board may now provide for their enforcement by officers of customs and officers and men employed in the coastguard, and for signals to be hoisted by vessels having on board any case of epidemic, endemic, or infectious disease; questions to be answered; detention of vessels; duties of masters, pilots, and others on board (Public Health Act, 1896, s. 1). This Act repealed numerous enactments relating to quarantine (s. 6), and together with the orders of the Local Government Board constitutes a code of the existing law for the special prevention of epidemics. The general regulations now in force as to England are those contained in the orders dated November 9, 1896, September 19, 1900, and December 24, 1902, which last order varied the order of 1896, and also certain local regulations.

Infectious Disease Hospitals generally.—Hospitals for the treatment of infectious disease may be established under the common law or under the express provisions of some statute. There is no legal objection at common law to the erection of an infectious disease hospital so long as it does not cause a nuisance (see NUISANCE). The common law has been supplemented by statutory provisions for the notification and prevention of infectious diseases and for the establishment of infectious disease hospitals.

Law outside London and in London as to Infectious Disease.—As there are two distinct codes of law (one for the area outside London, and the other for London or the metropolitan area), it will be convenient to state the law for each area separately, commencing with the area outside London, as to the notification and prevention of infectious disease and as to the establishment of infectious disease hospitals.

Notification of Infectious Disease outside London.—The principal Act as to notification outside London is the Infectious Diseases (Notification) Act, 1889. This Act originally extended to London (s. 2 (*a*)), but by the Public Health (London) Act, 1891, this provision was repealed and London was provided with its own code. The Act at first only applied to those places where the Act was adopted by the local authority (s. 2 (*b*)), but by the Infectious Diseases (Notification) Act, 1899, adoption ceased to be a condition, and the Act applies to all places outside London.

Infectious Diseases to which Notification Act applies.—The diseases specified by the Act as "infectious" are small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet fever, and all fevers known as typhus, typhoid, enteric, relapsing, continued, or puerperal, and include, as respect any particular district, any infectious disease to which the Act has been applied by the local authority (s. 6). Plague is now included by the Local Government Board Order of September 19, 1900. Any local authority may order that the Act shall apply in their district to any "infectious disease" (s. 7); but, as has been noticed, no further definition of infectious disease is given.

Notification: When required.—Where an inmate of any building used for human habitation is suffering from an infectious disease to which the Act applies (see last paragraph), then such disease must be notified to the

medical officer of health, "unless such building is a hospital in which persons suffering from an infectious disease are received" (s. 3). The hospitals exempted include voluntary as well as rate-supported hospitals, but would not, it is thought, include a hospital not intended for the reception of infectious cases.

Who is to notify.—The Act requires that a notice and medical certificate should be sent to the medical officer for health. The notice must be sent by one of the following persons: (1) the head of the family; (2) the nearest relative; (3) the person attending the patient; (4) the occupier of the building. The hospital authority may, therefore, be responsible as occupier of the building, in default of other notice being given. The medical certificate must be sent by the medical practitioner attending the patient (s. 3), for which he is entitled to a fee of *2s. 6d.* if the case occurs in his private practice, or of *1s.* if as medical officer of any public body or institution (s. 4). The fact that the medical practitioner in attendance is also medical officer of health does not disentitle him to his fee (s. 11).

Prevention of Infectious Disease outside London.—The principal Acts in force for the prevention of infectious disease outside London, are the Public Health Act, 1875, ss. 120-30 and 134, as amended by the Public Health Act, 1907, ss. 52-68, and the Infectious Diseases (Prevention) Act, 1890. The Act of 1890 applied to London until the Public Health (London) Act, 1891, when the section so applying it (s. 3 (*a*)) was repealed. The Act of 1890 only applies to those districts in which it has been adopted by the local authority (s. 3), and has been extended by the Public Health (Ports) Act, 1896, so as to apply to any port sanitary authority.

There are also some special statutes which contain

provisions for the prevention of infectious diseases, for example: the Housing of Working Classes Act, 1885, s. 9; the Canal Boats Act, 1877, s. 4; the Public Health (Ships) Act, 1885, s. 2; and the Factory Act, 1901, ss. 109, 110 (see Home Work Order of August 15, 1905). The last-mentioned Act also applies to London (see s. 153).

The reader is referred to the various statutes above mentioned for further information as to the powers conferred on local authorities and others for the prevention of infectious disease, but such provisions as seem material to this work and of importance to hospital authorities are set out below.

Removal of Infected Persons to Hospital by Order of Justice.—Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority; and any person so suffering who is lodged in any common lodging-house may, with the like consent and on a like certificate, be so removed by order of the local authority.

The justice's order may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding £10 (Public Health Act, 1875, s. 124).

In *Warwick* v. *Graham*, 1899, 2 Q.B. 191, it was decided that although a man suffering from a dangerous infectious disorder and lodging at his father's house might have proper lodging and accommodation, so far as he himself was concerned, yet, so far as he was a danger to others in the house, he was "without proper lodging and accommodation" within the meaning of the section.

It has been decided that it is no answer to a summons for obstructing the execution of a removal order that such order was improperly made (*R.* v. *Davey*, 1899, 2 Q.B. 301, following *Booker* v. *Taylor*, *The Times*, November 21, 1882).

Removal to Hospital of Infected Persons brought by Ships.—Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any person brought within their district by any ship or boat who are infected with any dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding 40*s.* for each offence (Public Health Act, 1875, s. 125).

Canal Boats.—With regard to the removal of persons suffering from infectious disorders on canal boats, see the provisions of the Canal Boats Acts.

Cholera, Yellow Fever, and Plague.—As to removal to and detention in hospital of persons suffering from cholera, yellow fever, and plague, see Art. 13 of the General Order of the Local Government Board, November 9, 1896.

Detention of Infected Person in Hospital by Order of Justice.—In a district in which the Infectious Diseases (Prevention) Act, 1890, has been adopted, any justice of the peace acting in and for the district of the local

authority, upon proper cause shown to him, may make an order directing the detention in hospital at the cost of the local authority of any person suffering from any infectious disease who is then in a hospital for infectious disease and would not on leaving such hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disorder by such person. Any order so to be made by any such justice may be limited to some specific time, but with full power to any justice to enlarge such time as often as may appear to him to be necessary. It shall be lawful for any officer of the local authority or inspector of police acting in the district, or for any officer of the hospital, on any such order being made to take all necessary measures and do all necessary acts for enforcing the execution thereof (Infectious Diseases (Prevention) Act, 1890, s. 12).

Detention in Poor-law Infirmary by Guardians.—The power of the guardians to detain poor persons suffering from infectious or contagious diseases in the workhouse is provided by s. 22 of the Poor Law Amendment Act, 1867, which is as follows:

"**22.**—Where there shall be in any workhouse a poor person suffering from any mental disease, or from bodily disease of an infectious or contagious character, and the medical officer of such workhouse shall upon examination report in writing that such person is not in a proper state to leave the workhouse without danger to himself or others, the guardians may direct the master to detain such person therein, or, if the guardians be not sitting, the master of the workhouse may, until the next meeting of the guardians, detain him therein, and such person shall not be discharged from such workhouse until the medical officer shall in writing certify that such discharge may take place; provided, however, that this enactment shall not prevent the removal of a lunatic to a lunatic asylum, registered hospital, or licensed house, when such removal is other-

wise required by law, nor the removal of any poor person after the parent or next-of-kin of such person shall have given to the guardians such an undertaking as they shall deem satisfactory to provide for the removal, charge, and maintenance of such person with due care and attention while the malady continues; and this provision shall apply to every district school and district asylum, and to the managers, board of management, medical officer, superintendent, or master thereof respectively."

Removal to Mortuary of Dead Body of Person dying of Infectious Disease.—By the Public Health Act, 1875, s. 142, where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body, which is in such a state as to endanger the health of the inmates of the same house or room, is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and, unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding £5.

This section should be compared with the three following sections of the Infectious Diseases (Prevention) Act, 1890, which, as already mentioned, only applies in those districts where the Act has been adopted by the local authority. The sections referred to are ss. 8, 9, and 10, and are as follows:

"**8. Prohibiting Retention of Dead Bodies in Certain Cases.**—No person, without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary, or in a room not used at the time as a dwelling-place, sleeping-place, or work-room, for more than forty-eight hours, the body of any person who has died of any infectious disease.

"**9. Bodies of Persons dying of Infectious Diseases in Hospital, etc., to be removed only for Burial.**—If any person shall die from any infectious disease in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried or taken direct to some cemetery or place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding £10. Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

"**10. Justices may order Dead Bodies to be buried.**—Where the body of any person who has died from any infectious disease remains unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or work-room for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building, any justice may, on the application of the medical officer of health, order the body to be removed at the cost of the

local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may, in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial."

Infectious Disease Hospitals outside London.—Legislation for the establishment of Infectious Disease Hospitals is, like that for the notification and prevention of infectious disease, of comparatively modern growth.

"A century ago the only special provision in England for infectious diseases was the old parish 'pest-house' to be met with here and there, and the distrust with which those generally primitive and insanitary places were regarded by the public may be gathered from the fact that the 'fever' hospitals, which at the end of the eighteenth century and the beginning of the nineteenth were erected by private efforts in view of the epidemics of that time, were, in many cases, called by the more attractive title of 'houses of recovery'" (Burdett's *Hospitals and Asylums of the World*, vol. iii. p. 103).

Voluntary Fever Hospitals.—The Voluntary Fever Hospitals are merely a special kind of voluntary hospital (see VOLUNTARY HOSPITALS), and can be established and carried on in the same way as any other voluntary hospital, so long as the position they occupy or the way in which they are carried on does not constitute a nuisance (see NUISANCE).

Rate-supported Hospitals outside London.—The principal statutory enactments which authorise local

authorities to establish hospitals outside London, and maintain them by compulsory rates, are the Public Health Act, 1875, ss. 131-3, and the Isolation Hospital Acts, 1893 and 1901. Many of the hospitals provided by local authorities under the Public Health Act, 1875, have now been transferred to the county councils, and adapted as isolation hospitals, but there are still many districts which have local and joint hospitals where the Isolation Hospital Acts have not been put in force.

The provisions of the Public Health Act, 1875, are as follows:

Hospitals under Public Health Act, 1875, ss. 131-3.—"**131.**—Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may (1) themselves build such hospitals or places of reception; (2) contract for the use of any such hospital or part of a hospital or place of reception; (3) enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other any sum as may be agreed on. Two or more local authorities may combine in providing a common hospital."

As to the constitution of a hospital under this section, see *Evans* v. *Liverpool*, 1906, 1 K.B. 160.

Whether Hospital means Infectious Disease Hospital.—It will be observed that the above section applies in general terms to "hospitals or temporary places for the reception of the sick," but it must also be remarked that ss. 120-33 constitute a group under the heading, "Infectious Diseases and Hospitals," and that in a memorandum issued by the Local Government Board, dated December 1876, "For local arrangements relating

to infectious disease," it is pointed out that the powers conferred on local authorities by s. 131 are intended to be exercised for the prevention of the spread of infectious disease, and, in fact, the hospitals so provided are generally for infectious diseases. On the other hand, the words are wide enough to include every kind of hospital, for no distinction is made as to the nature of the sickness, whether it be infectious or not (see per Chitty J. in *Withington Local Board* v. *Manchester*, 1893, 2 Ch. 30).

Within what Area Hospital may be provided.—In the same case the same learned judge has held that, as no mention is made in the section as to the precise area within which the local authority may provide such hospitals, a local authority may provide such hospital on land of its own, although the site is outside its own district and within the district of another local authority.

Available for Paupers or Non-Paupers.—The section extends to inhabitants of a district without class distinction, and on the face of it is not restricted to paupers or non-paupers (see *R.* v. *Rawenstall*, 1894, 10 Times Law Reports 643).

Nuisance in erecting Hospital.—Local authorities may be restrained from erecting hospitals under this section so as to cause a nuisance (see NUISANCE).

Power to use Voluntary Hospital.—The powers given by the section to contract for the use of a hospital would seem to extend to voluntary hospitals; but the section confers no power to compel a voluntary hospital to provide accommodation.

Joint Hospital Boards.—Joint Hospital Boards may be formed under this section and under s. 279 of the same Act (see *Isle of Thanet Joint Hospital Board* v. *Farquhar*, 1904, 2 L.G.R. 1310; *Bury and District Joint Hospital Board* v. *Chorlton Union*, 1905, 4 L.G.R. 489).

Powers extended to Ships.—SS. 131-3 of the Public Health Act, 1875, are extended to ships lying within the jurisdiction of the local authority by the Public Health (Ships, etc.) Act, 1885.

Recovery of Expense from Non-Pauper.—Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place (Public Health Act, 1875, s. 132).

S. 132 has been amended by s. 60 of the Public Health Act, 1907, as follows:

"**60.** Nothing in s. 132 of the Public Health Act, 1875, with respect to the recovery of the cost of maintenance in a hospital, shall require the local authority to recover the cost of maintenance from a patient who is not a pauper where the local authority have satisfied themselves that the circumstances of the case are such as to justify the remission of the debt."

This section extends to any district to which it is applied by order of the Local Government Board or of the Secretary of State.

Liability of Guardians for Expense of Pauper Patients.—It will be observed that in s. 132 of the 1875 Act, as amended by s. 60 of the 1907 Act, it is only in the case of a patient not a pauper that provision is made for the payment of the expenses of maintenance. Apart from contract express or implied (or some provision in the Provisional Order, if any, under which the hospital authority is constituted), poor-law guardians are not liable

to contribute to the expense of maintaining paupers settled in their parish who are admitted into the hospital of another parish (*Bury Joint Hospital Board* v. *Chorlton Union*, 1905, 4 L.G.R. 489).

Liability of Parents for Children not Paupers.—Neither is there any statutory liability imposed upon persons *in loco parentis* to pay for the maintenance of children who are not paupers (*Isle of Thanet Joint Hospital Board* v. *Farquhar*, 1904, 2 L.G.R. 1310).

Local Authority may provide Medical Relief.—Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district (Public Health Act, 1875, s. 133).

This section is in terms very wide, and tends to confirm the view of Chitty J., above mentioned, that the powers of this and the two previous sections are not necessarily confined to infectious cases.

Practical effect has been given to these powers by the establishment of local dispensaries.

Conversion of Local Hospital into Isolation Hospital.—Hospitals erected under ss. 131-3 may, by s. 1 of the Isolation Hospitals Act, 1901 (*post*), be converted into isolation hospitals within the meaning of the Isolation Hospitals Act, 1893 (*post*). By s. 2 of the Act of 1901 power is also conferred on the county council to contribute out of the county rate to such hospitals as are provided under ss. 131-3 for the reception of patients suffering from infectious disease.

Guardians may transfer Building to Local Authority for use as Infectious Disease Hospital.—By s. 14 of the Poor Law Act, 1879, provision is made for the transfer by guardians of a union to the rural sanitary authority

of buildings for use as an infectious hospital. The section is as follows:

"**14.** If it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts relating to the relief of the poor should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by an order of the Local Government Board, transfer such hospital or building accordingly; and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution or order.

"If the same is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district, the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building.

"Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept and the application of the sum so paid."

Origin of Isolation Hospitals.—Although in populous towns local authorities had established hospitals under the powers conferred by the Public Health Act, 1875, it was found that many less populated districts had no infectious disease hospitals, and it appeared advisable that these should be formed on a county basis and be maintained by a county rate, and on the recommendation of the County Councils Association the Infectious Hospitals Bill (afterwards called the Isolation Hospitals Act, 1893) was introduced (4th Hansard, vol. v. p. 1654).

Isolation Hospitals Act, 1893.—This Act, which is described as "An Act for enabling County Councils to promote the establishment of Hospitals for the reception of Patients suffering from Infectious Diseases," is as follows:

"1. **Short Title.**—This Act may be cited for all purposes as the Isolation Hospitals Act, 1893.

"2. **Limits of Act.**—This Act shall not extend to Scotland or Ireland, or to the administrative county of London, or to any county borough, or without the consent of the council of the borough to any borough containing, according to the census for the time being in force, a population of ten thousand persons or upwards, or to any borough containing a less population without the like consent, unless the Local Government Board by order direct that the Act shall apply to such borough."

The "administrative county of London" was established by s. 40 of the Local Government Act, 1888, and comprises "the metropolis" as defined by s. 100 of that Act. A "county borough" is defined by s. 31 of the same Act, and a list of these boroughs is set out in Schedule III. of the Act. The law as to infectious disease or isolation hospitals for London is discussed later.

"3. **County Council to provide for Establishment of Isolation Hospitals.**—The council of every county may, on such application being made to them, and proof adduced, as is in this Act mentioned, provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases (in this Act referred to as 'an isolation hospital')."

County councils were established by the Local Government Act, 1888. As to the meaning of "infectious diseases" in this Act, see s. 26 (*post*).

"4. **Application, by whom to be made.**—(1) An application to a county council for the establishment of an

isolation hospital may be made by any one or more of the authorities, by this Act defined as local authorities, having jurisdiction in the county, or any part of the county; and any such application may be made in pursuance of a resolution passed at a meeting of such authority by a majority of the members assembled thereat, and voting in manner in which votes are required by law to be given at a meeting of the authority. Any such meeting shall be called together by notice given in manner in which notices of the meetings of the authority concerned are required to be given by law, and specifying the object of the meeting to be the making an application to the county council under this Act.

"(2) An application for the establishment of an isolation hospital may also be made by any number of ratepayers not less than twenty-five, in any contributory place as defined by this Act."

As to the meaning of "local authority," see s. 26 (*post*). For definition of "contributory place," see s. 26 (*post*).

"**5. Application, how made.**—(1) The application shall be made by petition, and shall state the district for which the isolation hospital is required, and the reasons which the petitioners adduce for its establishment.

"(2) The county council shall, by themselves, or by a committee of their body appointed for that purpose, consider the petition, and, if satisfied by the statements of the petition as originally prepared, or by any amendments made therein, that a *prima facie* case is made out for a local inquiry, they shall cause such inquiry to be made as to the necessity for the establishment of an isolation hospital."

Sub-s. (2) is imperative, and on a *prima facie* case being made out for a local inquiry it would appear to be the duty of the county council to cause such an inquiry to be made.

The expenses of this inquiry and of an inquiry under the following section are provided by s. 17 (*post*).

"**6. Report of Medical Officer of County.**—The county council may direct an inquiry to be made by the medical officer of health of the county as to the necessity of an isolation hospital being established for the use of the

inhabitants of any particular district in the county, and in the event of such medical officer reporting that such a hospital ought to be established for the use of the inhabitants of a district, may take the same proceedings in all respects for the establishment of such hospital as if a petition had been presented by a local authority for the establishment of an isolation hospital for the district named in the report of such medical officer of health."

By this section power is conferred on a county council where no petition has been presented to direct an inquiry "as if a petition had been presented by a local authority" or by the ratepayers (see s. 4).

The Local Government Act, 1888, s. 17, provides for the appointment of the medical officer of health of the county, who may also be the district medical officer.

"**7. Conduct of Local Inquiry.**—The county council shall conduct the local inquiry into the necessity for the establishment of an isolation hospital, and as to the proper site for the hospital, and the district for which it is to be established (in this Act called the 'hospital district'), by a committee consisting of such number of their members, either with or without the addition of such other persons, or in such other manner as the council think expedient. All expenses properly incurred by any such committee shall be paid as hereinafter directed. The local inquiry shall be held subject to such regulations and otherwise as the council thinks fit. Due notice of the time and place at which any inquiry is to be held by the county council shall be given in such manner as the county council may think the best adapted to inform any persons interested, and such persons may attend and state their case before the members appointed to conduct such inquiry."

As to the expenses of a committee formed hereunder, see s. 17 (*post*).

"**8. Variation of District.**—(1) Every hospital district constituted under this Act shall consist of a single local area, or two or more local areas, as defined by this Act.

"(2) The county council may vary any proposed hospital district by adding to it or subtracting from it any local

area. A local area which is already provided with such isolation hospital accommodation as may in the opinion of the county council be sufficient for the reasonable exigencies of such area, shall not, without the assent of the local authority of such area testified by a resolution of such authority, be included in a hospital district under this Act.

"(3) If any local authority, having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months from the date of the order appeal to the Local Government Board, and the decision of such Board shall be conclusive."

For definition of "local area," see s. 26 (*post*). As to Local Government inquiries, see s. 24 (*post*). As to the powers of the Local Government Board on any appeal under s. 8, see s. 5 of the Isolation Hospitals Act, 1901 (*post*). As to the right of parish councils to appeal, see s. 6 of the latter Act.

"**9. Order dismissing Petition or constituting Hospital District.**—On conclusion of a local inquiry by the county council as to the necessity for the establishment of an isolation hospital, the county council shall make an order, either dismissing the petition, or constituting a hospital district, and directing an isolation hospital for such district to be established: Provided that the county council shall not take steps for the constitution of a hospital district for one or more contributory places forming a portion of a rural sanitary district within the jurisdiction of the county council, or for one local area, unless the sanitary authority of such place or places, or area, assent to the application, or are proved to the satisfaction of the county council to be unable or unwilling to make suitable hospital accommodation for such place, places, or area."

As to the alteration of county council orders, see s. 20 (*post*). It will be seen that it is the duty of the county council to make some order as specified above.

As to sending copies of orders to the Local Government Board, see s. 7 of the Isolation Hospitals Act, 1901 (*post*).

"**10. Hospital Committee.**—(1) When a hospital district has been constituted, a committee shall be formed by the county council. Any such committee may consist wholly of members of the county council, or partly of members of the county council and partly of representatives of the local area or areas in the district, or wholly of such local representatives. The county council shall make regulations for the election, rotation, and qualification, and for all other matters relating to the constitution of any such committee, subject to these qualifications, that where no contribution is made by the county council to the funds of the hospital, such committee shall consist, unless the constituent local authorities otherwise desire, wholly of representatives of the local area or local areas of the district, and that if any local authority within the hospital district feels aggrieved by the mode in which any such committee is constituted, it may appeal to the Local Government Board, and that Board may modify the constitution of any committee so formed by the county council in such manner as the Board think expedient and just.

"(2) A hospital committee shall have all such powers of acquiring land as are hereinafter mentioned, also all such other powers of providing a hospital by purchase or otherwise, and managing and maintaining the same when so provided, as the county council may delegate to them: Provided that the county council shall retain to themselves the power of inspecting any such hospital, and of raising money by loan for the purposes of such hospital.

"(3) A hospital committee shall be a body corporate, having a perpetual succession and a common seal, under such name and style as may be conferred on it by the county council. It shall be capable of acquiring land, by devise, gift, purchase or otherwise, without licence in mortmain.

"(4) Where a hospital district is an area wholly or as to the greater part thereof under the jurisdiction of any corporate local authority, the county council may, if they think fit, invest such local anthority with all the powers of a hospital committee under this Act, and thereupon such authority shall be deemed to be the hospital committee for

such district, and shall exercise all the powers of such committee under its original corporate name."

As to the constitution of hospital committees, see s. 8 of the Isolation Hospitals Act, 1901 (*post*).

As to contributions by county councils, see s. 21 (*post*).

As to appeal to Local Government Board, see s. 24 (*post*); power of acquiring land, s. 11 (*post*); management, s. 12 (*post*); and as to power of county council to raise a loan, see s. 22 (*post*).

As to the exemption of certain hospitals from the obligation to obtain licence in mortmain, see article on LAND, p. 125.

"**11. Purchase of Land for Hospital.**—Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purpose of this section the provisions contained in ss. 175 to 178 (inclusive), and ss. 296 to 298 (inclusive), of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act."

By this section express power is given to the hospital committee to purchase land outside their own district for the purpose of erecting an isolation hospital, thereby settling the question which arose in *Withington Local Board* v. *Manchester Corporation*, 1893, 2 Ch. 19.

The first group of sections in the Public Health Act, 1875, above referred to, deals with the purchase of land by local authorities and incorporates the Lands Clauses Acts, and the second group deals with provisional orders made by the Local Government Board.

"**12. Management of Hospital.**—A hospital committee may from time to time make all necessary rules and

regulations for the conduct and management of their hospital and the patients therein."

As to the power of revoking, amending, or rescinding the above rules, see s. 32 of the Interpretation Act, 1889.

"**13. Ambulances to be provided.**—Every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connection with the system of telegraphs."

As to ambulances, see article on AMBULANCES.

"**14. Additional Hospital Accommodation.**—A hospital committee may, in expectation of or in the event of an outbreak of any infectious disease, provide any accommodation in addition to their existing accommodation, by hiring or otherwise acquiring any buildings, tents, wooden houses, or other places for the reception of patients. A hospital committee may, in addition to, or instead of, providing a central hospital, establish within their district hospitals in cottages or small buildings, or otherwise as they may think expedient. A hospital committee may also, before they have established a permanent hospital or hospitals, provide for their district such temporary accommodation as in this section mentioned.

"**15. Training of Nurses.**—Subject to any regulations made by the county council, a hospital committee may make arrangements for the training of nurses for attendance on patients suffering from any infectious disease, either inside or outside the hospital, and may charge for the attendance of such nurses outside the hospital; and the expenses of any such nurses, after deducting any profits derived from their services, shall be establishment expenses of the hospital, within the meaning of this Act."

As to "establishment expenses," see s. 17 (*post*).

As to the "regulations made by the county council," see s. 10.

"**16. Charges for Patients.**—(1) There shall be charged with respect to every person admitted into the hospital such sum as the hospital committee may think sufficient to defray the expenses in this Act defined as patients'

expenses incurred in respect of such person; and there shall be added thereto, in the case of persons brought from beyond the hospital district, such sum as the committee may think fit, as a contribution to the structural and establishment expenses.

"(2) Persons desirous of being provided with accommodation of an exceptional character may be so provided on their undertaking, to the satisfaction of the committee, to pay for the same a sum fixed by the committee, and also to pay for all other expenses incurred in respect of their maintenance in the hospital, and all expenses so incurred in respect of such a patient are in this Act referred to as 'special patients' expenses.'"

As to what are "structural," "establishment," and "patients'" expenses, see next section.

As to the recovery of "special patients' expenses," see s. 19 (4).

"**17. Classification of Expenses.**—(1) The expenses to be incurred in respect of any isolation hospital under this Act shall be classified as structural expenses, establishment expenses, and patients' expenses.

"'Structural expenses' shall include the original cost of providing the hospital, including the purchase (if any) of the site, and the furnishing such hospital with the necessary appliances and furniture required for the purpose of receiving patients; also any permanent extension or enlargement of the hospital, or any alteration or repair of the drainage, and any structural repairs; but shall not include ordinary repairs, painting, cleaning or the renewal or keeping in order of the appliances and furniture, or the supply of new appliances or furniture.

"'Establishment expenses' means the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of the patients, also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a fit state for the reception of patients.

"'Patients' expenses' means the cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually, exclusive of structural and establishment expenses.

"(2) All expenses incurred by a county council in and about the formation of a hospital district, including the costs of any inquiries, and the expenses of obtaining land and other preliminary expenses, shall be deemed to be structural expenses.

"(3) In the case of any doubt arising as to what are structural expenses, establishment expenses, or patients' expenses within the meaning of this Act, the decision of the hospital committee shall be conclusive."

"Structural expenses" include costs of inquiries and other preliminary expenses (see sub-s. 2), and also the expenses alluded to in ss. 1 and 3 of the Isolation Hospitals Act, 1901 (*post*). The latter section also includes "establishment" and "patients'" expenses. As to inquiries, see ss. 6 and 7.

"Establishment expenses," it will be observed, include the salaries of doctors and nurses, the appointment and removal of whom would also seem to rest with the hospital committee.

"**18. Payment of Expenses.**—All expenses incurred by a county council or by a hospital committee under this Act, with the exception of patients' expenses and special patients' expenses, shall, when a hospital district consists of a single local area, be defrayed out of the local rate of that area. Where the hospital district consists of more than one local area, all the expenses, save as aforesaid, incurred by the hospital committee shall be paid out of a common fund to which all receipts shall be carried, and to which the local authorities in the hospital district shall contribute in such proportions as the county council by their order constituting the district may determine.

"S. 284 of the Public Health Act, 1875, shall apply to the sums to be contributed by the local authorities under this section as if the same were sums to be contributed by component districts and the hospital committee were a joint board under that Act."

"Local rate" is defined by s. 26 (*post*). S. 284 of the Public Health Act, 1875, contains provisions as to the

necessary procedure for obtaining payment of contributions by each component district to the joint board.

"**19. Recovery of Patients' Expenses.**—(1) Patients' expenses, in respect of any person who at the time of his reception into the hospital, or at any time within fourteen days previously, is or has been in receipt of poor-law relief, shall be a debt due to the hospital committee from the guardians of the union from which he is sent, and shall be recoverable from them in a summary manner or otherwise.

"(2) Patients' expenses, in respect of a non-pauper patient, shall be a debt due to the hospital committee, and recoverable in a summary manner from the local authority of the local area from which the patient is sent, and shall be paid out of the local rate.

"(3) Where a patient has been brought from a place beyond the hospital district, any additional charges made by the hospital committee in respect of such patient shall be recoverable as if they were part of the patients' expenses.

"(4) Special patients' expenses shall be a debt recoverable in a summary manner from the patient, or from the estate of the patient, in respect of whom the expenses have been incurred.

"(5) The expenses of the burial of any patient dying in the hospital shall be payable in the same manner in which the expenses of his maintenance are payable."

"In a summary manner," *i.e.* before a court of summary jurisdiction, in pursuance of the Summary Jurisdiction Acts.

As to the distinction between pauper and non-pauper patients, compare s. 132 of the Public Health Act, 1875, and *Isle of Thanet Joint Hospital Board* v. *Farquhar*, 1904, 2 L.G.R. 1310, referred to above (pp. 88, 89). The case of pauper patients is not therein provided for.

As to special patients' expenses, no express provision is contained in sub-s. 4 for the recovery from a parent or guardian of such expenses in the case of a patient who is a minor. In this case a suitable undertaking under s. 16 (2) would probably be obtained from the parent or guardian.

"**20. Power of County Council to alter Order.**—A county council may, on the application of a hospital committee, and with the assent of any local authority concerned in such alteration, alter any order made by them for the establishment of a hospital."

The order here referred to would appear to be that mentioned in s. 9 (*ante*), constituting a hospital district and directing an isolation hospital for such district to be established. If, however, the county council has made an order under s. 9 dismissing the petition, such order cannot, apparently, be revoked.

"**21. Power of County Councils to contribute to Isolation Hospitals.**—A county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and the establishment expenses of an isolation hospital, or to either class of such expenses."

It has been seen above (s. 18) that all structural and establishment expenses incurred by the county council or the hospital committee can be defrayed out of the local rate. The above section authorises the county council to make a voluntary contribution to these expenses and to make such contribution leviable on ratepayers outside the hospital district. The consent of the Local Government Board is not required.

This power is extended by s. 2 (1) of the Isolation Hospitals Act, 1901 (*post*).

"**22. Power of County Council to borrow Money.**—A county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888, any money required for the purpose of carrying into effect the provisions of this Act; and any loans so borrowed, and any other money expended by them for the purposes of this Act, together with interest thereon at the rate of £4 per centum per annum, shall be repaid to the county council out of the local rate, as in this Act directed; and, in the case of a loan, shall be repaid within

a period not exceeding that within which the loan is repayable by the county council."

By s. 69 of the Local Government Act, 1888, county councils were empowered to raise money on the security of the county rate with or without the consent of the Local Government Board.

As to the modification of this section, see ss. 2 and 4 of the Isolation Hospitals Act, 1901 (*post*).

"**23. Treatment in Hospital not to disqualify.**—A person shall not by reason of his being admitted into and maintained in a hospital established in pursuance of this Act suffer any disqualification or any loss of franchise or other right or privilege."

Numerous enactments provide that medical relief shall not involve loss of franchise. Compare the Medical Relief Disqualification Removal Act, 1885, and the Public Health (London) Act, 1891, s. 80 (4).

"**24. Inquiries by Local Government Board.**—Sub-ss. 1 and 5 of s. 87 of the Local Government Act, 1888, shall apply in every case where the Local Government Board are authorised to determine any question on appeal to them."

Sub-s. 1 of s. 87 of the Local Government Act, 1888, provides that the Local Government Board may, in order to determine any difference, cause to be made a local inquiry, and in that case the provisions of ss. 293-6 of the Public Health Act, 1875, shall apply. These latter sections deal with the procedure and costs of such inquiries.

Sub-s. 5 of the former section provides that the costs of such inquiries shall be paid by the councils and other authorities concerned.

"**25. Audit of Accounts.**—The provisions of ss. 245, 247, 249, and 250 of the Public Health Act, 1875, as amended by the District Auditors Act, 1879, shall apply to the accounts of any hospital committee, and of any

officers or assistants of such committee, and to the audit of such accounts, as if such committee were an urban authority other than the council of a borough."

The sections of the Public Health Act, 1875, here referred to deal with the audit of accounts of local authorities, and impose on the clerk of the peace of the county or his deputy the obligation to tax the solicitor's bill of costs for the purpose of audit.

"**26. Definitions.**—A 'local area' means in this Act any one of the following localities, that is to say, an urban sanitary district, a rural sanitary district, or any contributory place, or where a local area is included in more than one county, the part of the area included in each county.

"A 'contributory place' has the same meaning in this Act as in s. 229 of the Public Health Act, 1875.

"A 'local authority' means in this Act, as respects an urban sanitary district, the urban sanitary authority; as respects a rural sanitary district, the rural sanitary authority, and in the case of any contributory place being a parish, the vestry or other authority in which the powers of the vestry may be vested by any Act of Parliament, and in the case of any other contributory place situated within the district of a rural sanitary authority, such rural sanitary authority.

"The 'local rate' means, as respects an urban or rural sanitary district or contributory place, the rate out of which expenses incurred in the execution of the Acts relating to public health are directed to be paid, and in the case of any contributory place the expenses incurred in the execution of this Act shall be deemed to be special expenses.

"The expression 'infectious diseases' in this Act has the same meaning as in the Infectious Diseases (Notification) Act, 1889, and the provisions of this Act shall apply to the infectious diseases specially mentioned in that Act, and may be applied to any other infectious disease, by order of the county council, or any committee to whom they have delegated their powers under this section, in like manner as if such council or committee were a local authority acting under that Act."

Urban and rural sanitary authorities are now called urban and rural district councils respectively (see Local Government Act, 1894, s. 21).

As to the transfer of the powers of the vestry to the parish council or parish meeting, as the case may be, see Local Government Act, 1894, ss. 6 and 19; but see s. 6 of the Isolation Hospitals Act, 1901 (*post*). County councils can delegate any powers to a committee under s. 28 (2) of the Local Government Act, 1888.

Reasons for Isolation Hospitals Act, 1901.—After the passing of the Isolation Hospitals Act, 1893, it was found to be a useless expense to establish an isolation hospital in a district where a local hospital or joint hospital was already existing or in small districts which might be outside the area of the local hospital, and to meet other difficulties the powers conferred by the principal Act were extended.

The Act is as follows:

"**Isolation Hospitals Act, 1901.**

"An Act to amend the Isolation Hospitals Act, 1893.

[July 26, 1901.]

"1 Edw. VII. Ch. 8.

"**1. Transfer by Local Authority of Hospitals for Use as Isolation Hospitals.**—(1) Any local authority (including a joint board) within the meaning of the Public Health Act, 1875, which has provided under that Act, or any local Act, a hospital for the reception of the sick, may, with the sanction of the Local Government Board, and with the consent of the council, transfer it to the council of the county within which the hospital, or any part of the district of the authority, is situate.

"(2) The Local Government Board may give their sanction under this section subject to such terms and conditions as they think fit, but shall not give their sanction unless they are satisfied that hospital accommodation sufficient for the needs of the district has been or will be provided.

"(3) Any money paid to a local authority on any such transfer shall be applied as the Local Government Board direct, either in repayment of any loan of the local authority, or for any other purpose for which capital moneys may properly be applied.

"(4) Any hospital transferred under this section shall be appropriated to a district formed under the Isolation Hospitals Act, 1893 (in this Act referred to as the principal Act), and may be adapted as an isolation hospital, and any hospital so appropriated shall be treated as if it had been originally established under that Act for the district.

"(5) The expenses incurred by a county council in or incidental to the transfer of any hospital under this Act shall be defrayed as structural expenses incurred by a hospital committee within the meaning of s. 17 of the principal Act."

Sub-s. 1 refers to ss. 131-3 of the Public Health Act, 1875, which are dealt with earlier in this article. The effect of the section is to convert hospitals established under these sections into isolation hospitals within the meaning of the Isolation Hospitals Act, 1893.

The district referred to in sub-s. 4 is termed the "hospital district" by s. 7 of the Act of 1893 (*ante*).

"**2. Contribution to Hospitals provided by Local Authority.**—(1) The power conferred on a county council by s. 21 of the principal Act to contribute to the expenses of an isolation hospital is hereby declared to include the power to contribute, in manner provided by that section, to any hospital provided by a local authority (including a joint board) within the meaning of the Public Health Act, 1875, for the reception of patients suffering from infectious disease, whether within the area of the county council or not, but the consent of the Local Government Board shall be required to an annual contribution under this section by the county council to a hospital, the cost of providing which, or of any permanent extension or enlargement of which, has been defrayed otherwise than out of borrowed money.

"(2) A county council may borrow, in manner provided

by s. 22 of the principal Act, any sum required for the contribution of a capital sum under s. 21 of that Act, as amended by this Act, but sums so borrowed shall not be repayable to the county council out of the local rate, as directed by s. 22 of that Act.

"**3. Power of Hospital Committee to contract for Hospital Accommodation.**—(1) The hospital committee of any hospital district under the principal Act may make and give effect to agreements for the use of any hospital or part of a hospital, or for the reception into any hospital of the sick of their district, upon payment of such annual or other sums as may be agreed upon.

"(2) Any expenses incurred by a hospital committee under this section shall be defrayed under the principal Act as structural, establishment, or patients' expenses, in such proportions as the committee direct.

"**4. Rate of Interest.**—(1) The interest to be paid in pursuance of s. 22 of the principal Act on any money repayable to a county council shall be interest at such a rate as may be agreed upon between the county council and the hospital committee concerned, or, in default of agreement, determined by the Local Government Board.

"(2) In s. 22 of the principal Act, the words 'at the rate of £4 per centum per annum' are hereby repealed.

"**5. Amendment of Isolation Hospitals Act, 1893, s. 8 (3), as to Appeals.**—On any appeal against any order including any area in a hospital district under sub-s. 3 of s. 8 of the principal Act, the Local Government Board may by their decision confirm, disallow, or modify the order as they think fit.

"**6. Amendment of Definition of Local Authority.**—(1) Notwithstanding anything in s. 26 of the principal Act, the rural district council shall, to the exclusion of any other authority, be the local authority in the case of any contributory place. But the parish council shall have the same right of appeal to the Local Government Board under sub-s. 3 of s. 8 of the principal Act as a local authority.

"(2) Any liability which immediately before the passing of this Act attached to the local authority in respect of a contributory place, being a parish, shall be transferred to and discharged by the rural district council.

"**7. Copies of Orders to be sent to Local Government Board.**—The county council shall as soon as may be

send a copy of any order made by them under s. 9 of the principal Act to the Local Government Board.

"**8. Representatives of County Council on Hospital Committees.**—In s. 10 of the principal Act (which deals with the constitution of hospital committees) 'representatives of the county council, whether members of the council or not,' shall be substituted for 'members of the county council.'

"**9. Short Title.**—This Act may be cited as the Isolation Hospitals Act, 1901, and this Act and the principal Act may be cited together as the Isolation Hospitals Acts, 1893 and 1901."

Infectious Disease in London.—As regards infectious diseases in London, the Legislature, by the Public Health (London) Act, 1891, ss. 55-87, has provided a distinct code as to notification and prevention of infectious diseases, as to hospitals and ambulances, and as to prevention of epidemic diseases. The similarity of these provisions, so far as regards notification and prevention, to those applicable to places outside London, is so close that many of the cases decided under the statutes as to notification and prevention above referred to, apply in principle to the provisions of the London Act. Speaking generally, the London Act has provisions almost identical with those of the Infectious Diseases (Notification) Act, 1889, and (Prevention) Act, 1890.

Public Health (London) Act, 1891, ss. 55-87.—The provisions of the Public Health (London) Act, 1891, above referred to, are arranged in groups thus:

Infectious Diseases, Notification, ss. 55-7; Infectious Diseases, Prevention, ss. 58-74; Hospitals and Ambulances, ss. 75-81; Prevention of Epidemic Diseases, ss. 82-7; and see ss. 89, 94, and 95, and also s. 113, which applies to London certain provisions of the Public Health Acts as to cholera and other epidemic, endemic, or infectious diseases.

Metropolitan District Asylums.—In one respect, however, London is unique, and has an entirely different organisation in its establishment of infectious disease hospitals. The difference, it will be seen, lies in its Metropolitan District Asylums, which are rate-supported institutions, which, besides mental asylums, include infectious disease hospitals, and were established under the Metropolitan Poor Act, 1867. Under the powers conferred by this Act, and by subsequent Acts and Orders, infectious disease hospitals were established in London under the name of Metropolitan Asylums, the metropolis being formed into one district, called the Metropolitan Asylum District, governed by one central body, called the Metropolitan Asylum Board.

The Metropolitan Asylum District was formed for the reception and relief of poor persons infected with or suffering from fever or small-pox (Poor-law Order, May 15, 1867), and by the Order, October 19, 1889, referring to the Poor Law Act, 1889, s. 3 (4), diphtheria patients became admissible.

The expenses of all such patients are payable out of the Metropolitan Common Poor Fund (see Metropolitan Poor Act, 1867, s. 69 (2)).

Metropolitan Asylum Board. — The Metropolitan Asylum District is managed by a Board of 72 managers. Of these managers 54 are elected triennially by the various boards of guardians in the metropolis; and 18 are nominated by the Local Government Board (see Poor-law Order, May 15, 1867, amended by Orders February 24, 1871, and September 3, 1886).

The expenses of the Metropolitan Asylum Board are paid by contributions from the following sources: (*a*) parishes and unions forming the Metropolitan Asylum District; (*b*) the guardians; (*c*) the metropolitan common poor fund.

The Board being a body containing representatives elected by the guardians, send their precepts to the guardians and not to the borough council (see London Government Act, 1899, s. 11 (2)).

Admission of Non-Paupers.—Although originally intended for the relief of the poor, it was found to be impossible to prevent the spread of infectious disease unless persons who were not paupers were admitted. "Thus these hospitals came to be recognised as the means of isolation for all classes of persons irrespective of the fact that the machinery employed was entirely a branch of poor-law administration" (Burdett's *Hospitals and Asylums of the World* (1893), vol. iii. p. 99; and see Poor Law Act, 1889, s. 3, and Public Health (London) Act, 1891, s. 80, set out below, p. 112).

Admission of Medical Students.—Under the Poor Law Act, 1889, the Board are permitted to allow the asylums provided by them for fever, small-pox, and diphtheria to be used by medical students (s. 4; see also Orders October 10, 1890, and October 30, 1893).

Notification of Infectious Disease in London.—The provisions as to notification in ss. 55-7 of the Public Health (London) Act, 1891, are similar to those applicable to districts outside London (see above), except that it is expressly provided that in the case of a hospital of the Metropolitan Asylum Managers, a notice or certificate need not be sent respecting any inmate with respect to whom a copy of the certificate has been previously forwarded by the medical officer of health of the district to the said Managers (Public Health (London) Act, 1891, s. 55 (1)).

Notice to Metropolitan Asylum Managers.—It is also provided that where a medical officer of health receives a certificate under s. 55 relating to a patient within the Metropolitan Asylum District, he shall, within

twelve hours after such receipt, send a copy thereof to the Metropolitan Asylum Managers, and to the head teacher of the school attended by the patient (if a child), or by any child who is an inmate of the same house as the patient.

Power to add to List of Infectious Diseases.—The power of adding to the list of infectious diseases requiring notification is given not only to the sanitary authority of any district, but is extended to the County Council, whose order is construed as if it had been the order of every sanitary authority (s. 56).

Prevention of Infectious Disease in London.—The provisions as to prevention in ss. 58-74 of the Public Health (London) Act, 1891, are applicable to the whole of London as to the infectious diseases specifically mentioned (see s. 55 (8)), and all or any of the provisions may be applied by order to any other infectious disease. Otherwise the provisions are similar to those in the Infectious Disease (Prevention) Act, 1890, already mentioned, with variations appropriate to London. Thus an infected person may be detained in a hospital on a justice's order at the cost of the Metropolitan Asylum Managers (s. 67).

Power to provide Hospitals.—The provisions of the Public Health (London) Act, 1891, as to hospitals and ambulances, are as follows:

"**75.**—(1) Any sanitary authority may provide for the use of the inhabitants of their district hospitals, temporary or permanent, and for that purpose may—

(*a*) themselves build such hospitals, or

(*b*) contract for the use of any hospital or part of a hospital, or

(*c*) enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

"(2) Two or more sanitary authorities may combine in providing a common hospital."

"Hospital" here means any premises or vessels for the reception of the sick, whether permanently or temporarily applied for that purpose, and includes an asylum of the Metropolitan Managers (s. 141). This power to provide hospitals is distinct from the powers of the Metropolitan Asylum Board to provide asylums for the sick poor under the Metropolitan Poor Act, 1867, but for the prevention of epidemic diseases the Metropolitan Asylum Managers may have the powers of a sanitary authority conferred upon them (see ss. 85, 86).

"**76. Recovery of Cost of Non-infectious Patient.**—Any expenses incurred by a sanitary authority in maintaining in a hospital (whether or not belonging to that authority) a patient who is not a pauper, and is not suffering from an infectious disease, shall be a simple contract debt due to the sanitary authority from that patient, or from any person liable by law to maintain him, but proceedings for its recovery shall not be commenced after the expiration of six months from the discharge of the patient, or if he dies in such hospital from the date of his death.

"**77. Power to provide Temporary Supply of Medicine.**—Any sanitary authority may, with the sanction of the Local Government Board, themselves provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

"**78. Provision of Conveyance for Infected Persons.**—A sanitary authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

"**79. Power of Metropolitan Asylum Board as to Landing-places, Vessels, Ambulances, etc.**—(1) The Metropolitan Asylum Managers shall continue to maintain the wharves, landing-places, and approaches thereto heretofore provided by them, whether within or without London, and may use the same for the embarkation and landing of persons removed to or from any

hospital belonging to the Managers, and for any other purpose in relation thereto.

"(2) The Managers may also provide and maintain vessels for use in connection with the said wharves or landing-places, and with the hospitals of the Managers, and also carriages suitable for the conveyance of persons suffering from any dangerous infectious disease, and shall cause the vessels and carriages to be from time to time properly cleansed and disinfected, and may provide and maintain such buildings and horses, and employ such persons, and do such other things as are necessary or proper for the purposes of such conveyance.

"(3) The Metropolitan Asylum Managers may allow any of the said carriages with the necessary attendants to be also used for the conveyance of persons suffering from any dangerous infectious disease to and from hospitals and places other than hospitals provided by the Managers, and may make a reasonable charge for that use."

It will be observed that by the above section no power is expressly conferred on the Managers to provide wharves and landing-places, but merely to maintain such as have been already provided. Such power was conferred by s. 6 of the Diseases Prevention (Metropolis) Act, 1883, which is repealed by this Act.

"**80. Reception of Non-Pauper Patients into Hospital of Metropolitan Asylum Managers.**—(1) The Metropolitan Asylum Managers, subject to such regulations and restrictions as the Local Government Board prescribe, may admit any person, who is not a pauper, and is reasonably believed to be suffering from fever or small-pox or diphtheria, into a hospital provided by the Managers.

"(2) The expenses incurred by the Managers for the maintenance of any such person shall be paid by the board of guardians of the poor-law union from which he is received.

"(3) The said expenses shall be repaid to the board of guardians out of the metropolitan common poor fund.

"(4) The admission of a person suffering from an infectious disease into any hospital provided by the Metropolitan Asylum Managers, or the maintenance of any such person therein, shall not be considered to be

parochial relief, alms, or charitable allowance to any person, or to the parent or husband of any person; nor shall any person or his or her parent or husband be by reason thereof deprived of any right or privilege, or be subjected to any disability or disqualification."

Under the above section the Metropolitan Asylum Managers are empowered to admit into their small-pox or fever hospitals persons who are not paupers, and it is to be remarked that the expenses attendant on the admission of non-pauper infectious patients are to be borne by the metropolitan common poor fund. No provision is made for the recovery of such expenses from the patient.

"**81. Reception into Hospital in Metropolitan District of Child from School outside London.**—(1) Where the London School Board send any child to an industrial school which is provided by them outside London, such child shall for the purpose of the enactments relating to the Metropolitan Asylum Managers be deemed to continue to be an inhabitant of London, and if such child is sent to any hospital of those Managers he shall be deemed to have been sent from that place in London from which he was sent to the said industrial school.

"(2) This section shall apply to that part of London which is not within the Metropolitan Asylum district as if it were within that district, and the board of guardians of the poor-law union comprising that part shall pay for such child accordingly."

The London School Board is now abolished, and their place is now taken by the London County Council (see Education Act, 1903).

As to industrial schools, see *R.* v. *Jennings*, 1896, 1 Q.B. 64.

Prevention of Epidemic Diseases in London.—The provisions for the prevention of epidemics in London are comprised in ss. 82-7 of the Public Health (London) Act, 1891, and deal with the following matters:

(1) The sanitary authority may execute the epidemic regulations of s. 134 of the Public Health Act, 1875 (s. 82).

(2) The poor-law medical officers are entitled to costs of attendance on board vessels (s. 83).

(3) The Local Government Board may combine sanitary authorities (s. 84).

(4) The Metropolitan Asylum Managers are constituted a sanitary authority for the prevention of epidemic diseases (s. 85).

(5) Any authority having the management of any hospital, infirmary, asylum, or workhouse may let it to the Metropolitan Asylum Managers (s. 86).

(6) The expenses of any sanitary authority incurred in pursuance of epidemic regulations may be paid out of the metropolitan common poor fund (s. 87).

INSURANCE

Hospitals and the Workmen's Compensation Act, 1906.—The managers of charitable institutions have now an additional burden cast upon them by the liability to pay compensation in the case of injury by "accident" to members of their staff. This liability, which is incurred under the Workmen's Compensation Act, 1906, can only be met by insurance.

A question also arises, in the case of patients whose right to compensation has been insured against by their employers, whether the fact of insurance gives a hospital a right either against the patient, the employer, or the insurance company to be repaid the expense of the medical relief given by the institution.

This second question, which is of special importance to hospitals, will be separately considered after a short outline has been given of the principal provisions of the Act of 1906.

Employers' Liability generally.—The liability of employers to compensate their workmen for injury in the course of employment existed to a limited extent at common law, and has gradually been enlarged by a succession of statutes, of which the principal are the Employers' Liability Act, 1880, and the Workmen's Compensation Acts, 1897, 1900, and 1906.

Workmen's Compensation Act, 1906.—The right of a servant to claim compensation from his or her master for an accidental injury incurred during service has been

greatly extended by the Workmen's Compensation Act, 1906, which repeals the Acts of 1897 and 1900 (s. 16).

By the 1906 Act an employer is liable to pay compensation to a workman if in any employment personal injury by accident "arising out of and in the course of the employment" is caused to such workman, subject to certain exceptions, *e.g.* (1) where the workman is disabled for less than one week from earning full wages, or (2) where the injury is proved to be attributable to the "serious and wilful misconduct" of the workman himself, and the injury does not result in death or serious and permanent disablement.

Meaning of "Employer."—"Employer" includes any body of persons corporate or unincorporate (s. 13).

Where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of the Act, be deemed to continue to be the employer of the workman whilst he is working for that other person (s. 13).

Meaning of "Workman."—"Workman" in the Act of 1906 means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing (s. 13).

Who is not a "Workman."—"Workman" does not include (1) any person employed otherwise than by way of manual labour whose remuneration exceeds £250 a year; (2) a person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; (3) a member of a police force; (4) an out-worker; (5) a

member of the employer's family dwelling in his house (s. 13).

Present Test.—This definition is much wider than that in the 1897 Act, which only applied to those engaged in railways, factories, mines, quarries, or engineering works, or buildings over 30 feet high, and the present test, apart from the exceptions mentioned, is, Has the person entered into or does he or she work under a contract of service or apprenticeship with an employer?

Who are "Workmen" in a Hospital.—In a hospital nurses, probationers, dressers, and the service staff would be included.

A difficulty may arise in a hospital, in the case of persons whose income exceeds £250 a year, whether they are employed "otherwise than by way of manual labour," so as to bring them within the excepted class or not.

Matron or Sister: whether "Workmen."—The case of the clerical staff is clear, but it becomes more difficult where the matron or the sister is concerned. Their duties are mainly that of supervision, but may involve some manual labour. The question is, What is she employed to do? If merely to superintend, then the fact that she did manual labour would not alter the case (see *Simpson* v. *Ebbw, etc., Coal Co.*, 1905, 1 K.B. 453; *Bagwall* v. *Levinstein*, 1907, 1 K.B. 531—cases on the 1897 Act).

The decisions on the 1897 Act are not, however, always harmonious, and should be applied with caution to the 1906 Act—especially having regard to the wide difference between the definitions.

Are the Medical Staff Workmen?—A further difficulty occurs in the case of the medical staff. Where they are unpaid, there can hardly be any contract of service.

In some hospitals, however, it is the practice to pay the staff a fee or salary, however small, partly with the object of reserving the power of removal, and in such cases it may be said that a contract for service has been entered into.

Meaning of "Accident."—The word "accident" in the Act is used in the popular and ordinary sense, and so includes such a mishap as rupture or the infection of anthrax in sorting wool, but not a gradual illness like lead-poisoning (*Fenton* v. *Thorley*, 1903, A.C. 443; *Brintons* v. *Turvey*, 1905, A.C. 230; *Steel* v. *Cammell & Co.*, 1905, 2 K.B. 232). The anthrax case seems to let in any infectious illness the cause of which can be directly traced to a particular occasion.

Rights of Hospital against Insured Patient.—Whether the fact that a patient who obtains medical relief in a hospital without making any payment is insured gives any legal right to the hospital to claim any of the insurance money, is a question which may arise in one of two cases: (1) Where the patient has insured himself apart from the Workmen's Compensation Act, 1906; (2) where the patient has a right to compensation under the 1906 Act, and his employer is insured against such right.

Where Patient has insured himself.—The first case, where the patient has insured himself, is the simplest; and it would seem to follow that if in this case the hospital would have no such right, still less would it have any right in the second case, although the converse would not, of course, hold good. The question here depends upon the nature of the insurance contract. Is it one for payment of a certain sum in a certain event, or is it one of indemnity? If merely for payment of a certain sum, then clearly no right would arise; but if one of

indemnity, there would be some difficulty which would partly depend upon whether the hospital had the right to make any charge at all for treatment, for the hospital could hardly claim against the insurer a payment which it could not claim against the insured.

An accident policy is, in fact, seldom a contract of indemnity, but merely an agreement to pay a fixed sum according to the portion of the body injured, and under such a contract no right of subrogation could arise.

If, however, the contract was in fact one of indemnity—for example, to pay all proper medical expenses incurred—the hospital, before it could establish a claim, would have to show that, if it chose, it could have enforced payment against the insured, or a binding agreement by the insured either to pay to the hospital any money due for medical expenses, or, where the policy allows it, to assign to the hospital his benefit thereunder.

Where Patient entitled under 1906 Act.—The question here is really similar, but more complicated, for another party is introduced—the employer. At first sight it would seem that no right could possibly arise against the patient in respect of his statutory right to compensation; but on referring to s. 5 of the 1906 Act, it will be seen that, in the event of the insolvency of the employer, the workman is given certain direct rights against the insurer (see also Workmen's Compensation Rules, 1907, r. 35), which would place him in a position similar to that of a person who has insured himself.

Nature of Compensation.—The nature of the compensation allowed by the Act is rather by way of indemnity; and in the event of death, if the workman leave no dependants, the measure is "the reasonable expenses of his medical attendance and burial, not exceeding £10" (1st Schedule, clause (1) (iii)).

Legal Claim of Hospital.—The conclusion is that it is difficult to see what legal claim a voluntary hospital would have to recover expenses of medical attendance and burial apart from agreement. Moreover, the fact that they had not been incurred by the employer might disentitle him to claim from the insurers, even, perhaps, if he had actually paid the expenses of the hospital (see *Phœnix Assurance Co.* v. *Spooner*, 1905, 2 K.B. 753).

Contract with Patient.—The only safe way, where the constitution of the hospital admits, would be, before treating an insured patient or a patient entitled to compensation under the Act, to require such patient to agree to pay all expenses incurred by the hospital on his behalf, and, so far as he lawfully may, to charge his right to compensation under the Act or to any insurance money due.

Compensation not Assignable.—The efficacy of the last clause is doubtful, for the Act renders "a weekly payment or a sum paid by way of redemption thereof" not assignable, chargeable, or attachable (1st Schedule, clause (19)), but does not in terms mention expenses of medical attendance and burial, so that the case in clause 1 (iii) may not be included.

INVESTMENT

Investment of Fund representing Endowment.—All money representing capital given as a fund for the permanent endowment of a hospital ought as soon as practicable to be invested, and the income only applied to the general purposes of the hospital.

Investment of Surplus Income.—Accumulations of surplus income and gifts of money usable as income, but not immediately required, should also be invested, but would not thereby become capitalised so as to constitute an endowment.

Nature of Investment.—The mode in which money held upon trust may be invested depends in the first place upon the directions for investment, if any, expressed in the instrument of trust, secondly upon the general law regulating trust investments. Where the instrument of trust specifies certain kind of investments which do not include all trust investments authorised by law, the trustee may also invest in such trust investments, unless the instrument prohibits any other kind of investment.

On the other hand, the range of investment may be much wider than that authorised by law. In any case it is the duty of the trustee to exercise a proper discretion in selecting any particular investment. It is not sufficient merely to say, "It is within the range."

Trust Investments authorised by Law.—The principal Act regulating the range of investments authorised by law,

unless expressly forbidden by the instrument creating the trust (see *Ovey* v. *Ovey*, 1900, 2 Ch. 524), is the Trustee Act, 1893, ss. 1–9.

This range has been enlarged by the Colonial Stock Act, 1900, and subsequent orders (see *Weekly Notes*, May 27, 1905, p. 151).

Mortgage Securities.—In the investments authorised by the Trustee Act, 1893, are included "real or heritable securities in Great Britain or Ireland." In the case of charity trustees a difficulty would formerly have arisen as to those charities which by the law of mortmain (see LAND) or by their trust instrument were incapacitated from holding land.

Charitable Funds Investment Act, 1870.—This difficulty was removed by the Charitable Funds Investment Act, 1870, which was entitled "An Act to amend the law as to the investment in real securities of trust funds held for public and charitable purposes," and whereby it was enacted as follows:

"1. **Corporations and Trustees holding Money in Trust for any Public or Charitable Purpose may invest in Real Securities.**—It shall be lawful for all corporations and trustees in the United Kingdom holding moneys in trust for any public or charitable purpose to invest such moneys on any real security authorised by or consistent with the trusts on which such moneys are held, without being deemed thereby to have acquired or become possessed of any land within the meaning of the laws relating to mortmain, or of any prohibition or restraint against the holding of land by such corporations or trustees contained in any charter or Act of Parliament; and no contract for or conveyance of any interest in land made *bona fide* for the purpose only of such security shall be deemed void by reason of any non-compliance with the conditions and solemnities required by an Act passed in the 9th year of King George the Second intituled 'An Act to restrain the disposition of lands whereby the same become inalienable.'

"2. **Proviso for Cases in which the Equity of Redemption may be barred or released.**—Provided always, that in every case in which the equity of redemption of the premises comprised in any such security shall become liable to foreclosure, or otherwise barred or released, the same shall be thenceforth held in trust to be sold and converted into money, and shall be sold accordingly; and if any decree shall be made in any suit for the purpose of redeeming or enforcing such security, such decree shall direct a sale (in default of redemption) and not a foreclosure of such premises.

"3. **Interpretation of Terms.**—The words 'real security' in this Act shall include all mortgages or charges, legal or equitable, of or upon lands or hereditaments of any tenure, or of or upon any estate or interest therein or any charge or incumbrance therein; and the word 'conveyance' shall include all grants, releases, transfers, assignments, appointments, assurances, orders, surrenders, and admissions whatsoever operating to pass or vest any estate or interest, at law or in equity, in the premises comprised in any real security."

Meaning of "Real Security" under the Act.—The definition of "real security" in this Act is apparently wider than that in the Trustee Act, 1893 (see s. 5 (1) (*a*)), but it should not be assumed that charity trustees can by virtue of the 1870 Act invest in the wider range in the absence of express power in their trust instrument. The power given is "to invest such moneys on any real security authorised by or consistent with the trusts on which such moneys are held." This power does not expressly authorise an investment in a "real security" which is not a statutory investment. It would, therefore, be prudent for hospital trustees in the absence of any express power to confine themselves to "real securities" authorised by the Trustee Act, 1893.

Exempted Hospitals.—Some hospitals are by their special Acts exempted from the provision of the 1870 Act, which requires the land to be sold if the equity of redemption is foreclosed or released, provided the total land for the time being held by them does not exceed a specified annual value.

LAND

Generally.—The law of land relating to hospitals may be regarded from the point of view either of a donor who desires to benefit a hospital by giving land or money to buy land, or of the hospital authority who desire to purchase land or to let, mortgage, sell, or otherwise deal with land. The law applicable to gifts generally has been considered under the article GIFTS TO HOSPITALS; but as gifts of land more especially involve the law relating to land, they are dealt with at length in the following remarks on assurances of land.

Assurance of Land to Hospital.—The law governing assurances of land to hospitals will be considered under two distinct heads: (1) the Law of Mortmain, (2) the Law of Charities or Charitable Uses. The law of mortmain, which restricts corporations from holding land, only affects incorporated hospitals, but all kinds of hospitals are affected by the law relating to charitable uses, which is the technical term for what are commonly known as charities.

The Law of Mortmain.—Alienation *in mortua manu* is an alienation of lands or tenements to any corporation, which may take but not hold without licence, for within the year after the alienation the next lord of the fee may enter (Co. Lit. 2*b*).

Under the present law of mortmain land cannot be assured to or for the benefit of any corporation in mortmain, otherwise than under the authority of a licence

from the Crown, or of a statute for the time being in force, and if any land is so assured otherwise than as aforesaid the land will be forfeited to the Crown from the date of the assurance, subject to the rights of mesne lords (Mortmain Act, 1888, s. 1).

Licence in Mortmain. — The Crown may grant to any person or corporation a licence to assure in mortmain land in perpetuity or otherwise, and to grant to any corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise (s. 2).

Meaning of "Land."—The definition of "land" in this Act (s. 10 (iii)) has been repealed by the Mortmain Act, 1891, s. 3, which enacts that "land" shall include "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."

Meaning of "Assurance."—"Assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument; and "assure" and "assuror" have meanings corresponding with assurance (Mortmain Act, 1888, s. 10 (i)).

Exemptions from Mortmain Law. — As already mentioned, hospitals which are not incorporated do not fall within these provisions, and, besides, many incorporated hospitals are exempt, either by virtue of the special Act of Parliament creating them, or because they have been incorporated under some statute which gives a general exemption.

Charitable Trustees Incorporation Act, 1872.—Thus hospitals which are constituted corporations by the Charity Commissioners under the Charitable Trustees Incorporation Act, 1872, thereby acquire a licence in mortmain.

Companies Acts, 1862—1907.—An ordinary company formed under the Companies Acts has power to hold land (Companies Act, 1862, s. 18), but s. 21 of the 1862 Act contains an important restriction as regards certain charitable institutions. This section is as follows:

"**21.** No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit."

By this section a voluntary hospital would, if incorporated under the Companies Acts, clearly be subject to this restriction.

This section may be compared with s. 23 of the Companies Act, 1867 (set out under article INCORPORATION), whereby associations not for profit, but for the purpose of promoting commerce, art, science, religion, charity, or any other useful object may be registered with limited liability, without the addition of the word "limited" to their name.

A profit hospital for paying patients, and formed for the acquisition of gain by the hospital, if incorporated under the Companies Acts, may therefore hold land unrestricted in point of quantity, and, in fact, falls within the same class for this purpose as an ordinary company does under s. 18 of the 1862 Act.

The Law of Charitable Uses.—Hospitals, whether incorporated or unincorporated, and whether voluntary or rate-supported, are "charitable" within the meaning of 43 Eliz. c. 4 (see s. 13 (2) of the Mortmain Act, 1888). The conditions under which land or money to be laid

out in land may be assured for the benefit of a charity are contained in ss. 4 and 5 of the Mortmain Act, 1888, the provisions of which are as follows :

Mortmain and Charitable Uses Act, 1888

PART II

Charitable Uses

"**4. Assurance during Life.**—(1) Subject to the savings and exceptions contained in this Act, every assurance of land to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void.

"(2) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

"(3) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assuror or of any person claiming under him.

"(4) Provided that the assurance or any instrument forming part of the same transaction may contain all or any of the following provisions, so however that they reserve the same benefits to persons claiming under the assuror as to the assuror himself, namely :

"(i) The grant or reservation of a peppercorn or other nominal rent ;

"(ii) The grant or reservation of mines or minerals ;

"(iii) The grant or reservation of any easement ;

"(iv) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance, as of any other adjacent or neighbouring land ;

"(v) A right of entry on non-payment of any such rent or on breach of any such covenant or provision ;

"(vi) Any stipulations of the like nature for the benefit of the assuror, or of any person claiming under him.

"(5) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent charge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for non-payment thereof.

"(6) If the assurance is of land not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

"(7) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death.

"(8) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death.

"(9) If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses, those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land.

"**5. Power to remedy Omission to Enrol.**—(1) Where an instrument, the enrolment whereof is required under this Part of this Act for the validation of an assurance, is not duly enrolled within the requisite time, Her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the Central Office, may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court, and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or

through the destruction or loss of the instrument by time, or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled.

"(2) Thereupon, if the assurance to be validated was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorised by this Act, and if at the time of the application possession or enjoyment was held under the assurance, then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time.

"(3) Provided that if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the invalidity of the assurance is pending, or any decree or judgment founded on such invalidity has been then obtained, the enrolment under this section shall not give any validity to the assurance.

"(4) Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident, and the trusts thereof sufficiently appear by a copy or abstract thereof, or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled under this section in like manner, and with the like effect as if it were the instrument so destroyed or lost.

"(5) An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled."

Assurance of Registered Land.—The Mortmain Act, 1888, also further provides that any assurance of land which by the Act is required to be made by deed may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and that any assurance so made shall be exempt from the provisions of the Act, as to execution in the presence of witnesses, and as to enrolment in the Central Office of the Supreme Court (s. 9).

Assurance by Will.—Assurances by will of land or personal estate to be laid out in land for the benefit of any charitable institution are now, in the case of deaths after August 5, 1891, regulated by the Mortmain Act, 1891, the main provisions of which are as follows:

"**The Mortmain and Charitable Uses Act, 1891.**

"54 & 55 Vict. c. 73.

"**1. Short Title.**—This Act may be cited as the Mortmain and Charitable Uses Act, 1891.

"**2. Extent of Act.**—This Act shall not extend to Scotland or Ireland.

"**3. Definition of 'Land.'**—'Land,' in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include 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, and the definition of land contained in the Mortmain and Charitable Uses Act, 1888, is hereby repealed.

"**4. Meaning of 'Assurance.'**—In this Act the word 'assurance' shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888 (see p. 125).

"**5. Land assured by Will to be sold.**—Land may be assured by will to or for the benefit of any charitable use, but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at Chambers, or by the Charity Commissioners.

"**6. Land after One Year to be sold by Order of Charity Commissioners.**—So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be affected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said Commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing

such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said Commissioners made thereunder.

"**7. Personal Estate directed by Will to be laid out in Land, not to be so laid out.**—Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as hereinafter provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land.

"**8. Power to retain Land in certain Cases.**—It shall be lawful for the High Court, or any judge thereof sitting at Chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity, and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land.

"**9. Application of Act.**—This Act shall only apply to the will of a testator dying after the passing of this Act."

Summary of Law as to Assurance of Land to Hospitals.—Shortly summarised, the effect of the law is as follows:

(1) An assurance of land to an incorporated hospital requires a licence in mortmain (Mortmain Act, 1888, ss. 1, 2, pp. 124, 125).

(2) An assurance to any hospital of land or money to buy land can be made—

(*a*) During life, subject to the conditions of the Mortmain Act, 1888, Part II., pp. 127–129.

(*b*) By will, subject to the conditions of the Mortmain Act, 1891.

Purchase of Land by Hospital.—Hospitals may purchase land out of money given for the purpose, or out of money belonging to them, not being in the nature of an endowment, subject to the following conditions:

(1) That the hospital, if incorporated, has a licence to hold land in mortmain (see above).

(2) That the money given to buy land, if given during life, has been duly "assured" within the Mortmain Act, 1888 (see above); and if given by will has been authorised to be so applied by the Court or the Charity Commissioners under the Mortmain Act, 1891 (see above).

Purchase by Rate-supported Hospitals.—In the case of rate-supported hospitals there is generally a statutory power to purchase land without licence in mortmain (*e.g.* Isolation Hospitals Act, 1893, s. 10; set out under article INFECTIOUS DISEASE HOSPITALS).

Power to Purchase obtained by Special Act.—It is sometimes necessary to obtain a special Act of Parliament in order to obtain power to purchase land (see *St. Thomas's Hospital* v. *London*, 1864, 11 L.T. N.S. 520).

Court or Charity Commissioners may sanction Purchase.—The Court or the Charity Commissioners may sanction the purchase of land when required for the purposes of the hospital, but will not sanction such a purchase merely as an investment (see *A.-G.* v. *Wilson*, 1838, 2 Keen 680; *A.-G.* v. *Mansfield*, 1845, 14 Sim. 601; Charitable Trusts Act, 1860, s. 15; *A.-G.* v. *National Hospital for Epileptics*, 1904, 2 Ch. 252).

Purchase under Lands Clauses Act, 1845.—Trustees of hospitals, with the sanction of the Charity Commissioners, may purchase sites for building from owners under disability in accordance with the provisions of the Lands Clauses Act, 1845 (Charitable Trusts Acts, 1853, s. 27, and 1855, s. 41). Although the hospital is incorporated

no licence in mortmain is, in this case, required (Charitable Trusts Act, 1855, s. 41). By s. 27 of the Charitable Trusts Act, 1853, the Lands Clauses Act, 1845, is expressly embodied, and the hospital would under s. 80 of the Lands Clauses Act, 1845, be liable for costs; but where a special Act merely enabled a charity to take land compulsorily, the charity was held not so liable (*Sion College*, 1887, 57 L.T. 743; but see now Judicature Act, 1890; *Fisher*, 1894, 1 Ch. 450, and *Schmarr*, 1902, 1 Ch. 326).

Purchase out of Proceeds of Sale under Lands Clauses Act, 1845.—In some cases land held by a hospital is compulsorily purchased by a statutory body under the Lands Clauses Act, 1845, and questions arise as to the purchase of other land out of the proceeds. In the case of an unendowed voluntary hospital the proceeds are paid to the trustees of the hospital without the consent of the Charity Commissioners being required, (*Clergy Orphan Corporation*, 1894, 3 Ch. 145; *Harding and Trustees of Welsh, etc., Connexion*, 1905, 92 L.T. 641). In the case of endowed hospitals the consent of the Charity Commissioners is required. Interim applications for investment and payment of dividends do not, however, require the sanction of the Charity Commissioners even in the case of endowed hospitals (*Lister's Hospital*, 1855, 6 D.M. & G. 184; *Kyngeston's Charity*, 1881, 30 W. R. 78).

Costs of Application for Payment out.—In accordance with the general rule the statutory body who compelled the sale is liable to pay the costs incident to the re-investment of the proceeds, and this has been held to include the costs of an application for payment out of costs of capital towards the expenses of a new scheme whereby a charity has been re-cast owing to circumstances over which the charity trustees have no control (*Shakespeare Walsh School*, 1879, 12 Ch. D. 178).

Investigation of Title to Land.—No hospital authority should purchase land without making a strict investigation of the title, or under a contract with conditions which precluded a good title from being called for. Covenants restrictive of building or of carrying on business might render the land useless for the purpose for which it was required.

Covenant not to carry on Business.—Under a covenant not to carry on any "trade or business" the carrying on of a pay hospital is a "business," even though not carried on for pecuniary profit. Profit is not the test, but the user of the premises for the business of nursing (*Bramwell* v. *Lacy*, 1879, 10 Ch. D. 691; *Portman* v. *Home Hospital Association*, 1879, 27 Ch. D. 81 note).

Neither is it necessary to constitute a business that any payment should be made (*Rolls* v. *Miller*, 1884, 27 Ch. D. 71).

Where a covenant prohibited certain specified "trades or businesses," and added "or any offensive trade," a private lunatic asylum was held not to be included in the covenant (*Doe d. Wetherell* v. *Bird*, 1834, 2 A. & E. 161); but where it was provided that the lessee should not do anything amounting to "the annoyance, nuisance, grievance, or damage of the lessor or the inhabitants of the neighbouring or adjoining houses," it was held that a special hospital intended for poor out-patients suffering from diseases of the throat, nose, ear, skin, eye, and other diseases was prohibited by the covenant (*Tod-Heatley* v. *Benham*, 1888, 40 Ch. D. 80).

Where a covenant had the words "or any other offensive or noisy trade, business, or profession whatsoever," but no general restriction as to nuisance or annoyance, it was held in an Irish case that a private hospital or nursing home for surgical or medical (not infectious) cases was offensive within the meaning of the covenant (*Pembroke* v. *Warren*, 1896, 1 I.R. 76).

Infectious Disease Hospital whether "Noxious or Offensive Business."—Infectious disease hospitals do not, however, constitute a "noxious or offensive business" within s. 112 of the Public Health Act, 1875 (*Withington Local Board* v. *Manchester Corporation*, 1893, 2 Ch. 19). In this case the Withington Local Board attempted to prevent the Manchester Corporation from erecting a temporary small-pox hospital on land belonging to the latter, but within the district of the former.

Registration of Title to Land.—In some cases it may be necessary or advisable that the title to land of a hospital should be registered in the Land Registry, in accordance with the provisions of the Land Transfer Acts, 1875 and 1897, and of the Land Transfer Rules, 1903. Special provision is made by Rules 83 to 85 inclusive for land which is held for charitable uses (not being solely educational), "for the sale of which the consent of the Charity Commissioners is by statute required." In such a case an application to be registered should, where the land is vested in the administering trustees, be made with the consent of the Charity Commissioners, and a restriction will be entered in the register and in the land certificate in the form prescribed (see r. 83). The form prescribed is No. 13 in the First Schedule to the Land Transfer Rules, 1903, and is as follows: "No disposition is to be registered without the consent of the Charity Commissioners or an order of the Registrar."

It is seen that the rules only apply (1) where the land is held for charitable uses, and (2) when the consent of the Charity Commissioners to a sale is required by statute. The second test is sometimes one of difficulty, and has already given rise to litigation. Thus in *A.-G.* v. *National Hospital for Epileptics*, 1904, 2 Ch. 252, the hospital had, after many years' previous existence,

recently been incorporated by charter, whereby powers to acquire, hold, and dispose of land were conferred. The hospital applied to be registered with possessory title without any restriction as to the powers of the board of management to dispose of the property. It was held, however, that the charter of incorporation was not a "scheme legally established" within the meaning of the Charitable Trusts Act, 1855, s. 29, and therefore that the consent of the Charity Commissioners was by that section required to any sale of the charity estate, and therefore that the title could not be registered without the restriction.

A similar question arose in *Church Army*, 1906, 94 L.T. 559, where the Church Army applied to register a lease. It was held that no restriction need be added in this case, as there was no "endowment" of the charity within the Charitable Trusts Act, 1853, s. 62, and the consent of the Charity Commissioners to a sale of the premises was not therefore necessary (see VOLUNTARY HOSPITALS). The charity had been incorporated as a company not for profit under the Companies Act, 1867, s. 23, and claimed to be exempt from the jurisdiction of the Charity Commissioners; but this point was left undecided (see *Society for Teachers of Deaf & Whittle*, 1907, 2 Ch. 486).

Leases, Mortgages, and Sales by Unincorporated Voluntary Hospitals.—The authorities of unincorporated voluntary hospitals may deal with land, which is not held as an endowment, without restriction, so long as they keep within the regulations imposed by the hospital itself. As trustees with full powers of management they have discretion to use the property in the most beneficial way.

Hospitals incorporated under 39 Eliz. c. 5.—A hospital incorporated under 39 Eliz. c. 5 (see INCORPORATION) is restricted from alienating its land except by lease for twenty-one years,

Other Incorporated Hospitals and Statutes of Elizabeth.—Other statutes of Elizabeth—namely, 13 Eliz. c. 10; 14 Eliz. cc. 11, 14; 18 Eliz. c. 11—impose restrictions on incorporated hospitals generally from alienating their land except by way of lease and exchange. The statutory powers shortly are: (1) in country districts, lease for twenty-one years or three lives; (2) in town districts, repairing lease for forty years; (3) exchange of town houses for lands of equal value. These provisions, which have not been repealed, may still affect some ancient foundations; but the majority of modern hospital corporations have larger powers either under their charter or under the general or special statute under which they have been incorporated (see INCORPORATION). Leases which have been made not in accordance with the statutory power are absolutely void (*Moore* v. *Clench*, 1875, 1 Ch. D. 447; *Magdalen Hospital* v. *Knotts*, 1879, 4 A.C. 324).

Endowments within Charitable Trust Acts.—In the case of endowments which fall within the jurisdiction of the Charity Commissioners under the Charitable Trust Acts (see VOLUNTARY HOSPITALS), the following restrictions are imposed by the Charitable Trusts Act, 1855:

Charitable Trusts Act, 1855, s. 29.—"It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of Parliament, under any Act already passed or which may hereafter be passed, or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Board, any sale, mortgage, or charge of the charity estate or any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years."

Meaning of "Charity" and "Charity Estate."—The term "endowment" is not used in this section, but

"charity" and "charity estate," and some doubt might have arisen as to whether the statutory restriction did not affect voluntary hospitals having no endowment (see VOLUNTARY HOSPITALS). The term "charity" is, however, defined by s. 48 of the Charitable Trusts Act, 1855, as not including any charity or institution expressly exempted from the operation of the Charitable Trusts Act, 1853, and it has been held that "charity estate" has a similar meaning (*Sons of Clergy Corporation*, 1893, 1 Ch. 178, 187; see also *Church Army*, 1906, 94 L.T. 559; *Sons of Clergy Corporation*, 1860, 1 L.T. N.S. 386).

Lease in Excess of Power void.—A lease for more than twenty-one years in contravention of s. 29 is not valid for twenty-one years, but is absolutely void (*Bishop of Bangor* v. *Parry*, 1891, 2 Q.B. 277).

Charity Commissioners may sanction Mortgage.—The Charity Commissioners may authorise money to be raised by mortgage for repairs and improvements (Charitable Trusts Act, 1853, s. 21) and the redemption of rent-charges (s. 25); and may also sanction the application of endowment funds to any beneficial object not inconsistent with the trusts (Charitable Trusts Act, 1860, s. 15).

Charitable Trust Acts over-ride Statutes of Elizabeth.—Any leases, sales, exchanges, or partitions which have been authorised by the Charity Commissioners are valid in the case of incorporated hospitals, notwithstanding the statutes of Elizabeth mentioned above (Charitable Trusts Act, 1855, s. 38).

Title-deeds.—Title-deeds may be deposited for safe custody with the Commissioners (Charitable Trusts Act, 1853, s. 53, and 1860, s. 19).

For full information as to modes of application and other details, see Tudor on *Charities*.

LUNATICS AND IDIOTS

Law of Lunacy outside the Scope of this Work.—The law of lunacy, which regulates the custody of the person and management of the property of lunatics and idiots, is of too special a nature to be treated in this work; the reader is accordingly referred to the textbooks on the subject, except so far as it bears on the law of hospitals.

Distinction between Idiots and Lunatics.—The law recognises two main classes of insanity: (1) idiots, (2) lunatics.

"Idiocy is a natural insanity of the mind from the birth of the party; so that insanity of mind is the genus, of which idiocy is one species, for an idiot may be defined as a person of unsound mind from his birth.

"There is but one other species of insanity of mind which the law regards on inquiries of this sort [commission of inquiry in lunacy], and which is called accidental or adventitious insanity by my Lord Chief Justice Hale. As where a person having had a competent use of reason, loses it by some distemper in the humours of the body, or by a hurt in the brain, or its organs, or by the violence of disease, as a fever, or palsy, or the like. And this is subdivided into that which is periodical and has lucid intervals and that which is permanent without intermission. This adventitious insanity was at the common law called lunacy and is generally called so at this day" (*Lord Ely's Case*, 1764, 1 Ridg. Parl. Cas. 517).

Idiots Act, 1886.—The distinction is maintained by the Idiots Act, 1886, in which "idiots" or "imbeciles" do not include lunatics, and "lunatic" does not mean or include idiot or imbecile (s. 17).

Lunacy Act, 1890.—In the Lunacy Act, 1890, however, "lunatic" means an idiot or person of unsound mind (s. 341); but the same Act also expressly provides

that "this Act shall not affect the provisions of the Idiots Act, 1886" (s. 340 (2)).

Hospitals for Idiots.—By the Idiots Act, 1886, "'hospital' and 'institution' mean any hospital or institution or part of a hospital or institution (not being an asylum for lunatics) wherein idiots or imbeciles 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 sane patients for or towards the support, provision, or benefit of other patients" (s. 17). The Act contains provisions for the registration and regulation of "hospitals" within the meaning of the Act.

Hospitals for Lunatics.—By the Lunacy Act, 1890, s. 341, "'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 sane patients for or towards the support, provision, or benefit of other patients." Such "hospitals" are subject to special regulations (see Lunacy Act, 1890, ss. 230-7, and Lunacy Act, 1891, ss. 12 and 21), and also to the general law applicable to private patients in licensed houses (see Lunacy Acts, 1890 and 1891, and statutory and other rules made thereunder). It may be observed that, apart from the lunacy law, the management of the property of a hospital for idiots or lunatics, whether endowed or unendowed, is subject to the same general law as other endowed and unendowed hospitals.

Lunatic in Ordinary Hospital.—The fact that a patient in an ordinary hospital happens to be an idiot or lunatic would not of itself involve the hospital authority in liability for treating his illness.

LYING-IN HOSPITALS

Lying-in Hospitals Act, 1773.—The law as to lying-in hospitals is regulated by the Lying-in Hospitals Act, 1773. This Act was entitled "An Act for the better regulation of Lying-in Hospitals, and other places appropriated for the charitable reception of pregnant women; and also to provide for the Settlement of Bastard Children, born in such Hospitals and Places," and it is clear from the preamble and the later provisions of the Act that it was passed as much to regulate the poor-law settlement of bastards as to encourage such hospitals.

Licence required.—By this Act no hospital or place for the public reception of pregnant women may be established or used except under a licence which is granted by the justices in general quarter sessions, a fee of 40*s.* for each licence being payable to the clerk of the peace or town clerk (s. 1). The licence is required to be written on parchment, and signed by two or more justices, and stamped with a 5*s.* stamp. A copy is directed to be preserved by the clerk of the peace or town clerk, which any one may inspect on payment of 1*s.* Each licence authorises one hospital and no more (s. 2).

Inscription on Front of Hospital.—The hospital, when licensed, is required to maintain the following inscription in large letters over the door: "Licensed for the publick reception of pregnant women, pursuant to an Act of Parliament passed in the thirteenth year of the reign of King George the Third." If this is not done, the licence becomes void (s. 4).

"Hospital" or "Place" within the Act.—A "hospital" or "place" within the Act includes all hospitals, houses, and places established, used, or appropriated for the public reception of pregnant women, and supported by charitable contributions or otherwise, for the purposes of the delivery or lying-in of such pregnant women (s. 3). A room in a workhouse set apart for the reception of women pregnant with children likely to be born bastards is not a "hospital" or "place" within the meaning of the Act (*R.* v. *Manchester*, 1821, 4 B. & Ald. 504).

Inquiry as to whether Woman Married or Single.—Before a pregnant woman is admitted into a lying-in hospital, or (if she is then too ill) as soon as she has sufficiently recovered, the governor, master, secretary, clerk, or other person in charge of the hospital is required to take her before a justice of the peace for the county, riding, division, or place in which the hospital is, for the purpose of having her examined on oath as to whether she is married or single; and particulars of the examination are required to be entered in a book kept for that purpose by the person in charge of the hospital, and to be signed by the justice before whom the examination is taken (s. 10).

Woman may produce Affidavit.—This ceremony may, however, be avoided if, on admission, the woman produces an affidavit made by her before a justice of the peace for the City of London, or the county, riding, division, or place in which the hospital is situate, stating that she is married or single. The affidavit must be kept and filed at the hospital (s. 11).

Birth of Bastard.—On birth of a bastard in a lying-in hospital, the governor, master, secretary, clerk, or other person in charge of the hospital is required, four days at least before the mother is discharged, to give notice of the birth to the overseers and churchwardens of the

parish or place in which the hospital is, the notice to be given either personally or by writing left at their usual place of abode (s. 12).

One of the overseers or churchwardens must then attend at the hospital within the time notified and take the mother before a justice of the peace to be examined on oath as to her last legal settlement (*ibid.*). If, when the overseer or churchwarden attends in pursuance of the above notice, he is informed by the hospital authorities that the woman is not well enough to be removed, he must wait until another similar notice is received, the notices being repeated as often as occasion requires (s. 13).

Detention of Mother not to exceed Six Weeks after Birth.—The woman may be detained in the hospital until she is in a fit condition to be discharged, and until she has been examined before a justice of the peace as above mentioned (s. 14); provided the period of detention does not, except with the consent of the woman, exceed six weeks from the birth of the child (s. 15).

Penalties.—Any governor, master, secretary, clerk, or other person in charge of the hospital who neglects or refuses to comply with any of the above provisions, is liable to a penalty of £50 for each offence (s. 16).

Limitation of Action under Public Authorities Protection Act, 1893.—The proceeding for the recovery of the penalty must be commenced within six calendar months after the offence was committed (Public Authorities Protection Act, 1893, s. 1; and see s. 2 repealing s. 18 of the Lying-in Hospitals Act, 1773).

Poor-law Settlement.—A child takes, for poor-law purposes, the settlement of its father, or, if it is illegitimate, the settlement of its mother. If, however, this cannot be ascertained without inquiring into the derivative settle-

ment of the father or mother, the child is deemed to be settled in the parish in which it was born. These rules apply in the case of a child born in a hospital, and it is expressly enacted that birth in a lying-in hospital or other place appropriated for the charitable reception of pregnant women shall not of itself confer a settlement in the parish or place in which the hospital is situate (Poor Relief Act, 1814, s. 2), and that a bastard born in a lying-in hospital shall keep the settlement of its mother, and if that cannot be ascertained, then that its place of settlement shall be governed by the ordinary law (Lying-in Hospitals Act, 1773, ss. 5, 9). And it is further expressly provided in the case of a bastard born in a lying-in hospital that the expenses of any necessary removal of either mother or child to the parish or place of the mother's settlement is, if it is within twenty miles, wholly chargeable to such parish or place (*ibid.* s. 6). If therefore a bastard is born in the maternity ward of a poor-law infirmary, which is not a "hospital" or "place" within the meaning of the Lying-in Hospitals Act, 1773, its settlement will be in the parish where it is born (see *R.* v. *Manchester*, 1821, 4 B. & Ald. 504), or since the Poor Law Amendment Act, 1834, the settlement of the mother, if that settlement is known (see s. 71, and *Headington* v. *Ipswich*, 1890, 25 Q.B.D. 143).

Midwives Act, 1902.—The Midwives Act, 1902, which came into operation on April 1, 1903 (s. 19), provides that, after April 1, 1905, any woman who, not being certified under the Act, takes or uses the name or title of "midwife" (which means a woman certified under the Act (s. 18)), or any name, title, addition, or description implying that she is certified under the Act, or is a person especially qualified to practise midwifery, or is recognised by law as a midwife, shall be liable on summary conviction

to a fine not exceeding £5 (s. 1 (1)). She must not employ an uncertified person as substitute (s. 1 (4)) (see *Felaman*, 1907, 5 L.G.R. 653).

After April 1, 1910, no Woman to act as Midwife for Gain without Certificate.—It is also provided that after April 1, 1910, no woman shall habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner unless she be certified under this Act, subject to a penalty of £10. This provision does not apply to any one rendering assistance in a case of emergency (s. 1 (2)).

Qualification of "Midwife" under the Act.—For the period between April 1, 1903, and 1905 an opportunity was given to then existing midwives having certain prescribed qualifications to obtain a certificate under the Act, but now no woman can be certified under the Act until she has complied with the rules laid down in pursuance of the Act (s. 1 (3)).

The qualifications now necessary are prescribed by the Central Midwives Board Rules, 1903 (see Privy Council Order, April 24, 1907), which, so far as they regulate the issue of certificates and the conditions of admission to the roll of midwives, are substantially as follows:

Candidates must satisfy the Central Midwives Board that they have reached a sufficient standard of general education, and submit the following documents:

(*a*) A certificate of birth showing that the candidate is not under twenty-one years of age; and where the candidate has been married, a certificate of such marriage;

(*b*) Certificates to the effect that the candidate has undergone the training hereinafter mentioned;

(*c*) A certificate of good moral character.

Candidates must pass an examination, but no person shall be admitted to an examination unless she produces

certificates that she has undergone the course of training prescribed by the Rules.

The training required is as follows:

(1) She must, under supervision satisfactory to the Central Midwives Board, have attended and watched the progress of not fewer than twenty labours, making abdominal and vaginal examinations during the course of labour, and personally delivering the patient;

(2) She must, to the satisfaction of the person certifying, have nursed twenty lying-in women during ten days following labour.

These certificates of training must be filled up and signed either (i) by a registered medical practitioner, or (ii) by the Chief Midwife, or, in the absence of such an officer, (iii) by the matron of an institution recognised by the Board, or (iv) in the case of a poor-law institution, by the matron, being a midwife certified under the Midwives Act, or a superintendent nurse certified in like manner and appointed under the Nursing in Workhouses Order, 1897 (*post* pp. 238–240), and attached to such an institution, or (v) by a midwife certified under the Midwives Act, and approved by the Board for the purpose. (For further particulars see Central Midwives Board Rules, 1903, B and C.)

Exemption of Hospitals from Certain Regulations.—The Central Midwives Board Rules, 1903 (E), prescribe that nothing in this section applies to certified midwives exercising their calling in hospitals, workhouses, or poor-law infirmaries under the supervision of a duly appointed medical officer (E, 25). The Local Government Board, however, advise its adoption in poor-law establishments (Circular, July 29, 1907), and it is submitted that hospitals, although exempt from the regulations in (E), may usefully adopt as a code to be followed by midwives practising

in their institutions those regulations which prescribe (*a*) directions to midwives, (*b*) duties to patients, (*c*) duties to child, and (*d*) general provisions (E, 1-17).

Local Supervising Authority.—The Act constitutes every council of a county or county borough through England and Wales the local supervising authority over midwives within the area of such county or county borough with certain powers and duties (s. 8). These powers and duties may be delegated to a committee appointed by such council (s. 8), or to any district council who may appoint a committee to exercise such powers and duties (s. 9). The provisions of the last-mentioned section apply to the administrative county of London in like manner as if each metropolitan borough were a county district and the borough council were the district council of that district (s. 9; see also Central Midwives Board Rules, 1903, F).

Registration of Birth.—In the case of every child born alive it is the duty of the father and mother of the child, and in default of the father and mother of the *occupier of the house* in which to his knowledge the child is born, and of each person present at the birth, and of the person having charge of the child, to give to the registrar, within forty-two days next after such birth, information of the particulars required to be registered concerning such birth, and in the presence of the registrar to sign the register (Births and Deaths Registration Act, 1874, s. 1).

Meaning of "House."—The word "house" in this Act includes a prison, lock-up, workhouse, lunatic asylum, hospital, and any prescribed public or charitable institution (s. 48).

Meaning of "Occupier."—The word "occupier" includes the governor, keeper, master, matron, superin-

tendent, or other chief resident officer of every public institution (s. 48).

Particulars to be registered.—The particulars required to be registered include date and place of birth, name (if any) and sex of child, name of father, name and maiden name of mother, rank or profession of father, signature, description, and residence of informant (1874 Act, s. 47).

On Default, Registrar may require Attendance.—If the information directed to be given is not so given within forty-two days after the birth (not including the day of birth), the registrar may, by notice in writing, require any of the persons above mentioned to attend personally at his office or other appointed place within such time (not less than seven days after the receipt of the notice and not more than three months after the birth of the child) as he may specify, to give the required information and to sign the register (1874 Act, s. 2).

Birth to be registered Gratis.—It is the duty of the registrar to inform himself carefully of every birth which happens within his sub-district, and upon receiving personally from the informant at any time within three months from the date of the birth of the child information of the particulars required to be registered concerning the birth of such child, forthwith in the prescribed form and manner to register the birth and the said particulars (if not previously registered) without fee or reward from the informant, except that if, in pursuance of a written requisition, he registers the same at the residence of the person making such requisition, or at the house in which the birth took place, he shall, unless the birth took place in a *public institution*, be entitled to the appointed fee (1874 Act, s. 4). "Public institution" here includes a hospital (see s. 48).

Registration after Three Months.—If the registration has not been effected within three months, the registrar may, after that time and within twelve months from the birth, by notice in writing, require any of the persons required to give information as above mentioned to make a declaration before the superintendent registrar of the particulars required for registration and to sign the register. After twelve months a birth cannot be registered except with the written authority of the Registrar-General (1874 Act, s. 5).

Father of Illegitimate Child.—No person can be required to give information under the Act as being the father of an illegitimate child, nor can his name be entered on the register as the father unless at the joint request of the mother and of the person acknowledging himself to be the father (1874 Act, s. 7).

Still-born Child.—The birth of a still-born child is not required to be registered under these Acts, but if a child is born alive and dies, however soon after birth, the birth and death must be registered. It is the duty of a master of a workhouse to register births in the workhouse register, and this duty apparently extends to the birth of still-born children (Glen's *Poor Law Orders*, 416).

Notification of Births Act, 1907.—In addition to the requirements of the Registration Acts, a new duty is now in certain cases imposed—that of notification of the birth to the medical officer of health within thirty-six hours after the birth. This duty is imposed by the Notification of Births Act, 1907. The Act was passed on August 28, 1907, but only has effect in those areas (1) the local authority of which have by resolution adopted the Act, or (2) in which the Local Government Board have by order declared that the Act shall be in force (ss. 1-3; see L.G.B. Circular, September 27, 1907).

Who must notify.—The duty of notification is imposed (1) on the father, if residing where the birth takes place, and (2) on "any person in attendance upon the mother at the time of or within six hours after the birth" (s. 1 (1)).

To whom to notify.—Notification is to be made to the medical officer of health of the district or to the county medical officer of health as the case may be (ss. 1, 2).

When to notify.—Notice of birth must be given within thirty-six hours after birth (s. 1 (2)), subject to a penalty of 20*s.* (s. 1 (3)).

How to notify.—The notice must be in writing, but may be either posted or delivered at the office or residence of the medical officer (s. 1 (2)).

Period of Gestation.—The Act applies "to any child which has issued forth from its mother after the expiration of the twenty-eighth week of pregnancy, whether alive or dead" (s. 1 (5)).

Law of Vaccination.—In lying-in hospitals and other hospitals with maternity wards, on the birth of a child the law of vaccination becomes of importance and has to be studied, so that an outline of the general requirements may be useful to the persons in charge.

The law is contained in the Vaccination Acts, 1867 to 1907, and in the Rules and Orders made thereunder.

The general principle underlying these statutes is that every child should be vaccinated within a short period of its birth. Recent legislation has, however, introduced important grounds of exemption.

Vaccination Compulsory within Six Months after Birth.—The period within which the parent (including the mother of an illegitimate child: see Vaccination Act, 1867, s. 35) or other person having the custody of a child shall cause the child to be vaccinated shall be six months

from the birth of the child (Vaccination Act, 1898, s. 1 (1)). The public vaccinator of the district shall, if such parent or other person so requires, visit the home of the child for the purpose of vaccinating the child (sub-s. 2). If a child is not vaccinated within four months the public vaccinator, after at least twenty-four hours' notice to the parent, shall visit the home and shall offer to vaccinate the child with glycerinated calf lymph, or such other lymph as may be issued by the Local Government Board (sub-s. 3). (See as to this sub-section, *Pym* v. *Wilsher*, 1901, 2 K.B. 806; *Bowden* v. *Toll*, 1901, 85 L.T. 486; *Moore* v. *Keyte*, 1902, 1 K.B. 768.) The public vaccinator shall not vaccinate a child if, in his opinion, the condition of the house in which it resides is such, or there is or has been such a recent prevalence of infectious disease in the district, that it cannot be safely vaccinated, and in that case shall give a certificate of postponement of vaccination, and give notice of such certificate to the medical officer of health of the district (sub-s. 4).

Hospitals not to compel Vaccination until after Six Months.—As regards hospitals, the Vaccination Act, 1898, specially provides as follows:

"Notwithstanding any regulation of any lying-in hospital or infirmary or other similar institution, the parent of any child born in any institution shall not be compelled under such regulation or otherwise to cause or permit the child to be vaccinated at any time earlier than the expiration of six months from its birth" (sub-s. 5).

Exemption on the Ground of Conscientious Objection.—Under the Vaccination Act, 1898, as amended by the Vaccination Act, 1907, vaccination is not compulsory if the parent or other person having the custody of the child within four months from the birth of the child makes a statutory declaration that he conscientiously

believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers or sends by post the declaration to the vaccination officer of the district. (See Order September 21, 1907.)

Medical Certificates avoiding Vaccination.—In all other cases, in order to avoid the penalties under the Vaccination Acts, 1867 to 1898, the parent or other person must procure one of the following medical certificates: (1) postponing vaccination owing to the state of the child's health (Vaccination Act, 1867, s. 18); (2) postponing vaccination owing to the condition of the house, or the recent prevalence of infectious disease in the district (Vaccination Act, 1898, s. 1 (4)); (3) of the insusceptibility of successful vaccination, or of the child having had small-pox (Vaccination Act, 1867, s. 20); (4) of successful vaccination by the public vaccinator (Vaccination Act, 1867, s. 21); (5) of successful vaccination by some one other than the public vaccinator of the district (Vaccination Act, 1871, s. 12). Certificates 1, 3, and 4 may be given by the public vaccinator or by some registered medical practitioner. Certificates 2 and 5 can only be given by the public vaccinator. For the forms of these certificates see the Vaccination Orders of 1898 and 1907.

No Fee for such Medical Certificate.—No fee shall be charged by the public vaccinator to the parent or other person for any such certificate (Vaccination Act, 1867, s. 22).

Production of any such certificate or of the register in which the certificate of successful vaccination is entered is a sufficient defence on a prosecution for neglect to procure vaccination, except in regard to a certificate of postponement when the time specified therein for the postponement of the vaccination shall have expired before

the time when the information was laid (Vaccination Act, 1867, s. 34). The burden of proving non-compliance with a vaccination order is upon the prosecution, but the fact that no notification of vaccination has been received by the proper officer is *prima facie* evidence that the child has not been vaccinated (*Over* v. *Harwood* 1900, 1 Q.B. 803). Where a parent was summoned for not having had his child vaccinated within six months, the child being then eleven months, it was held that a medical certificate that it was at that time unsafe owing to the state of the child's health to vaccinate was no defence (*Hinds* v. *Elsam*, 1903, 88 L.T. 867).

MEDICAL SCHOOLS

What is a Medical School.—A medical school is an institution for the teaching of the science of medicine and surgery; and although sometimes distinct, is often attached to some hospital, so that the students are enabled to acquire practical teaching at the bedside of the hospital patient.

Relation of School to Hospital.—The precise relation of a medical school to the hospital is not always easy to define, and varies in each case. The management is generally separate, although the buildings may belong to the hospital.

Hospital Funds: Whether applicable to School.—It is a question of some importance how far moneys subject to a trust for the general purposes of a hospital may properly be applied in contributing to the support of a medical school. Hospitals which give financial support to the medical school to which they are attached should, therefore, be prepared to justify what at first sight appears to be a divergence of their funds from the purpose for which they are given.

Report on Financial Relations between Hospitals and Medical Schools.—In October 1904, an inquiry was instituted by the King Edward's Hospital Fund for London into the financial relations between hospitals and medical schools, the terms of reference being as follows:

"(1) Whether any (and if any, how much) money given or subscribed for the relief of the sick poor to the twelve

London hospitals having medical schools is contributed, directly or indirectly, by those hospitals, or any of them, for the maintenance of medical education.

"(2) Whether any direct or indirect return for such contribution (if any) is received by the hospitals from their medical schools, and if so, whether such return is equivalent to the amount of the contributions.

"(3) Whether, in the event of the Committee finding that any hospital contributes to its medical school a sum in excess of the return it receives from the medical school, there are any special considerations advanced in justification of such expenditure, or any general considerations which would apply to all hospitals having medical schools."

The Committee, consisting of Lord Welby, Sir Edward Fry, and the Bishop of Stepney, made their report on February 8, 1905.

As to the first head of inquiry, no complete answer could be given, as it appeared that in several cases (as St. Mary's) the hospital and school were founded together; that in some cases (as University College Hospital) the hospital was founded as an aid to the school; that in some cases (as Charing Cross and Westminster Hospitals) the school buildings were provided, or partly provided, by money provided for the specific purpose; while in other cases (as London Hospital) sums have been contributed to hospitals, subsequent to foundation, of which, to the knowledge of the donors, a portion was applied to the school.

As to the second head, it was found that the hospitals did receive, directly or indirectly, some return for the contributions made to the schools in the following ways: (*a*) By the wide interest in the hospital caused by a large body of students and medical men having been there educated; (*b*) by attracting eminent men in the profession; (*c*) by the publicity tending to maintain the work at a high level. Against this should be put increased

expense of appliances, and perhaps discomfort to patients of so many students. On the other hand, it was found that science was advanced and that the public generally benefited; that (in answer to the latter part of the second head) the benefits from school to hospital and from hospital to school were mutual and reciprocal and could not be stated in money value.

To the third head the answer was, that there were no special considerations (except as above) advanced in justification of expenditure by hospitals on schools, or any general considerations which would apply to all hospitals having medical schools.

The Committee further expressed the opinion that the preliminary teaching in medical schools had no real relation to a hospital, and might more properly be pursued in an institution of a university character, while it was this preliminary teaching which caused most expense to hospitals.

In conclusion it was submitted, that in future the distribution between hospital and school should in every case be drawn with such clearness that it might be understood by the general public, in order that no question might arise as to the destination and application of moneys contributed whether by the King's Fund or from any other source.—*Report of the Committee of King Edward's Hospital Fund for London on Financial Relations between Hospitals and Medical Schools in London*, February 1905: *Geo. Barber, 23, Furnival Street, Holborn, E.C.*

MEETINGS

Object of Meetings.—The usual method by which any body of persons, whether incorporated or unincorporated, signify their wishes on any matter affecting the interests of such body is by meeting together and voting upon the matter in question.

Meetings may be divided into general meetings of the whole body and board or committee meetings of selected representatives of such body.

As to meetings, hospitals, apart from any statutory or other regulation, fall under the general rules of common law.

Constitution of Meeting.—It might be assumed that every person who is a donor or subscriber, and not merely an officer or servant of the institution, would be entitled to attend and vote at a meeting duly convened, but in the majority of hospitals such right is confined to donors or subscribers of more than a certain amount, who, by virtue of the amount of their donation or subscription, are termed governors. This regulation does not affect the right of any contributor to call for an account (see ACCOUNTS).

Notice the Usual Mode of convening Meeting.—As a general rule a meeting is convened by giving notice to every person entitled to attend of the time and place at which and of the objects for which such meeting is to be held. Every person entitled to vote ought to be summoned. The omission to give notice may invalidate the meeting (see *Smith* v. *Darley*, 1849, 2 H.L.C. 789).

It would seem clear that if, in fact, every person entitled to attend was present no complaint could be made of the insufficiency of the notice as to time and place.

What the Notice should state.—The omission to state the subject of discussion might be material, and vitiate the proceedings. Apart, however, from special regulation there is no rule at common law of universal application to the effect that a notice of a meeting which fails to specify the nature of the business to be undertaken is thereby rendered invalid (see *R.* v. *Chetwynd*, 1828, 7 B. & C. 695). If in the face of an express regulation that in the case of an extraordinary meeting notice of the specific object of the meeting is to be given, and no notice of the object of the meeting is in fact given, the proceedings at the meeting are invalid (*Lawes's Case*, 1852, 1 D.M. & G. 421).

Special Business should be stated.—Even in the absence of any express regulation it is generally advisable in the notice to state the nature of the business to be transacted at the meeting when such statement can conveniently be made, and certainly when any business of a "special" nature is to be taken. All business may be deemed special except the consideration of accounts and balance-sheets, the ordinary report of the governing body and auditors, the election of officers and fixing remuneration of auditors (compare Companies Act, 1862, Table A [revised 1906] Art. 50).

Notice should be Clear.—In framing the notice, the object being not to mislead but to inform, care should be taken to make it so plain that the ordinary business man could attach only one meaning to it. The test which a court of law will apply is, What is the fair business-like construction which business men would place on the document when they received it? (see and compare the company law case of *Alexander* v. *Simpson*, 1889, 43 Ch. D. 139).

The length of the notice is usually prescribed by the rules; if not, the notice must be issued within a reasonable time of the hour of meeting.

What is a Quorum.—The attendance of one person does not constitute a meeting. The word "meeting" *prima facie* means a coming together of two or more persons (per Lord Coleridge C.J., in *Sharp* v. *Dawes*, 1876, 2 Q.B.D. 26, 29). In order to constitute a meeting there must therefore be a quorum of persons present. If there is no regulation as to a quorum, the common law rule is that there must be at least two persons to form a quorum.

All properly drawn laws governing voluntary hospitals should provide for the number of members of the governing body who shall constitute a quorum at the meetings of the various boards and committees. For example, the laws of a large hospital not unusually provide that seven governors should constitute a quorum at the annual and quarterly board, five at the weekly board, and at the medical and house committee meetings that three members should form a quorum.

Election of Chairman.—The meeting being duly convened, the next step is to elect a chairman. Regulations generally provide that the president of the institution, or in his absence one of the vice-presidents, shall take the chair at the general and special meetings of the governing body, and in their absence that the governors present shall appoint a chairman for the day from among themselves. In the case of the board of management, it is usual for the members to elect a chairman and deputy-chairman for the year, and in the absence of both the chair is taken by a chairman nominated by the members of the board present. No hard-and-fast rule appears to be laid down as to the method of adopting a chairman

of finance, house, election, or other sub-committees, and in these circumstances the following observations may be found useful.

Mode of Election.—There is no general rule of law which regulates the mode of electing a chairman, and the laws of hospitals and similar institutions rarely contain any express provision on the subject. In cases where there is, and has been, no duly appointed chairman, a difficulty might arise in a case where the election of a chairman was sought to be impugned. Pending the due election of a chairman, each member of the elective body stands on a similar footing in so far as putting a question to the meeting is concerned, one member having no more authority to do so than another. The expedient which is sometimes adopted of electing a temporary chairman does not really solve the difficulty. In cases where dispute is likely to arise it is advisable to call in some permanent official, as, for example, the secretary, and authorise him to take the initiative in conducting the election. Where a chairman has been previously appointed, the outgoing chairman is the proper person to act. The actual election may be by ballot or by any other mode which seems convenient at the time. A good deal of uncertainty would be removed and possible unpleasantness avoided if every institution had some regulations expressly prescribing the mode of procedure.

Absence of Chairman.—In the absence from any meeting of the duly elected chairman or of the deputy chairman, if any, the members present may generally, after allowing a reasonable interval (say fifteen minutes) to elapse, proceed to elect a substitute as chairman for that meeting. When once the substitute has been elected he retains the chair during that meeting, even though the

regular chairman may afterwards arrive. Express provisions may of course modify this practice.

Chairman and the Casting Vote.—It is usual to provide that in the case of an equality of votes the chairman shall have a second or casting vote. In the absence of any express provision a casting vote does not appear to necessarily attach to the office of chairman (*Stirling* v. *Campbell*, 1816, 6 Paton 238; *Journals of House of Lords*, July 1, 1816; see *R.* v. *Salisbury*, 1901, 1 Q.B. 573; 2 K.B. 225). Express provision should therefore be made in the laws or by-laws of the institution.

The chairman's first or ordinary vote should obviously be exercised in common with and at the same time as the votes of the other members, and before the necessity for the casting vote can be ascertained.

A curious result may be brought about by the chairman refusing to vote at all. Thus, where the election of clerk to the guardians of the poor was to be by the majority of guardians present at the meeting, and twenty-two guardians (including the chairman) were present, of whom eleven voted for one candidate and ten for the other, and the chairman would not vote, the election was held void because it had not been determined by a majority of the guardians present (*R.* v. *Griffiths*, 1851, 17 Q.B. 164).

In the House of Commons the Speaker, and in Committee the Chairman of Ways and Means, has no ordinary or original vote, but only a casting vote when the votes are equal, and such a rule certainly tends to preserve his impartiality.

Preservation of Order.—The primary duty of a chairman is to preserve order at the meeting, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained

with regard to any question which is properly before the meeting (*National Dwellings Society* v. *Sykes*, 1894, 3 Ch. 159).

He has authority to decide all questions which require decision at the time, and, having once decided, the burden of proof rests upon any person who disputes his ruling to show that he is wrong (*Indian Zoedone Co.*, 1884, 26 Ch. D. 70).

Power to adjourn Meeting.—He has no power to adjourn the meeting against the wish of those present (*National Dwellings Society* v. *Sykes*, above), except perhaps in cases where a disorderly element renders the preservation of order impossible (see Palgrave, *Chairman's Handbook* (1903), p. 8 ; and see *R.* v. *D'Oyley*, 1840, 12 A. & E. 139).

Sometimes there is an express regulation to the effect that the chairman may with the consent of the majority of the members present adjourn the meeting. This power does not impose an obligation upon the chairman to adjourn a meeting merely because the majority wish it, and in some cases he may be justified in declining to submit to the vote a motion for adjournment (*Salisbury Gold Mining Co.* v. *Hathorn*, 1897, A.C. 268).

Order of Business.—It is the common practice for the secretary or some other officer of a corporate body before the meeting commences to place before the chairman an agenda-paper specifying in order the business to be transacted by the meeting. This paper usually specifies first that the notice convening the meeting shall be read, and accordingly the first step taken by the chairman on taking the chair is to read out or direct some other person to read out the notice convening the meeting, and then the minutes of the previous meeting following with a formal motion that the minutes be confirmed.

Confirmation of Minutes.—The object of reading out and confirming the minutes is merely to ensure their verbal accuracy and not to give occasion for argument as to the substance of the transactions at the previous meeting. The chairman should keep any discussion confined to this object. There is no legal obligation to confirm the minutes.

Order of Debate.—The debate commences by the mover of a motion explaining his reasons for bringing forward the resolution, after which he hands to the chairman a paper upon which the terms of the motion are written or printed. The chairman then asks "Who seconds this motion?" If there is no one who seconds the motion, the motion is dropped. If, however, the formality of having the motion seconded is overlooked and the question is debated and the motion carried, the informality does not invalidate the resolution of the meeting. "In my opinion, if the chairman put the question without its having been either proposed or seconded by anybody, that would be perfectly good" (per James L.J., *Horbury Bridge etc. Co.* 1879, 11 Ch. D. at p. 118). If the motion is duly seconded, the terms of the motion should be read by the chairman, and the debate will proceed. The seconder may either speak immediately after the mover and at the same time as he seconds the motion (see Parliamentary Debate, *Times*, July 20, 1904), or he may without speaking signify to the chairman that he seconds the motion and reserves his speech until later. Subject to this the chairman may decide the order in which two or more persons desiring to speak shall be heard. To prevent doubt he will call upon a person by name. If the meeting is dissatisfied with his decision, the question "That Mr. A. be now heard" should be put to the

vote. Apart from any such question the convenient course is that a speaker for, should be followed by a speaker against, the motion, and so on alternately. The chairman may, at any rate, with the support of the majority of the members present, keep the speech of any one person within reasonable limits (*Wall* v. *London and Northern Assets Corporation*, 1898, 2 Ch. 469).

Speaking Twice.—It is a convenient rule of order that no person may speak twice upon the same motion or amendment, but to have spoken when the original motion alone was before the meeting does not disentitle the speaker from speaking upon an amendment, nor does speaking upon an amendment prevent speaking again upon another amendment. The chairman is at liberty to relax this rule, which is one of convenience, and where there are only a few persons present the reasons for adhering to it are not obvious. The exception to the rule against speaking twice is when any person rises to a point of order. This he must do at once, and the person then addressing the meeting must sit down until the chairman has disposed of the point of order, over which he has an absolute discretion. Once the point of order is disposed of, the interrupted person resumes his speech.

Amendments.—After the original motion has been proposed and seconded and read to the meeting, a speaker may propose an amendment, which should be handed in writing to the chairman or the terms of which should be taken down in writing by the chairman and should be seconded in the same way as a motion. An amendment cannot be proposed by the mover or seconder of the original motion. Two amendments cannot be placed before the meeting at the same time, although sometimes for convenience a speaker in

the course of the debate will indicate a further amendment which he intends to propose while the first amendment is being discussed. Moreover, the mover or seconder of one amendment cannot move or second another amendment.

If an amendment is in itself irregular, the chairman is bound not to put it to the meeting. An amendment should not only be relevant to the subject-matter of the motion, but should, like motions themselves, be within the scope of the business which the meeting is authorised to deal with, having regard to its constitution and to the terms of the notice which convened the meeting. It is not always easy to decide questions of this sort. For example, where an extraordinary general meeting of a company was called to consider, and, if thought fit, to pass a resolution "That a reconstruction of the company is desirable, and that the company be therefore wound up voluntarily," it was held that a resolution, "That the company be wound up voluntarily," was invalid, and entitled an absent shareholder to a compulsory winding-up order, on the ground that he was entitled to suppose that the subject-matter for discussion was to be a reconstruction scheme, and not a mere voluntary winding-up (*Teede & Bishop, Ltd.*, 1901, 84 L.T. 561; compare *Bethell* v. *Trench Tubeless Tyre Co.*, 1900, 1 Ch. 408: also 70 L.J. Ch. 409; 8 Manson 217). The resolution adopted at the first meeting need not, however, be in the identical terms of the notice, but, once passed, cannot be amended at the confirmatory meeting (*Torbock* v. *Westbury*, 1902, 2 Ch. 871).

The motion and amendment or amendments (if any) having been discussed and the debate concluded, the chairman proceeds to obtain the votes of the meeting. A sub-amendment should be voted upon before the original

amendment, and an amendment before the original motion. Where there is only one amendment, the chairman says, "The original motion was [*reads motion*]. To this an amendment has been moved [*reads amendment*]," and then proceeds to put the amendment to the vote.

If the amendment is lost, and no further amendment is proposed, the original motion is put to the vote. If the amendment is carried, the original motion as so amended should be put to the vote. Thus the chairman will in the latter case say, "The motion as amended is that," etc. Sometimes, however, the amendment is framed as an alternative motion, and in this case, and if carried, is treated as finally disposing of the original motion; but this procedure is inconvenient, and cannot be adopted when there is more than one amendment.

If an amendment is in substance a direct negative of the motion, it should not be accepted by the chairman.

Sometimes amendments are proposed to amendments. The sub-amendment should be put to the meeting before the amendment, and stands very much to the amendment as the amendment does to the original motion.

Voting.—There are several different ways in which the sense of the meeting may be ascertained. The principal methods are as follows: (1) Vote by voices; (2) vote by show of hands; (3) vote by poll; (4) vote by proxy; (5) vote by ballot.

Incorporated hospitals, with no special statutory provision as to voting, are governed by the general law applicable to corporations. Corporations are under no restraint at common law as regards the mode in which they may take the votes of their members; and provided they make no regulation which infringes the law of elections generally, as by giving a casting vote to the presiding officer or other person, or by declaring that the

election shall be carried by some majority other than a simple one, they may adopt any mode of voting they please, as by show of hands, voting papers, ballot, etc. (Grant on *Corporations* (1850), p. 255). But as to voting by proxy, see below.

(1) **Vote by Voices.**—This mode of voting is usually adopted at small meetings. It consists in the chairman, after having put the resolution to the meeting, requiring those present in favour of the same to say "Aye," and afterwards those who are against it to say "No." It is then more correct—as vote by voice is not a legally recognised form of voting, and may afford occasion for dispute—for the chairman to inform the meeting in a tentative way that he thinks the "Ayes" or the "Noes" have it, as the case may be. If after a reasonable pause this assertion is not challenged, the chairman may announce the result decisively.

If, however, any person present disputes the finding of the chairman, the voting should be taken by show of hands; but the objector should raise his objection before the chairman has given his final decision.

(2) **Vote by Show of Hands.**—According to what may be termed the common law of the country as to voting at meetings, votes are taken by show of hands (per Jessel M.R., *Horbury Bridge etc. Co.*, 1879, 11 Ch. D. 115). Where every person present has a vote of equal value, this mode is the most satisfactory; but where the votes are of unequal value owing to the larger or smaller holding or stake which any person holds in the corporation, or to the fact that some person holds a proxy, then show of hands is obviously not sufficient, and a poll may be demanded.

(3) **Vote by Poll.**—When a poll is demanded after a voting by show of hands, the result of the poll over-rides

the result of show of hands, and, apart from special agreement, there is no valid election until such poll has been held (see *R.* v. *Cooper*, 1870, L.R. 5 Q.B. 457). The mode in which a poll may be demanded depends upon express regulation, if any—that is, whether the demand should be made verbally or in writing, whether immediately after the vote or at any time during the meeting. Where the regulations are silent, the poll may be demanded verbally and at any time before the termination of the meeting. A further question then arises as to whether the poll shall be taken at that meeting or at a subsequent meeting convened for the purpose; but the later meeting is deemed in law to be merely a continuation of the original meeting. There is a conflict of judicial opinion as to whether, in the absence of regulation, in the case of a meeting of a company incorporated under the Companies Act, 1862, a poll may be taken at the meeting at which it is demanded; but it would seem to be the better opinion that there is no legal objection to a poll being taken at the original meeting (see *Chillington Iron Co.*, 1885, 29 Ch. D. 159, and compare with *Horbury Bridge etc. Co.*, 1879, 11 Ch. D. 109).

Once a poll has been demanded, and the request acceded to by the chairman, and the meeting has dispersed, it would seem that the demand cannot be afterwards withdrawn. At any rate, where in similar circumstances the demand has been seconded, despite the withdrawal of the proposer, the act of seconding operates as a distinct and additional demand (*R.* v. *Dover Corporation*, 1903, 1 K.B. 668).

A poll generally involves a record being kept of the name of each voter who either orally or in writing delivers his vote to the person appointed to receive it. The poll by ballot is explained later.

Incidentally a poll may involve votes by proxy being given where this kind of voting is allowed; but a proxy cannot demand a poll unless specially authorised so to do (*R.* v. *Government Stock Investment Co.*, 1878, 3 Q.B.D. 442; *Haven Gold Mining Co.*, 1882, 20 Ch. D. 151, 157).

(4) **Vote by Proxy.**—By common law voting by proxy is not recognised, so that apart from regulation no such vote can be allowed. "In general the personal presence of the voter is necessary; and it seems that a corporation not authorised so to do by charter or statute could not establish a mode of voting by proxy" (Grant on *Corporations* (1850), p. 256 note; *R.* v. *Elles*, 1734, 17 Sta. Tri. 822). In cases where it is allowed it should be seen that the proxy is in proper form, duly attested and stamped, and held by a properly authorised person.

"Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of 1*d.*, is to specify the day upon which the meeting at which it is intended to be used to be held, and is to be available only at the meeting so specified, and any adjournment thereof. The duty of 1*d.* may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is executed, and a letter or power of attorney or voting paper charged with the duty of 1*d.* is not to be stamped after the execution thereof by any person.

"Every person who makes or executes or votes, or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall incur a fine of £50, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper, shall be void" (Stamp Act, 1891, s. 80).

In the case of trading companies, it is usual to send with the notice of the meeting forms of proxies stamped with an impressed stamp, and sometimes with an addressed envelope stamped to pay return postage; but it

is doubtful whether the practice is legally binding on the company if the stamps are paid for out of the funds of the company. In the case of a charitable institution like a voluntary hospital, it does not seem to be a practice to be followed. In a company case, Kay J. said: "It may seem to be a very small thing in the case of each individual shareholder; but the sending out of 10,000 or 15,000 such circulars requires a substantial sum of money. The stamps on 15,000 proxies, with the halfpenny return stamp, amounts to £93 15*s*. . . . Such a proceeding I do not hesitate to say is a misapplication of the funds beyond the power of a general meeting to sanction" (*Studdert* v. *Grosvenor*, 1886, 33 Ch. D. 528, 539). It would seem sufficient to send out the form of proxy with full directions as to filling in and stamping.

(5) **Vote by Ballot.**—The adoption of the ballot, which originally signified secret voting by means of balls, has been spoken of as an encroachment on the common law mode of election, which is by show of hands or by poll (*Faulkner* v. *Elger*, 1825, 4 B. & C. 449); but several of the old charters of municipal corporations expressly gave the power of voting by ballot in corporate elections (Grant on *Corporations* (1850), p. 256), and this method is one of some antiquity, and has in modern times been recognised by the Legislature. A system of ballot by papers was adopted in the case of parliamentary and municipal elections by the Ballot Act, 1872. A custom to elect by ballot has been held good in an Irish corporation (*Adcock* v. *Dublin Corporation*, 1826, Batty, Ir. Rep. 628), and in the election of persons to hold official posts this method is likely to avoid personal unpleasantness, and if properly conducted seems free from objection. It would appear that voting by ballot was the mode in use by the College of Physicians in 1768 (see *R.* v. *Askew*, 1768,

4 Burr. 2186). In this case the old plan of placing small balls in a box was the one employed, and where all voters are present, and their right to vote undisputed, this plan answers the purpose; but in more complicated cases, and cases where the Ballot Act, 1872, applies, papers are used whereby on a scrutiny the voter may be identified.

Minutes.—Whilst the meeting is in progress it is the common practice for the chairman to make rough notes upon the agenda-paper of what takes place. The secretary or other officer whose duty it is to compile the minutes of the proceedings ought to rely upon these notes in a large measure for the basis of the minutes. Only facts should be entered upon the minutes, which should not be encumbered with the arguments of speakers for or against any proposition that may be brought forward.

Minutes are merely intended to be an abridged record, concisely and accurately stated, of the transactions of that meeting. Upon the minute-book should appear all motions and amendments put from the chair, in the precise terms employed—whether affirmed, negatived, withdrawn, or superseded; names of all present at the meeting, of all who proposed or seconded any motion or amendment, of all who voted, and whether for or against the question; important points of order, by whom raised and how decided by the chairman; the fact that the meeting has been duly convened by a proper notice should also be recorded.

It is generally considered sufficient, apart from statutory enactment or express regulation, if the minutes of the previous meeting are read out, confirmed, and signed by the chairman at the next meeting. It is sometimes the practice for the chairman of the previous meeting to read over and sign or initial the rough minutes as

recorded on the agenda-paper at the end of that meeting; these rough minutes are then fair copied by the secretary or some other official, and read over and confirmed at the next meeting. This latter practice seems useful, and likely to ensure the accuracy of the minutes as a record, and should be included in the laws of the institution. The chairman's signature is usually added, but is not essential to the confirmation by the meeting, nor is confirmation essential to the validity of the transactions themselves.

As a record of the transactions of meetings, minutes are obviously useful, not only by way of information to those who were absent, but as a means of reference to remind those who themselves were present at the meeting. Their most important function, however, may be as documentary evidence in a court of law. Some statutes provide that minutes duly signed shall be received as evidence in all legal proceedings—*e.g.* (*a*) in the case of joint stock companies (see Companies Act, 1862, s. 67, and *Jones* v. *Victoria Graving Dock Company*, 1877 2 Q.B.D. 314); (*b*) borough councils (Municipal Corporation Act, 1882, s. 22); (*c*) local authorities (Public Health Act, 1875, Schedule 1, Part I. rule 10).

Apart from statute, minutes are not in themselves evidence. "A minute of a meeting, at common law, is nothing more than a note of what takes place at the meeting, more or less regular and complete, but it does not prove itself. It requires to be set up by evidence—to be established as a correct record of what passed at the meeting—before it can become evidence or be received as such by any Court" (per Lord President Inglis in *Glasgow Bank Liquidators*, 1880, 7 R. 1196, 1199).

MORTUARIES

Local Authority outside London may provide Mortuary.—By the Public Health Act, 1875, any local authority may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in the Act called a mortuary), and may make by-laws with respect to the management and charges for use of the same (s. 141). They may also provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place (s. 143).

London Sanitary Authority may provide Mortuary.—By the Public Health (London) Act, 1891, a similar power to provide mortuaries is given to the sanitary authorities in London (s. 88), also to provide places for post-mortem examinations (s. 90), and for either purpose two or more sanitary authorities may combine (s. 91).

The same Act also enacts as follows:

"**93. Mortuary for Unidentified Bodies found in London.**—(1) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and preserved with a view to the ultimate identification of such dead bodies.

"(2) A Secretary of State may make regulations as to—

"(*a*) the manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception; and

"(*b*) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and

"(*c*) the disposal and interment of any such bodies.

"(3) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

"(4) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner."

Removal to Mortuary of Body after Death of Infectious Disease.—Power to order the removal to a mortuary of the dead bodies of persons who have died of infectious disease is given to any justice of the peace (*a*) in any district outside London by the Public Health Act, 1875, s. 142; (*b*) in any district where the provisions of the Infectious Disease (Prevention) Act, 1890, have been adopted under s. 10 of that Act; (*c*) in London by the Public Health (London) Act, 1891, s. 89 (see INFECTIOUS DISEASE HOSPITALS).

Burial of Body deposited in Mortuary.—The Local Government Board have issued a set of Model By-laws for the use of local authorities in the management of mortuaries, the most important of which provide for the burial of a body which has been deposited in a mortuary; for it is pointed out that although the Poor Law Act, 1844, s. 31, empowers the board of guardians to bury at the cost of the poor rate the body of any poor person which may be within their parish or union, there is no obligation upon them to incur this expense unless the body is lying in the workhouse or on premises belonging to the guardians.

Cost of Burial of Poor Patient dying in Hospital.—A hospital authority does not, therefore, relieve itself of the responsibility of bearing the expense of the burial of a poor patient merely by depositing it in the local mortuary, although the fact that the hospital by medically treating the patient has relieved the poor rate might well be taken into account by the guardians, and be a good reason for their exercising their power of burial (see DEATH IN HOSPITAL).

Hospital Mortuary.—Every hospital should have either a separate building or a separate part of the hospital set apart for the reception of dead bodies, and where a building is being erected for the purpose the suggestions made by the Local Government Board for the erection of local mortuaries may be usefully adopted (see Model By-laws issued by the Local Government Board: XV. Mortuaries).

NAVAL AND MILITARY HOSPITALS

Hospitals in Peace and War.—Hospitals, whether in times of peace or of war, are an important feature in every naval and military system, and, in this country, are under the control of the medical department of either service, and subject to naval and military law.

Naval Hospitals.—Our principal naval hospitals in peace are those of Haslar, Plymouth, and Chatham; and there are smaller hospitals at most of our important naval stations abroad.

Military Hospitals.—In time of peace, military hospitals are divided into two classes—namely, general and station hospitals.

The Netley and Woolwich Hospitals are general hospitals. These hospitals receive the sick and wounded in war, and invalids from home and foreign stations.

Station hospitals are numerous, being established wherever troops are quartered.

Subject to the general or commandant, the medical officer in charge has military authority over all soldiers in hospital.

Importance of Hospitals in War.—In time of war the importance of well-organised hospitals was shown in the South African War by the fact that this country lost more men by disease than in battle, and useful lessons as to hospital organisation have been learnt from the Japanese in their war with Russia, especially the advantage of having a permanent hospital estab-

lished in time of peace as the central institution of the Red Cross Society, from which the nursing staff can be drawn, utilising other existing institutions as a war reserve.

Military Hospitals in War.—In war there are three lines of medical assistance, namely: (1) the medical officers attached to corps and the regimental bearers; (2) the field ambulances having three divisions: (*a*) bearer division corresponding with the old bearer companies, (*b*) tent division corresponding with the old field hospitals, and (*c*) transport division; (3) the stationary field hospitals established on the lines of communication and connected by hospital trains with the base hospitals.

Hospital ships form a regular part of the medical equipment of all expeditions with a sea-board base.

Recommendations in 1883 as to Army Hospital Corps Organisation.—In 1883 some important recommendations were made as to hospital organisation in peace and war, some of which have since been adopted.

In peace the main recommendations were that nursing sisters should be employed in all large hospitals, and that opportunity of practice with war equipment during peace should be afforded both as regards field hospitals and bearer companies.

In war it was recommended that the evacuation principle, under which sick were constantly sent to the base, required a check; that field hospitals should be distributed by brigades, and not by divisions; that generals and commandants should realise their responsibility as to the proper working of the hospital system; and, what seems of great importance, that voluntary aid in war should be taken into consideration, and a system organised for its proper utilisation (Report on Army Hospital Corps Organisation, April 25, 1883, C 3607).

Queen Alexandra's Naval and Military Nurses.—The want felt in this country of a properly organised medical and nursing staff ready to serve in time of war has, so far as nurses are concerned, been to a large extent remedied by Queen Alexandra's Royal Naval Nursing Service and Queen Alexandra's Imperial Military Nursing Service, which latter is supplemented by the Army Nursing Service Reserve. (For particulars as to these institutions, see Burdett's *Hospitals aud Charities.*)

Japanese War Hospital.—In Japan the Red Cross Society's hospital is the only one privileged to supply the army with nurses in war time. It has a reserve of over three thousand trained nurses ready for immediate service. In peace time civilian patients, paying and non-paying, are received into the hospital. The Society is under the control of the Ministers of the Army and of the Navy.

Geneva Convention.—The Geneva Convention is a branch of international law accepted by most civilised nations for the relief and protection of the wounded. Hospitals flying the flag with the Geneva Cross are by this law deemed to be neutral, and should be exempt from attack. (For terms of Convention, see *Army Manual.*)

Hague Conference.—In the Second Peace Conference held at the Hague in 1907, the Powers resolved upon a new Convention replacing the Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention. In the new Convention provision is made for the protection of hospital ships and sick-wards of vessels (Cd. 3857).

NEGLIGENCE

Liability of Hospital for Negligence of Staff.—Allegations of negligence causing injury to patients are sometimes made against the medical or nursing staff of hospitals, and generally involve the question of the legal liability of the institution itself. It is perhaps some tribute to the general efficiency of such institutions in this country that the reported decisions on hospital negligence are so few.

As the liability of the institution depends upon whether the medical man or nurse attending the patient has been guilty of negligence, we must first examine what in law constitutes negligence in a medical man or nurse, for it is obvious that if an action against the person causing the injury fails, no action will lie against the institution.

Negligence of Doctor or Nurse.—A doctor or nurse is bound to show reasonable skill and care in treating or nursing a patient, and the obligation is no less because the patient, instead of being treated in his home, has become the in-patient of a hospital. The law has been thus stated: "Every person who enters a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case; nor does a surgeon undertake that he will perform a cure; nor does he undertake to use the highest possible degree of skill. There may be persons who have higher education and greater advantages than

he has; but he undertakes to bring a fair, reasonable and competent degree of skill" (per Tindal C.J., *Lanphier* v. *Phipos*, 1838, 8 C. & P. 475, 479; see also *Seare* v. *Prentice*, 1807, 8 East. 384; *Slater* v. *Baker*, 1767, 2 Wilson 359).

A hospital nurse may equally be liable for negligence in carrying out the duties entrusted to her, or if she exceeds those duties.

The fact that a surgeon undertakes to perform an operation by himself or his assistant does not constitute a guarantee of the success of such operation, but he is personally responsible for the act of his assistant and for the injury caused by the latter owing to want of skill (*Hancke* v. *Hooper*, 1835, 7 C. & P. 81). A medical man is not answerable merely because some other practitioner might possibly have shown greater skill and knowledge, or even used some greater degree of care, so long as he showed what, in the opinion of the jury, was due care and a competent degree of skill and knowledge (*Rich* v. *Pierpont*, 1862, 3 F. & F. 35).

Remuneration Immaterial.—The liability of a surgeon or a physician does not depend upon the question whether he is or is not to be remunerated (*Pippin* v. *Sheppard*, 1822, 11 Price 400). This rule would seem equally applicable to the case of a nurse.

Not necessary to prove Express Contract.—In such an action it is not necessary to aver an express contract so long as it is alleged that the defendant was retained as the surgeon and entered upon the case (*Gladwill* v. *Steggall*, 1839, 5 Bing N.C. 733).

Hot Bath Case.—Medical men employed in hospitals are not necessarily liable for the carelessness of their subordinates, *e.g.* the nurses and servants acting under their direction. Thus, in *Perionowsky* v. *Freeman*, 1866,

4 F. & F. 977, an action was brought against two surgeons of St. George's Hospital for alleged negligence in the treatment of a patient there by placing him in a bath heated to an excessively high temperature, and keeping him there for an improper length of time, whereby he was severely scalded. The defence was that it arose from the negligence of the nurses. The surgeons stated that they had no control over the nurses as to appointment and dismissal, which rested with the Board. When the complaint was made, they desired that it might be sent to the Board to be inquired into. That course, however, was not taken, but this action was brought. It was proved to be the usual hospital practice to leave it to the nurses to see to the baths. Cockburn C. J. said that a person who became a patient in a hospital could expect no more than the usual and ordinary degree of care and attention, and therefore this action would not be maintainable merely for the negligence of the nurses. The only question would be whether the defendants were liable, by reason of their personal presence on the occasion, which they denied. He added that our great hospitals, supported as they were by alms and voluntary subscriptions, could not be supported if they had to engage a staff of medical men sufficient to attend to all the minor incidents or details of medical or surgical operations which might be ordered, such as baths. It was indispensable that such matters should be left to nurses, who were necessarily familiar with them. Medical men who gave their services gratuitously were not to be made liable for negligence for which they were not personally liable.

This decision, it may be observed, does not deal with the question whether the institution itself was not liable for the negligence of its nurses.

Unqualified Practitioner.—A person not qualified as a medical practitioner, but assuming to be or to practise as such, is liable for injury caused to the patient by ignorant and improper treatment by which the patient grows worse, and is injured by the use of improper medicines (*Ruddock* v. *Lowe*, 1865, 4 F. & F. 519).

In an action against an unqualified practitioner, the questions for the jury are: Did the defendant undertake to treat the plaintiff for his disorder? Did he do so either with negligence or ignorance? Did this negligent or ignorant treatment cause injury to the patient? These questions practically resolve themselves into this—Was the medicine which the defendant gave to the plaintiff an improper medicine having regard to his disorder? For if so, whether given advisedly or by accident, the defendant would be equally liable (*Jones* v. *Fay*, 1865, 4 F. & F. 525).

Who may bring the Action.—The only person who can properly bring an action for damages done to the person of the patient is the patient himself, even though a minor, "otherwise in all cases of surgeons retained by any of the public establishments, the patient would be without redress, for it could hardly be expected that the governors of an infirmary should bring an action against the surgeon employed by them to attend the child of poor parents who may have suffered from his negligence and inattention" (*Pippin* v. *Sheppard*, 1822, 11 Price 400).

Damages after Patient's Death.—Formerly, when a patient died as a result of the negligent treatment of the doctor or nurse, any right of action which he might have had in his lifetime ceased on the principle of the well-known maxim, *Actio personalis moritur cum persona.* By the Fatal Accidents Act, 1846, more commonly known as "Lord Campbell's Act," and called "an Act for com-

pensating the families of persons killed by accidents," it is enacted that whenever the death of a person shall be caused by wrongful act, neglect, or default, such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages, then the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony (s. 1). Every such action shall be for the benefit of the wife, husband, parent, or child (including in these terms grandparents and step-parents or grandchildren and step-children) of the deceased, and shall be brought by his personal representative (s. 2). Every such action shall be commenced within twelve calendar months after the death of the deceased (s. 3). The Fatal Accidents Act, 1864, provides that if there is no legal personal representative, all or any of the persons for whose benefit such action would have been brought may themselves bring the action.

In *Markey* v. *Tolworth Joint Isolation Hospital District Board*, 1900, 2 Q.B. 454, an action under this Act was brought by the widow and child of a patient in the hospital whose death, it was alleged, had been caused by a negligent act of a nurse in the employment of the defendants in administering an overdose of opium. The case was not decided on its merits, but on a preliminary point of time. The writ was issued within twelve months (but more than six months) from the death of the deceased. The defendants contended that the action should have been brought within six months, pleading the protection of the Public Authorities Protection Act, 1893, s. 1 (*a*), and in this contention they were successful.

Contributory Negligence of Patient.—In cases where the patient has contributed to the injury by his own carelessness, the patient's contributory negligence may be a good defence to the action.

Criminal Negligence.—There is a distinction between the negligence which gives a right to damages in a civil action and the negligence sufficient to support a conviction in a criminal case, but it is not clear in what this distinction precisely lies. It is perhaps rather a question of degree, and cannot well be ascertained without a comparison of the decided cases.

Gross negligence is of two kinds, as, for example, (1) when a man goes hunting and neglects his patient; and (2) when a person without skill in his profession ignorantly and rashly uses dangerous medicine (*R.* v. *Markuss*, 1864, 4 F. & F. at p. 358).

Criminal liability is incurred by a competent person for death occasioned by gross want of care, as, for example, by insufficient attention to a woman after her confinement (*Ferguson's Case*, 1830, 1 Lewin C.C. 181).

The authorities are clear that in a prosecution for criminal negligence the question whether the accused was or was not a duly qualified practitioner is not in itself a material element in ascertaining his guilt:

"If a physician gives a person a potion without any intent of doing him any bodily hurt, but with an intent to cure or prevent a disease, and, contrary to the expectation of the physician, it kills him, this is no homicide, and the like of a surgeon. And I hold the opinion to be erroneous that think, if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony, for physic and salves were before licensed physicians and surgeons; and therefore if they be not licensed, they are subject to the penalties in the statutes, but God forbid that any mischance of this kind should make any person not licensed guilty of murder or man-

slaughter" (Hale, *Pleas of the Crown* (1800), p. 429, cited with approval in *R.* v. *Van Butchell*, 1829, 3 C. & P. 635; *R.* v. *Ling*, 1830, 4 C. & P., 398).

"Such is the opinion of one of the greatest judges that ever adorned the bench of this country; and his proposition amounts to this, that if a person, *bona fide* and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter. . . . It would be most dangerous for it to get abroad that if an operation performed either by a licensed or by an unlicensed surgeon should fail, that surgeon would be liable to be prosecuted for manslaughter" (per Hullock B. in *R.* v. *Van Butchell*, above).

In this case there was no evidence respecting the operation itself. But in the earlier case of *R.* v. *Williamson*, 1807, 3 C. & P. 635 (tearing away prolapsed uterus, mistaking it for placenta), the operation showed great want of anatomical knowledge on the part of the prisoner, who was not a regularly educated accoucheur, but had acted as man-midwife. Lord Ellenborough C.J., in summing-up, said medical men are sometimes guilty of what is called "malpractice," which generally means an unprofessional treatment of disease, pregnancy, or bodily injury, either from gross ignorance or carelessness, or with criminal intent, and would certainly extend to the performance of operations for mere curiosity or experiment. Such malpractice is a criminal offence. See *Groenvelt's Case*, 1697, Ld. Raym. 213, where the Court resolved that "*mala praxis* is a great misdemeanour and offence at common law (whether it be for curiosity or experiment, or by neglect), because it breaks the trust which the party has placed in the physician, tending directly to his destruction."

Liability of Doctors and Nurses summarised.—Doctors and nurses may therefore incur personal liability (*a*) to an action for damages for incompetence and negli-

gence; (*b*) to criminal proceedings for malpractice and criminal negligence.

Liability of Institution itself.—As liability for criminal acts cannot extend beyond the persons themselves, it is only in respect of their liability to a civil action that the question of the consequent liability of the hospital or institution whom they represent need be considered.

Assuming now that the facts show that the injury to, or the death of the patient was caused by the negligence of the doctor or nurse, the further question remains whether the hospital itself is liable to be sued for negligence in an action for damages.

This question is not free from difficulty, and more so as there are so few reported cases on the point. There is also, perhaps, a disinclination to fix with liability an institution engaged in charitable work; but this sentiment is not consistent with the legal principle that a person who acts gratuitously may nevertheless be liable in law for negligence.

In the present unsettled state of the law the question can only be examined upon legal principles, with the help of such English decisions as bear upon it. Reference is also made to some American decisions, which, although having no authority in this country, yet are useful and interesting, and of weight, so far as they are based upon cases decided in English Courts.

It is, perhaps, advisable to add that the conclusion here arrived at must be accepted rather as an expression of opinion than a statement of law.

Liability founded on Agency.—It is clear that the foundation of any such liability must rest upon the law of agency.

"It is a general doctrine of law that, although the

principal is not ordinarily liable (for he sometimes is) in a criminal suit for the acts or misdeeds of his agent, unless, indeed, he has authorised or co-operated in those acts or misdeeds, yet he is held liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligences, and other malfeasances or misfeasances and omissions of duty of his agent, in the course of his employment, although the principal did not authorise, or justify, or participate in, or, indeed, know of such misconduct, or even if he forbade the acts or disapproved of them. In all such cases the rule applies *respondeat superior*, and it is founded upon public policy and convenience, for in no other way could there be any safety to third persons in their dealings, either directly with the principal, or indirectly with him through the instrumentality of agents. In every such case the principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of his agency" (Story on *Agency*, s. 452).

Relation of Hospital to Staff that of Principal and Agent.—Applying this doctrine to a hospital and its staff of doctors and nurses, it is submitted that a hospital stands in the position of principal and the doctors and nurses of agents, and that, apart from some special reason to the contrary, the hospital is responsible to its patients for the negligent acts of its doctors or nurses committed in the course of their treatment of any such patient.

Hospital by Agents volunteers to treat Sick.—The position seems to be this: The hospital undertakes and holds itself out to treat the sick, with a view to their cure. We have seen that, in the case of an individual who treats the sick, he, by undertaking this duty, incurs an obligation to use reasonable skill and care. Similarly it would seem that the hospital incurs a like obligation through its agents by whom it acts. We have also seen that the mere fact that the individual is remunerated or

not is immaterial. So in the case of a hospital it seems immaterial whether the institution is purely charitable or whether its doctors or nurses are or are not paid.

Action for Negligence lies against Incorporated Hospital.—In general an action for tort will lie against a corporation whenever it would lie against an individual (see Grant on *Corporations*, p. 277), so that the mere fact that the institution is incorporated is not sufficient to relieve it from liability (see Pollock on *Torts*).

Mersey Docks Case.—A leading case in which a public body was held liable for negligence is *Mersey Docks Trustees* v. *Gibbs*, 1866, L.R. 1 H.L. 93. In this case the Mersey Docks and Harbour Board was a corporation entrusted by statute to perform certain works and receive tolls to be applied to the maintenance of the works, and in case of surplus the tolls to be diminished. The act of negligence alleged was allowing mud to accumulate at the entrance of the dock, so that the respondent's vessel was damaged. It was argued that, assuming the negligence, the appellants were a public body performing a public duty and receiving no profit, and therefore not liable. It was also contended that the funds in their hands, being merely trust funds, could not be applied in payment of damages for such negligence, citing *Duncan* v. *Findlater*, 1839, 6 Cl. & F. 894, and *Heriot's Hospital* v. *Ross*, 1846, 12 Cl. & F. 507.

These contentions failed to convince the House of Lords, who, in fact, expressly disapproved of part of the judgment of Lord Cottenham in *Duncan* v. *Findlater* to the effect that trust funds cannot be applied in payment of damages for tort for which otherwise the corporation would be liable. It was accordingly held that the principle on which a private person is liable for damages occasioned by the neglect of servants applied, and that the appellants,

although a public body, were liable (see also *Coe* v. *Wise*, 1866, L.R. 1 Q.B. 711).

Scotch Case.—In a Scotch case decided by the Court of Session it was held by a majority of seven judges that the case of the *Mersey Docks Trustees* v. *Gibbs* had overruled that of *Duncan* v. *Findlater*, and consequently that statutory trustees or commissioners acting gratuitously in the administration of a public trust, and administering funds appropriated by statute to special purposes, were bound to give compensation from the trust funds for damages caused by the fault of their servants (*Virtue* v. *Alloa Police Commissioners*, 1873, 1 R. 285, Ct. Sess.).

The Lord-President at p. 295 says:

"The judgment of the House of Lords in 1866 is, in my opinion, an entire subversion of the judgment of the same supreme tribunal in *Duncan* v. *Findlater* in 1839. The two cannot possibly stand together."

American Cases.—In the American case of *Glavin* v. *Rhode Island Hospital*, 1879, 34 Am. Rep. 675; 12 R.I. 411, p. 683, the judge (Durfee C.J.) said:

"The question here is whether a charitable corporation like the Rhode Island Hospital, which holds its property for the charity, is more highly privileged than a corporation created for public purposes which holds its property for such purposes; whether, in fact, because it holds its property for the charity it is relieved from all responsibility for the torts or negligences of its officers, trustees, agents, or servants. We have come to the conclusion, after much consideration, that it is not. We understand the doctrine of the cases which we have just been considering to be this: that where there is a duty there is, *prima facie* at least, a liability for its neglect, and that when a corporation or quasi-corporation is created for certain purposes which cannot be executed without the exercise of care and skill, it becomes the duty of the corporation or quasi-corporation to exercise such care and skill, and that the fact that it acts gratuitously, and has no property of its own in which

it is beneficially interested, will not exempt it from liability for any neglect of the duty, if it has funds or the capacity of acquiring funds, for the purposes of its creation, which can be applied to the satisfaction of any judgment for damages recovered against it."

The Court held that the funds of the hospital were liable in damages for injury to a patient caused by the negligence of the hospital surgeon, and the Court refused to follow the decision in *McDonald* v. *Massachusetts General Hospital*, 1876, 21 Am. Rep. 529; 120 Mass. 432, that a corporation established for the maintenance of a public charitable hospital, which has exercised due care in the selection of its agents, is not liable for injury to a patient caused by their negligence.

In *Downes* v. *Harper Hospital*, 1894, 45 Am. St. Rep. 427; 101 Michigan 555, the Court followed *McDonald* v. *Massachusetts General Hospital*, but the case of *Glavin* v. *Rhode Island Hospital* does not appear to have been cited, neither is any mention made of the judgment of the House of Lords in *Mersey Docks* v. *Gibbs*, so that the decision is not of much value.

The headnote to *Downes* v. *Harper Hospital* is as follows:

"An incorporated eleemosynary hospital, organised and maintained for no private gain, but for the proper care and medical treatment of the sick, and for that purpose made the manager of a donated trust fund, is not liable for injury received by a patient therein, through the negligence of its managers or their employees, and the fact that patients who are able to pay are required to do so does not deprive the corporation of its eleemosynary character, nor permit a recovery for damages on account of the existence of contract relations."

(See also *Goddard* v. *Inhabitants of Harpswell*, 1892, 30 Am. St. Rep. 373; 84 Maine 499, and the cases cited in the note at p. 402.)

Distinction between Voluntary and Rate-supported Hospitals.—The principle of the liability of the hospital authority has, so far, been generally discussed without reference to the distinction as to whether the institution was voluntary or rate-supported.

To say that the fact that a rate-supported hospital is governed by a public body and is maintained by public money distinguishes it from a voluntary hospital, seems inconsistent with the *Mersey Docks* case (*ante*, p. 188).

Liability of Rate-supported Hospital.—It is, therefore, hardly upon this ground that the decision of Walton J. in *Evans* v. *Liverpool*, 1906, 1 K.B. 160, is to be explained; in fact, the language of the judgment is wide enough to apply to voluntary as well as rate hospitals. In this case a father sued the corporation for damages because his son was discharged too soon from their infectious hospital, and conveyed scarlet fever to his other children. The following extract will show the grounds of his decision:

"It would be a very serious burden upon public bodies who carry on similar hospitals. . . . In my opinion they undertake the duties of persons who manage and carry on the business of a hospital. . . . They do not undertake the duties of medical men, or to give medical advice, but they do undertake that the patients in their hospitals shall have competent medical advice and assistance, and it is admitted that Dr. Archer was a competent medical man, and that no blame attaches to the defendants for employing him. Assuming that he made a mistake, even a negligent mistake, I do not think that the defendants are liable for its consequences. . . . It is contended that the doctor was the servant of the defendants for the purpose of discharging the child, and that they are liable for the negligence of their servant, but the terms of his appointment and the rules under which he acted do not bear out this contention."

It should be observed that this was not a case of injury

to a patient, but of injury to others caused by the exposure of a diseased person (see and compare Public Health Act, 1875, s. 126 (2)), which subjects to a penalty any person who, in charge of a person suffering from a dangerous infectious disorder, exposes him in a public place (*Tunbridge Wells Local Board* v. *Bishopp*, 1877, 2 C.P.D. 187 ; see also the article NUISANCE).

It remains to be decided how far the case of *Evans* v. *Liverpool*, which was a decision in favour of a rate hospital, is an authority in favour of a voluntary institution. The decisions stated below as to poor-law guardians appear to be based on grounds peculiar to their constitution.

Liability of Guardians in the case of Poor-law Infirmaries.—The question of the liability of the guardians of the poor in the case of workhouse infirmaries arose in *Hickmore* v. *Guardians of St. George-in-the-East* (*The Times*, May 21, 1884). In this case a widow brought an action under Lord Campbell's Act against the guardians of the poor of that parish to recover damages for the death of her husband, which she alleged was caused by the negligence of the servants of the defendants. It was proved that the deceased had, in a fit of *delirium tremens*, thrown himself from a window in the ward. Baron Huddleston, who tried the case without a jury, gave judgment for the plaintiff, and no question apparently was raised before him of the liability of the defendants assuming that negligence was proved. His decision was reversed by the Court of Appeal on the ground that negligence was not proved, and the Court expressed no opinion on the question of the liability of poor-law guardians for the negligence of their servants, but it appears that Bowen L.J. intimated that the question was a difficult one and of great importance. It has, however,

since been fully discussed by the English and Irish Courts, with the result that guardians have been held not to be liable. The principal ground is that guardians have not absolute control over persons holding office under the poor law, but are subordinate to the Local Government Board, but it will be seen that the Irish judges also suggested another ground, namely, that a workhouse infirmary is a charitable institution.

In the case of *Brennan* v. *Guardians of Limerick Union*, 1878, 2 L.R. Ir. 42, Q.B. Div. (O'Brien, Fitzgerald, and Barry JJ.), it was held that poor-law guardians, in providing for the sick poor, act ministerially under the government and control of the Poor Law Commissioners, and are a subordinate administrative body, and so, where a patient in a fever hospital attached to a union workhouse was so insufficiently attended to that, while in a state of delirium, he received injuries of which he died, it was held that an action under Lord Campbell's Act did not lie against the guardians in their corporate capacity for negligence in not having had the patient sufficiently attended to. The judgment of the Court was delivered by Fitzgerald J., who expressed his own opinion that such an action was not maintainable against the guardians in their corporate capacity, not only on the ground above stated, but also on the ground of public policy, especially as the damages would be payable out of the rates.

The decision in *Brennan* v. *Limerick Union* was followed with approval by the Court of Appeal in *Dunbar* v. *Ardee Union*, 1897, 2 I.R. 76 (Lord Ashbourne C. and Fitzgibbon and Walker L.JJ.). In the judgment of the Court delivered by Fitzgibbon L.J., he says :

"The question really at issue is, whether guardians of the poor are answerable in damages in their corporate

capacity for injuries caused by the negligence of union officers in the treatment of poor patients received into workhouse hospitals. *Levington* v. *Lurgan Union*, I.R. 2 C.L. 202, decided by the Exchequer Chamber in 1868, shows that guardians are answerable to third parties for the wrongful acts, and apparently also for the negligently injurious acts, of those acting under their orders or on their behalf. But we have to consider whether the same liability extends to injuries arising from the negligence of servants who have been properly employed by the guardians to discharge ministerial duties towards the recipients of relief under the poor law itself; in other words, towards persons accepting from the guardians, and under the poor-law code, the eleemosynary provisions made for them. Upon this question there is a paucity of authority which is almost unaccountable if the liability exist. The applicability to the poor-law guardians of the principle of the decision in *Mersey Docks Trustees* v. *Gibbs* is really at issue." He also says: "It appears to me that the guardians are, themselves, but members, not even the supreme members, of the department to which the negligent subordinates also belong. . . . I think that *respondeat superior* does not apply."

This may be a sufficient distinction, but Fitzgibbon L.J. also expresses his personal opinion that a workhouse hospital is really a charitable institution, and says: "The case suggests the question whether the founders or governors of every charitable or voluntary institution are liable to indemnify patients, coming to them for gratuitous relief, against the consequences of any neglect or default of the nurses or officers whom the governors have, in their benevolence, engaged to attend the poor. If not, it is hard to hold the guardians liable." From this passage it would seem that the learned judge assumed that voluntary hospitals might be exempt from liability for negligence, a question which is not yet settled. It is submitted that this dictum was not necessary to the decision, and cannot be taken as being an authority

on the subject of the liability of voluntary hospitals for negligence. It should be noted that the argument that the Metropolitan Asylum Board were acting under the directions of the Poor Law Board did not protect them in *Met. Asylum District Managers* v. *Hill*, 1881, 6 A.C. 193.

There does not appear to be any essential distinction between the English and Irish poor law in respect of the position of guardians for this purpose. By the English poor law, guardians appoint the medical officer for the workhouse and the district medical officer (General Order, July 24, 1847, Art. 153), but when appointed the office is held for life, or until resignation or mental incapacity (Medical Appointments Order, May 25, 1857, Arts. 1 and 2), subject however to the power of the Local Government Board to remove any paid officer of a parish or union This power is discretionary, so that the result is that the office is only in fact tenable during the good pleasure of the Local Government Board (*Donahoo* v. *Local Government Board*, 1882, 46 L.T. 300, s.c. *Donahoo* v. *Dodson*, 30 W.R. 334). It appears therefore that the power of dismissal is not vested in the guardians, although they have a limited power of suspension, the exercise of which must be notified to the Local Government Board (General Order, July 24, 1847, Art. 192). The functions of the guardians, who, by the Poor Law Acts, are made a corporation to sue or be sued, would in this connection appear to be mainly ministerial and their position intermediary between the officer and the Local Government Board.

The decisions of *Brennan* v. *Limerick Union* and *Dunbar* v. *Ardee Union* have been followed by the English Court of Appeal in *Tozeland* v. *West Ham Union*, 1907, 1 K.B. 920 (injury to pauper caused by negligence of engineer of guardians). The result of the above decisions, so far

as both English and Irish law are concerned, is to decide the question of the liability of guardians for negligence in their favour.

Liability of Association for supplying Nurses.—A distinction should be drawn between a hospital which undertakes to nurse the sick and an institution which undertakes to supply nurses. In the latter case it has been held that no liability is incurred by the institution for the negligence of the nurse who scalded a patient with a hot-water bottle while under the influence of an anæsthetic. "If the association undertook to nurse the patient, then they are responsible for the failure of the person, by whom they nursed her, to use due care. If, on the other hand, they only undertook to supply a competent nurse to the patient, then if they exercised ordinary care and skill in the selection of the nurse whom they supplied, their responsibility was at an end, and they were not responsible for her failure to exercise due care and skill" (per Collins M.R., *Hall* v. *Lees*, 1904, 2 K.B. 602, 610).

Liability of Friendly Society.—A friendly society is not as a rule liable for the negligence of its medical officer, provided that he is a person duly registered under the Medical Act, 1858 (see DISPENSARIES, and *Barnes* v. *Lincoln Oddfellows, etc., Friendly Society*, 1895, 99 *Law Times Journal* 217, a case decided by his Honour Judge Shortt).

NUISANCE

Nuisance of Infectious Hospitals.—The law of nuisance is chiefly important in the case of infectious disease hospitals. A hospital of this kind may be either a public or a private nuisance (see *A.-G.* v. *Nottingham*, 1904, 1 Ch. 673). The erection of a hospital likely to cause a nuisance will be restrained, whether it is a rate-supported or a voluntary hospital, for the Legislature does not necessarily sanction a nuisance.

Whether Legislature sanctions Nuisance.—Lord Blackburn said: "It is clear that the burden lies on those who seek to establish that the Legislature intended to take away the private rights of individuals to show that by express words, or by necessary implication, such an intention appears" (*Metropolitan Asylum District Managers* v. *Hill*, 1881, 6 A.C. 193, 208). So in America it has been held that the delegation to a municipality of the power to erect and maintain pest-houses and hospitals does not deprive a private citizen of the right to complain of any special injury sustained by him as a consequence of the exercise of the power (*Baltimore* v. *Fairfield Improvement Co.*, 1898, 67 Amer. St. Rep. 344: 87 Maryland 352. Compare *Hawthorn* v. *Kannulink*, 1906, A.C. 105). (As to the statutes which authorise the erection of infectious disease or isolation hospitals, see INFECTIOUS DISEASE HOSPITALS.)

Injunction against Infectious Hospital.—Apart, therefore, from express legislative sanction to erect and carry

on an infectious hospital upon a particular site, the hospital authority, whether voluntary or rate-supported, is liable to have to defend legal proceedings for damages or an injunction on the ground of actual or apprehended nuisance, and it is important to know how far the Courts have gone.

Apprehended Nuisance — "Nottingham Hospital Case."—The law of apprehended nuisance was fully discussed by Farwell J. in *A.-G.* v. *Nottingham*, 1904, 1 Ch. 673, which was a *quia timet* action to prevent the Corporation of Nottingham from using a certain building as a small-pox hospital on the ground that it was likely to be both a public and a private nuisance. The learned judge held that, no actual case of injury having arisen, and the action being *quia timet*, the plaintiffs were bound to show a strong case of probability that the apprehended mischief would in fact arise, and found, as a result of the evidence, that the site of the hospital was carefully chosen and constituted no appreciable danger to the public health and no nuisance to the relator plaintiffs' property.

He doubted whether evidence of what had happened with other hospitals was properly admissible as evidence in chief, and suggested that such admission was wrong in principle, as raising a number of side issues on which it was impossible for the Court to adjudicate without injury to absent parties.

In this case the hospital in question was only 51 feet from the high road, within a quarter of a mile of 204 residents and half a mile of 510 residents, and also near a colliery in which 1,280 men worked.

Finding a difference in medical opinion, his lordship rejected the theory of aerial convection, at any rate for more than 50 feet.

The learned judge further intimated that in considering

the question of public and even of private nuisance the general question of public health should be considered, and the hospital accepted as a lesser evil than the mischief to the public health if there were no hospital.

This latter view seems to admit the probability of a nuisance, and should be regarded as constituting an exception to the law of nuisance on the ground of public policy. It may be added that a private nuisance may be committed by poisoning the air over a neighbour's land (per Lindley L.J., *Ballard* v. *Tomlinson*, 1885, 29 Ch. D. 115, 126).

Previous Decisions.—Prior to this decision injunctions were not granted in the following *quia timet* actions (all cases of small-pox hospitals): *Fleet* v. *Metropolitan Asylum District*, 1886, 2 T.L.R. 361 C.A.; *Saunders* v. *New Windsor*, 1886, 81 *Law Times Journal* 353; *Matthews* v. *Sheffield*, 1887, 31 Sol. J. 773; *A.-G.* v. *Manchester*, 1893, 2 Ch. 87, Chitty J.; *A.-G.* v. *Guildford Hospital Board*, 1895, 12 T.L.R. 54, Kekewich J.; *Harrop* v. *Ossett*, 1898, 14 T.L.R. 308, Romer J.; and *A.-G.* v. *Rathmines, etc., Hospital Board*, 1904, 1 I.R. 161 (see also *Baines* v. *Baker*, 1752, Ambler 158).

An interim injunction was granted by Stirling J. in *Bendelow* v. *Wortley Union*, 1888, 57 L.J. Ch. 762, upon the report of a medical referee to the effect that there was an appreciable danger of infection by aerial convection to the property of the plaintiff. [*Note.*—In *Metropolitan Asylum District Managers* v. *Hill*, 1881, 6 A.C. 193, 208, the jury had found an actual nuisance. See also the second appeal in 1882 in the same case, reported 47 L.T. 29.]

General Conclusion.—The general conclusion from the authorities is that in cases of apprehended nuisance the Court is not ready to interfere with an infectious hospital

unless a strong case of real danger is made out; that while medical science discovers fresh theories of infection, so are new means of prevention invented, and that mere personal inconvenience or anxiety must yield to the health and welfare of the general community.

Actual Nuisance—Exposure of Infected Person.—Cases of actual nuisance stand, of course, on a different footing (see *Met. Asylum* v. *Hill*, 1881, A.C. 193). So the exposure of an infected person or infected clothes without proper precautions is unlawful at common law and by statute.

To unlawfully, injuriously, and with full knowledge of the fact, expose in a public highway a person infected with a contagious disease was a nuisance indictable at common law as a misdemeanour (*R.* v. *Vantandillo*, 1815, 4 M. & S. 73; *R.* v. *Burnett*, 1815, 4 M. & S. 272).

A person who knowingly introduced into a lodging-house children suffering from an infectious disease, whereby four of the lodging-house keeper's children died, was liable in damages (*Best* v. *Stapp*, *The Times*, November 9, 1872).

So by the Public Health Act, 1875, s. 126, the wilful exposure of infected persons and things without proper precautions is made a statutory offence (see *Tunbridge Wells Local Board* v. *Bishopp*, 1877, 2 C.P.D. 187).

Liability of Infectious Hospital—"Liverpool Hospital Case."—So for the authorities of an infectious hospital by their servants or agents to negligently expose infected persons or things without proper precautions, whereby some other person was infected, would be unlawful and render them liable to an action for damages. Thus a local authority was found liable in damages for using a stable near plaintiff's house as a small-pox hospital, so that his daughter caught the disease and died (*Chapman* v. *Gillingham U.D.C.* 1903, *The Times*, March 28).

On the other hand, in *Evans* v. *Liverpool*, 1906, 1 K.B. 160, a rate-supported hospital was held not liable for discharging a patient before he was free from infection, whereby the disease was communicated to others, on the ground that the patient was discharged on the advice of their visiting physician. The fact that the physician was negligent in giving such advice was treated as not affecting their liability.

Restrictions in Sales or Leases against quasi-Nuisance.—In addition to liability for nuisance at law, land about to be purchased or hired by a hospital may be subject to restrictions made to prevent annoyance to neighbours, although such annoyance may fall short of a nuisance at law.

Difficult questions often arise in the construction and enforcement of such restrictions, and in purchasing or hiring land care should be taken to see that these restrictions will not be likely to affect the carrying on of the hospital. The discussion of them, however, only incidentally involves the law of nuisance, and more directly affects the relations of vendor and purchaser or landlord and tenant. These restrictions are therefore discussed elsewhere (see LAND).

Right of Hospital to prevent Nuisance.—Hospital authorities have, of course, the same right as other owners and occupiers of protecting themselves against nuisance from others; but the fact that their premises are used as a hospital would not legally entitle them to special protection, nor can any special right be acquired by a hospital *qua* hospital to protect them against the objectionable conduct of others, unless such conduct constituted a public or private nuisance.

Nuisance of Noise.—Noise near a hospital is the most likely form of nuisance, and the authorities would do well

to prevent annoyance of this kind by procuring the passing of a by-law by the local authority. The Home Office Circular of January 1, 1903, sets out a model by-law to the following effect:

"**3. By-law as to Music near Hospitals.**—No person shall sound or play upon any musical or noisy instrument or sing in any street or public place within 100 yards of any hospital, infirmary, convalescent home, or other place used for the reception or treatment of the sick, after being requested to desist by any constable, or by any inmate or officer of such hospital or other place, or by any person acting on his behalf."

This by-law is confined to musical efforts, and might be altered so as to include any loud noise (*e.g.* for "or sing" read "sing or make any loud noise"). As so extended, other noises (*e.g.* the shouting and screaming of children) could be stopped. It is submitted that such a by-law would not be invalid as being too wide or uncertain. If this were doubtful the following words might be added: "likely to disturb any patient in such hospital." (See *Kruse* v. *Johnson*, 1898, 2 Q.B. 91, 105, in which Jeune P. says: "But it is not necessary that a requirement of evidence of actual annoyance should be prescribed in terms; it is enough if the circumstances render annoyance certain or even probable." See also *Thomas* v. *Sutters*, 1900, 1 Ch. 10, 17.)

Duty to abate Nuisance under Public Health Acts.—It is perhaps hardly necessary to mention that the duty imposed upon persons by the Public Health Acts to abate a nuisance at the request of the local sanitary inspector is equally imposed upon every hospital authority. The governing body is generally alive to the importance of insisting upon the most perfect sanitation, but a nuisance may arise from the carelessness of subordinates, and involve the hospital in the expense of abating it.

NURSING INSTITUTIONS

Nursing Home.—The phrase "nursing home" is of modern growth and only means a private hospital. The homes, in which rooms are generally let out to private paying patients, may be charitable institutions, but are more often profit hospitals, run on purely commercial lines, and are subject to rules of law corresponding with those of other hospitals. Some homes have a medical staff, but in others each patient is attended by his or her own medical man. There is generally a nursing staff attached to the establishment, but some patients have their own special nurses.

Liability for Negligence of Nurse.—The institution could hardly be held responsible for the negligence of the patient's own nurse; but if injury was caused through the negligence of one of the nursing staff or of the servants, it is conceived that the institution would be under the same liability as any other hospital (see NEGLIGENCE).

Training School for Nurses.—Attached to the hospitals are often training schools for nurses which supply nurses to private cases and for district nursing.

A training school for nurses may, like a medical school, either be established independently of any particular hospital or may be merely a subsidiary institution entirely controlled by the hospital to which it is attached. There may also be a school established independently of, but intended primarily as a source of supply to a particular

hospital, and secondarily for private nursing. In this last case it may be advisable that the hospital to benefit should have a preponderating control (see *Westminster Training School and Home for Nurses*, 1904, 20 T.L.R. 694).

Some hospitals which are established by statutory authority have express provisions for the training of nurses (see, for example, s. 15 of the Isolation Hospitals Act, 1893, set out under article INFECTIOUS DISEASE HOSPITALS).

Nurse Supply Associations.—Besides training schools, whether or not attached to hospitals, which supply nurses to private individuals, there are associations which do not train but undertake to supply qualified nurses at short notice. Some of these board and lodge their nurses when not engaged on a case, and pay them a fixed salary and take all their earnings. Others only take a commission on their earnings, and leave them to find their own board and lodging and to support themselves while disengaged.

In the case of injury to a patient through the negligence of a nurse, an association is not liable if it does not undertake to nurse but only supplies nurses (*Hall* v. *Lees*, 1904, 2 K.B. 602).

Nursing of Sick Poor.—A large and important charitable institution was established in 1887 under the name of Queen Victoria's Jubilee Institute for Nurses, the object of which was to train nurses to nurse the sick poor in their own homes. (For particulars, see Burdett's *Hospitals and Charities*.)

The nursing of the sick poor in their own homes is also carried out by District Nurses, who are generally appointed by the guardians of the poor, and are paid out of the rates (see POOR-LAW INFIRMARIES, pp, 240, 241).

OFFICERS AND SERVANTS

Officers of Rate-supported or Voluntary Hospitals.—The mode of appointment, grounds for suspension or dismissal, and the powers and duties of the principal officers of a hospital are in the case of rate-supported hospitals prescribed by statute or statutory rules or orders, and in the case of voluntary hospitals by the laws or by-laws of the particular institution.

Governing Body of Rate-supported Hospital.—The governing body of a rate-supported hospital which is a statutory institution varies with the statutes under which it is created. Thus, a poor-law infirmary is governed by the board of guardians (see POOR-LAW INFIRMARIES), and an isolation hospital by the hospital committee (see INFECTIOUS DISEASE HOSPITALS).

Governors of Voluntary Hospital.—Voluntary hospitals are managed by a board of directors, who are usually termed governors. Governors, except in special cases, are chosen from among the largest donors to the funds of the institution.

Election of Governors.—The mode of election and necessary qualification are prescribed by the charter or other instrument incorporating the hospital where it is incorporated, or by its laws in the case of an unincorporated hospital.

Tenure of Office.—A donation of a specified amount generally entitles the donor to election to the office of governor for his life, whereas an annual subscription of

a specified amount entitles him to hold office only so long as such subscription is continued.

Liability of Governors.—Election to office does not of itself involve the donor in any personal liability, provided that he is no party to any breach of the hospital trusts, and subject to any question of liability which may arise from his pledging his credit as an active member of any committee (see CONTRACTS). In the latter case he may look to the hospital funds for indemnity.

Duties of Governors.—His duty as governor consists in controlling the expenditure, appointing and dismissing the other officers and the servants of the hospital, and generally in acting as trustee of its property. The discretion of the governors in administering its affairs is generally absolute and unimpeachable, so long as it is honestly and reasonably exercised.

Meetings of Governors.—Governors exercise their functions at meetings of their body, which are sometimes termed courts, and to these meetings, as in the meetings of other boards or committees, the general law applies, subject to any special rules prescribed by the by-laws (see MEETINGS).

Fiduciary Position of Governors.—In all acts relating to hospital administration governors should remember that their position is one of trust. Thus a governor, as standing in a fiduciary relation to the charity, cannot take a lease to himself of the charity land (*A.-G.* v. *Clarendon*, 1810, 17 Ves. 491, 500).

Medical Officers.—The term "medical officer" has in itself no strictly technical meaning and implies no special qualifications, but in the case of public institutions maintained by a compulsory rate its meaning has been narrowed by statute to imply an official duly registered under the Medical Acts, 1858—1905.

Medical Acts.—The principal Act is the Medical Act, 1858, and must be read with the following amending Acts: Medical Act, 1859; Medical Acts Amendment Act, 1860; Medical Council Act, 1862; Medical Act (University of London), 1873; Medical Act (Royal College of Surgeons, England), 1875; Medical Practitioners Act, 1876; Medical Act, 1876; Medical Act, 1886; Medical Act (1886) Amendment Act, 1905.

These Acts should also be read with the Midwives Act, 1902 (see LYING-IN HOSPITALS).

Statutory Qualification of Medical Officer.—By the Medical Act, 1858, s. 36—

"No person shall hold any appointment as a physician, surgeon, or other medical officer, either in the military or naval service, or in emigrant or other vessels, or in any hospital, infirmary, dispensary, or lying-in hospital not supported wholly by voluntary contributions, or in any lunatic asylum, gaol, penitentiary, house of correction, house of industry, parochial or union workhouse or poor-house, parish union, or other public establishment, body, or institution, or to any friendly or other society for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health, unless he is registered by this Act."

It will be noted that voluntary hospitals are not affected under this Act.

Examination before Registration.—S. 36 of the Medical Act, 1858, must now be read with s. 2 of the Medical Act, 1886, which provides that—

"On and after the appointed day [*i.e.* June 1, 1887; see s. 27] a person shall not be registered under the Medical Acts in respect of any qualification referred to in any of those Acts, unless he has passed such qualifying examination in medicine, surgery, and midwifery as in this Act mentioned."

Colonial and Foreign Practitioners: When a Foreigner may act as Physician of Hospital for Foreigners.—As to colonial and foreign practitioners,

the 1858 Act contained no special provision, but the 1859 Act, s. 6, provides as follows:

"6. Nothing in the [1858] Act contained shall prevent any person, not a British subject, who shall have obtained from any foreign university a degree or diploma of doctor in medicine, and who shall have passed the regular examinations entitling him to practise medicine in his own country, from being and acting as the resident physician or medical officer of any hospital established exclusively for the relief of foreigners in sickness: provided always, that such person is engaged in no medical practice except as such resident physician or medical officer."

Registration of Colonial and Foreign Practitioners.—Express provision is now made for the registration of colonial practitioners by the Medical Act, 1886, as amended by the Medical Act, 1905 (Part II., ss. 11 to 18).

By s. 17 of the last-mentioned Act power is given to the Crown by Order in Council to define the British possessions and foreign countries to which Part II. of the Act shall apply.

List of Countries to which English Act applies.—The following is a list of the Orders in Council so made up to date:

British Possession.	Date of Order in Council.
Ceylon	Dec. 29, 1887.
India	May 9, 1892.
Malta	Sept. 26, 1901.
New South Wales	March 21, 1890.
New Zealand (now a Dominion)	March 25, 1887.
Nova Scotia	May 11, 1906.
South Australia	Feb. 23, 1891.
Victoria	March 21, 1890.
Foreign Country.	
Italy	March 9, 1901.
Japan	Dec. 11, 1905.

Medical Officers in Ships.—"Nothing in the Medical Act, 1858, shall prevent a person holding a medical diploma entitling him to practise medicine or surgery in a British possession to which this Act applies from holding an appointment as medical officer in any vessel registered in that possession" (Medical Act, 1886, s. 18).

Meaning of "British Possession."—The expression "British possession" means any part of His Majesty's dominions, exclusive of the United Kingdom, but inclusive of the Isle of Man and the Channel Islands; and where parts of such dominions are under both a central and local legislature, all parts under one central legislature are, for the purposes of this definition, deemed to be one British possession (Medical Act, 1886, s. 27). And now by the Medical Act (1886) Amendment Act, 1905: "For the purposes of the Medical Act, 1886, where any part of a British possession is under a central and also under a local legislature, His Majesty may, if he thinks fit, by Order in Council, declare that the part which is under the local legislature shall be deemed a separate British possession" (s. 1).

Meaning of "Qualified" or "Registered" Medical Practitioner.—In the Public Health Acts and other statutes of a similar nature frequent reference is found to such phrases as "qualified" or "registered" medical practitioners. By the Medical Act, 1858, s. 34, "the words 'legally qualified medical practitioner' or 'duly qualified medical practitioner' or any words importing a person recognised by law as a medical practitioner or member of the medical profession, when used in any Act of Parliament, shall be construed to mean a person registered under this Act." By the Medical Act, 1886, s. 27, "the expression 'registered medical practitioner' means any person for the time being registered under the Medical Acts."

Women may be registered under the Medical Acts.—It should be remembered that the Medical Act, 1876 ("Russell Gurney's Act"), removed restrictions on the granting of qualifications for registration under the Medical Acts on the ground of sex, so that women are now capable of being registered medical practitioners within the meaning of the Acts.

Medical Officer of Health.—It has been seen that by the Medical Acts it was a qualification of a medical officer of health that he should be registered under those Acts (see Medical Act, 1858, s. 36, and the amending Acts above mentioned). He may be appointed either (1) for the county by the county council, with power for the county council to make special arrangements with any district council for his services (Local Government Act, 1888, s. 17); or (2) for a district by the district council and, with the sanction of the Local Government Board, for two or more districts by the local authorities of such districts (Public Health Act, 1875, ss. 189-191).

Special qualifications are required by the Local Government Act, 1888, of which s. 18 provides as follows:

"(1) Except where the Local Government Board, for reasons brought to their notice, may see fit in particular cases specially to allow, no person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery.

"(2) No person shall after the 1st day of January, 1892, be appointed the medical officer of any county or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of 50,000 or more inhabitants, unless he is qualified as above mentioned, and also either is registered in the Medical Register as the holder of a diploma in sanitary science, public health, or state medicine under s. 21 of the Medical Act, 1886, or has been during three consecutive

years preceding the year 1892 a medical officer of a district or combination of districts, with a population according to the last published census of not less than 20,000, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board."

Medical Officer for Workhouse and for District.—Poor-law guardians have power to appoint a medical officer for the workhouse and a district medical officer (General Order, July 24, 1847, Art. 153). The term "medical officer" within this General Order includes any person duly licensed as a medical man, who may have contracted or agreed with any guardians for the supply of medicines or for medical attendance (Art. 228). As to necessary qualifications, see Arts. 168-70. This Order must now be read with the Medical Appointments Order, May 25 1857, the Medical Officers' Qualification Order, December 10, 1859, and the Workhouse Medical Officers Orders, April 4, 1868, and August 24, 1869 (see POOR-LAW INFIRMARIES).

District School Medical Officers.—As to the duties of medical officers appointed by school managers, see District Schools Regulation Order, November 11, 1879.

Metropolitan Dispensaries and Infirmaries.—District medical officers in the metropolis have special duties in connection with the metropolitan dispensaries (Metropolitan Dispensaries Order, April 22, 1871 ; and in connection with the Metropolitan Infirmary for Children, Margate, Metropolitan Infirmary Order, February 7, 1889).

Prison Medical Officers.—As we have already seen, it is essential that a medical man has qualified under the Medical Acts in order to hold the position of medical officer in any "gaol" (Medical Act, 1858, s. 36, above). The duties of the medical officers of our various prisons are prescribed by the Prison Rules now in force (see PRISON INFIRMARIES).

Chaplain.—Another important officer in a voluntary or rate-supported hospital is the chaplain, who attends to the spiritual needs of the staff and inmates, and takes the services in the chapel. He is appointed on being duly licensed by the bishop.

Private Chapels Act, 1871.—By the Private Chapels Act, 1871, the bishop is authorised to license a clergyman of the Church of England to serve and administer the sacrament, and perform any other offices and services of the Church of England (except marriage) in the chapel of any hospital, asylum, or public or charitable institution within his diocese, and to revoke such licence (s. 1). The minister officiating in such chapel is free, with respect to the offices and services specified in the licence, from all control or interference on the part of the incumbent of the parish or district in which the chapel is situated (s. 2), and offertories and alms collected at it are disposable as the minister shall, subject to the direction of the ordinary, determine (s. 3).

Stipend of Chaplain.—The stipend of the chaplain of a voluntary hospital is frequently provided by special endowment.

Duties of Chaplain.—The duties of the chaplain of a voluntary hospital are generally prescribed by the by-laws. Besides performing services in the chapel, he is required to visit patients daily, and to be ready to attend at other times when sent for.

Workhouse Chaplain: how Appointed and Removed.—Chaplains are also appointed to workhouses and workhouse infirmaries under the Poor Law Acts. The salary is paid out of the poor rate, and the chaplain, although appointed by the guardians, can only be dismissed by the Local Government Board (see *Mirams*, 1891, 1 Q.B. 594, 596). The Local Government Board may, by order

under s. 46 of the Poor Law Act, 1834, require the guardians to appoint a chaplain, and the Court will not inquire into the expediency of the order (*R.* v. *Braintree Union*, 1841, 1 Q.B. 130). He is a "paid officer" within ss. 46 and 48 of the Poor Law Act, 1834, and may therefore be removed by the Local Government Board as "unfit" for his office, at their discretion, without assigning any special grounds for such removal (*Molyneux*, 1863, 11 W.R. 233).

His Duties.—The duties of the workhouse chaplain are prescribed by Art. 211 of the Poor Law Order, 1847, and include those of visiting the sick paupers and of administering religious consolation to them.

May mortgage his Salary.—It has been held that he may lawfully mortgage his salary (*Mirams*, 1891, 1 Q.B. 594).

Stamp Duty.—The stamp duty on the licence to hold the office of chaplain is 10*s.* (Stamp Act, 1891, "Licence").

Nurses.—In the nursing department of our large hospitals there are generally four grades: (1) the matron; (2) the sister; (3) the staff nurse; (4) the probationer. The matron is the supreme authority of the department, and the sister presides over a ward of about thirty beds, to about fifteen of which is attached a staff nurse, and, under her, the probationers (see Burdett's *Hospitals and Asylums of the World*, 1893, vol. iii.; *Nursing Systems*, pp. 232-302).

Midwives.—Nursing for confinement cases is a special branch, and is now regulated by special legislation (see LYING-IN HOSPITALS).

Workhouse and District Nurses.—Workhouse and district nursing is regulated by special provisions (see POOR-LAW INFIRMARIES).

Appointment of Nurse.—A nurse may be engaged verbally and the terms on which she is employed will have to be gathered from the rules of the hospital, the

way in which she is paid, and other circumstances. It is therefore advisable that the agreement should be in writing and the terms clearly set out, one of which should be that she becomes subject to the hospital regulations for the time being in force.

Relation of Nurse to Hospital.—The legal status of a nurse, whether regarded as officer or servant, is that of an agent of the institution, and while, of course, personally liable for any wrongful act or omission on her part, she may also involve the institution in liability—for example, by negligence causing injury to a patient (see NEGLIGENCE). Although a hospital may be liable for the negligence of one of its own nurses, an institution which merely lets out private nurses may not be so liable (see NURSING INSTITUTIONS).

Other Officers and Servants.—The mode of appointment or dismissal of the other officers and servants of a hospital is similar to that in other institutions, and calls for no special remark. In the case of the inferior grades of menial servants, large powers are generally given to the house governor or other person in charge of the household.

OPERATIONS

Consent of Patient.—It may be laid down as a general rule, subject, of course, to obvious exceptions, that no surgical operation can legally be performed on an adult patient without his or her consent, if it is possible to obtain it. An extreme case of urgency might be imagined in which such consent could not be obtained. In the latter case, if feasible, the consent of the nearest relative should be sought. It is difficult to lay down any definite rule, for the word "operation" is an elastic term, and may be applied to any surgical treatment from the extraction of a tooth to trepanning or other operation involving grave danger to life. The following general rules should, as far as possible, be followed:

1. No operation should be performed without the patient's consent.

2. Before obtaining consent the reasons for and possible consequences of the operation should be explained.

3. Such consent should, if possible, be either in writing or, if verbal, in the presence of a witness.

4. Such operation should not be extended further than that to which the patient consented.

Disregard of these rules may cause the operation to be illegal, and render the operator liable to an action for damages.

In the case of *Beatty* v. *Cullingworth* (reported in *The Times*, August 11 and November 17 and 18, 1896, and January 14, 1897), an action was brought for damages

for injury to the plaintiff from the defendant's malpractice as a medical man in performing an operation wrongfully and without her consent, and also for assault. The plaintiff's case was that she had consented to an operation for the removal, if necessary, of one only of her ovaries, but had refused to consent to the removal of both, yet the surgeon had removed both ovaries while she was under the anæsthetic. The defendant alleged that the operation as performed was necessary, and the jury found for the defendant. Hawkins J., in directing the jury, said :

"If a medical man with a desire to do his best for his patient undertook an operation, he should have thought it was a humane thing for him to do everything in his power to remove the mischief, provided that he had no absolute definite instructions not to operate. Would any one of them undertake an operation fettered by such a condition as the one the plaintiff suggested, namely, that if the operation was in their opinion absolutely necessary, still they should not perform it if they found there was a little more disease than they had thought?"

The Court of Appeal refused an application for a new trial.

Operation on a Child.—Similar rules should be adopted in the case of an operation on a child, except that, instead of the patient's consent, the consent of the parent or guardian should be obtained. Even in the case of a child, it may be advisable to obtain his or her consent as well, especially if the child has attained years of discretion, for the power of the parent or guardian over the person of the child does not extend to the whole period of minority (see CHILDREN'S HOSPITALS).

Operation in Poor-law Infirmary.—In the case of poor-law infirmaries, the question has been raised as to whether the medical officer would be justified in using force to perform an operation which he considered necessary.

The opinion of the Local Government Board appears to be that, unless the pauper can be certified to be of unsound mind and incapable of exercising his own discretion, his consent should first be obtained, and he must decide for himself (see Glen's *Poor Law Orders* (1898), p. 403).

Outdoor Paupers.—The district medical officer (see POOR-LAW INFIRMARIES) is entitled to special remuneration for operations on outdoor paupers: General Order, July 24, 1847, Arts. 177-81, as amended by General Order, June 10, 1875, which was rescinded by General Order, February 12, 1879 (see Glen's *Poor Law Orders*, (1898), pp. 366-70).

Fees of District Medical Officer.—Art. 177 provides:

"No salary of any district medical officer shall include the remuneration for operations and services of the following classes performed by such medical officer in that capacity for any outdoor pauper, but such operations and services shall be paid for by the guardians according to the rates specified in this article.

	£	s.	d.
1. Treatment of compound fractures of the thigh	5	0	0
2. Treatment of compound fractures or compound dislocation of the leg	5	0	0
3. Amputation of leg, arm, foot, or hand	5	0	0
4. The operation for strangulated hernia	5	0	0
5. Treatment of simple fractures or simple dislocations of the thigh or leg	3	0	0
6. Amputation of a finger or toe	2	0	0
7. Treatment of dislocations or fractures of the arm	1	0	0

"The above rates shall include the payment for the supply of all kinds of apparatus and splints."

Restriction on Amputation.—Art. 178 was rescinded by the General Order, June 10, 1875, Art. 2 of which prescribed a substituted proviso. This latter article was

rescinded by the General Order, February 12, 1879, Art. 4 of which substituted the following proviso:

"No district medical officer shall, except in cases of sudden accident immediately threatening life, be entitled to receive the remuneration prescribed by the firstly before recited order [General Order, July 24, 1847, Art. 177] for any amputation, unless, before performing it, he shall have obtained, at his own cost, the advice of some person who shall be registered under the Medical Act, 1858, and shall be qualified by law to practise in England and Wales either medicine or surgery, or both; and unless he shall produce to the guardians a certificate from such person stating that, in his opinion, it was right and proper that such amputation should be then performed."

Death within thirty-six Hours.—Art. 179 provides:

"If in any case the patient has not survived the operation more than thirty-six hours, and has not required and received several attendances after the operation by the medical officer who has performed the same, such medical officer shall be entitled only to one-half of the payments respectively prescribed above."

Several Fees in respect of the same Person.—Art. 180 provides:

"If several of the fees specified in Art. 177 become payable with respect to the same person at the same time, and in consequence of the same cause or injury, the medical officer shall be entitled only to one of such fees, and if they be unequal to the highest."

Specially difficult Surgical Case.—Art. 181 provides:

"In any surgical case not provided for in Art. 177, which has presented peculiar difficulty, and required and received long attendance from the district medical officer, the guardians may make to the said medical officer such reasonable extra allowance as they may think fit, and the Commissioners [now Local Government Board] may approve."

Negligence of Operator.—An operation may be performed so carelessly as to render the operator, and even the hospital authority itself, liable to an action for damages (see NEGLIGENCE).

Operation by way of Experiment.—To perform an operation by way of experiment, and not with the view of benefiting the patient, is a kind of criminal negligence, and is known as malpractice, and is punishable as a misdemeanour (see NEGLIGENCE). Experiments on live animals, even for scientific purposes, are now subject to legal restrictions (see VIVISECTION).

Administration of Anæsthetic.—To administer an anæsthetic ignorantly or carelessly, so as to cause the death of a patient, may, of course, render the anæsthetist liable to an action for damages or even to criminal proceedings, and possibly involve the institution itself in liability, as in the case of the operation itself.

PATIENTS

Admission of Patients to Voluntary Hospital.—Voluntary hospitals admit patients recommended by their subscribers, and also cases of emergency; but many of their patients are persons who apply for admission merely on the ground that they are suffering from some disease which the particular hospital professes to treat, or, in the case of a general hospital, have some bodily infirmity for which a surgical operation is necessary.

Inquiry into Patient's Means.—In some voluntary hospitals it is a rule, either before or shortly after admission, to make some inquiry into the means of a patient to contribute to the expense of their treatment, and even to refuse admission in cases where the patient appears to be able to afford medical treatment at his own home. This is a rule which may work hardly in some cases.

There is, however, a class of persons who take advantage of the benefits of our great hospitals without making any payment at all, although well able to afford a substantial contribution to expenses. In justice to the really poor, hospitals may properly protect themselves against abuse of this kind by regulations which can be enforced as occasion arises.

Can Voluntary Hospitals refuse to admit Patients?—Voluntary hospitals are under no legal obligation to admit as patients persons who come to them for treatment without any recommendation from subscribers or other kind of introduction. The fact that an institution

is charitable is not of itself sufficient to entitle the public at large to demand free treatment, and cases can therefore be refused without any reason being given. This right to refuse admission is perhaps not often exercised without some adequate ground for refusal; but such refusal would, it is submitted, give the rejected patient no cause of action against the governing body.

Admission only on Payment.—Nor is there any legal objection to refusing admission except on payment, for a hospital for paying patients may nevertheless be a charitable institution (see *Bramwell* v. *Lacy*, 1879, 10 Ch. D. 691; *Portman* v. *Home Hospital Association*, 1879, 27 Ch. D. 81, *n.*; see COTTAGE HOSPITALS).

Admission to Rate-supported Hospitals. — Rate-supported hospitals stand on a different footing, and are, it is submitted, legally bound to admit any person who is an inhabitant of the district and requiring treatment for the kind of illness for which such hospital was instituted. Payment by a patient who was able to pay may afterwards be enforced (see Isolation Hospitals Act, 1893, s. 16, set out under article INFECTIOUS DISEASE HOSPITALS).

Result of Admission of Patient to Hospital.—Upon admission the patient, on the one hand, submits himself to the regulations of the institution, and generally to undergo the treatment advised by the medical officer in charge, but this does not necessarily imply consent to a surgical operation (see OPERATIONS). On the other hand, an obligation seems to be imposed upon the hospital authority to ensure the treatment being carried out with reasonable skill and care (see NEGLIGENCE).

Bodily Restraint of Patient.—A reasonable degree of bodily restraint may legally be put on a patient who, from delirium or other kind of temporary insanity

involving loss of self-control, may endanger himself or others; but no treatment in the nature of punishment could be justified.

Gifts by Patients.—The law looks jealously on any transaction in the nature of a gift by a patient to the doctor or nurse attending him, and is ready to presume that influence has been unduly exercised to obtain it. This rule would not affect the validity of a contribution to the institution itself.

Negligence.—Want of skill or care in the treatment of a patient, whereby he is injured, may subject the medical man or nurse, and in some cases even the institution itself, to an action for damages for negligence (see NEGLIGENCE).

Operations without Consent.—To perform a surgical operation on a patient without consent will render the operator liable to an action for damages for assault (see OPERATIONS).

Assault on Patient.—It is no answer to a charge of assault that the act was committed with the consent of the patient, if such consent was obtained by fraud or undue influence, or was given on the supposition that the patient was undergoing beneficial medical treatment (see *R.* v. *Case*, 1850, 1 Den. C.C.R. 580; 19 L.J. M.C. 174; *R.* v. *Rosinski*, 1824, 1 Moody C.C. 19, 1 Lewin 11; *R.* v. *Stanton*, 1844, 1 Cas. & Kir. 415).

"Suppose a medical man from malice were, under the pretence of curing a patient, to rub him with an ointment that caused a serious sore, and the patient submitted at the time, supposing that the treatment was good, there would be consent in one sense of the word; but could not the medical man be indicted for assault?" (per Wilde C.J. in *R.* v. *Case*, cited above).

POOR-LAW INFIRMARIES

What Kind of Hospital is a Poor-law Infirmary.—We have already seen that there are three kinds of hospitals, (1) those charitable institutions called voluntary hospitals, (2) those institutions which we call rate-supported hospitals, and (3) self-supporting or profit hospitals (see INTRODUCTION). A poor-law infirmary being maintained by the poor rate falls, of course, within the second kind. Rate-supported institutions include two large classes, namely, poor-law infirmaries and isolation hospitals. The difference between these two institutions lies not only in their objects, but in the statutes by which they are regulated. The isolation hospital is a statutory creation of modern growth, and is primarily intended to protect society against the spread of infectious disease, whereas the poor-law infirmary is an institution which has for its object the medical relief of the sick poor, and is merely a development of the old poor law.

Relation of Poor-law Infirmary to Voluntary Hospital.—It is true that the voluntary hospital is primarily intended for the relief of the sick poor, and in fact the charitable institution was the pioneer in such relief, and its action operates, often unjustly to itself, in a substantial reduction of the poor rate. Guardians may subscribe to hospitals out of the poor fund (*post* p. 225), but such power is not, as a rule, adequately exercised, and there is room for amendment in the law adjusting the relations between a poor-law infirmary and voluntary hospital.

Poor-law Infirmary Part of the Workhouse.—A poor-law infirmary, although, especially in large towns, often a separate institution, is, in law, merely a department of the workhouse, and, therefore, under the control of the guardians, being regulated by the poor-law statutes and orders—the latter, so far as regards medical relief, being the most numerous and important, especially those defining the duties of the workhouse medical officer.

Power of Justices to provide Medical Relief.—By s. 2 of 30 Geo. III. c. 49, which is "an Act to empower justices and other persons to visit parish workhouses or poorhouses and examine and certify the state and condition of the poor therein to the quarter sessions," it was provided that "in case any justice or justices of the peace, or persons duly authorised by warrant as aforesaid, shall, upon any such visitation, find any of the poor in any parish workhouse or poorhouse afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house," the justices may make an order to that effect.

Power to Overseers and Guardians to provide Relief in Emergency.—By s. 52 of the Poor Law Amendment Act, 1834, power is given to the overseers and guardians of the poor in cases of emergency to provide relief in food, temporary lodging or medicine to persons living out of the workhouse, notwithstanding relief may be contrary to the ordinary poor-law regulations.

Power of Justices in Emergency.—By s. 54 any justice of the peace may order the overseer to give medical relief to any parishioner as well as out-parishioner where any case of sudden and dangerous illness may require it.

Power of Guardians to subscribe to Public Hospital.—By s. 4 of the Poor Law Amendment Act, 1851, it is enacted as follows:

"Whereas doubts have been entertained with regard to the legal authority of guardians to subscribe towards the funds of any hospital or infirmary: be it enacted that the guardians of any union or parish may, with the consent of the Poor Law Board, pay out of the common fund of such union, or in the case of a parish out of the funds in the hands of such guardians, any sum of money as an annual subscription towards the support and maintenance of any public hospital or infirmary for the reception of sick, diseased, disabled or wounded persons, or of persons suffering from any permanent or natural infirmity."

By s. 10 of the Poor Law Act, 1879, it is enacted that the above section shall be extended so as—

"to authorise the guardians, with such consent as is therein mentioned, to subscribe towards any asylum or institution for blind persons, or for deaf and dumb persons, or for persons suffering from any permanent or natural infirmity, or towards any association or society for aiding such persons, or for providing nurses, or for aiding boys or girls in service, or towards any other asylum or institution which appears to the guardians, with such consent as aforesaid, to be calculated to render useful aid in the administration of the relief of the poor. Provided always that nothing herein contained shall authorise any subscription to any asylum or institution unless the Local Government Board be satisfied that the paupers under the guardians have or could have assistance therein in case of necessity."

Poor Law Orders as to Medical Relief.—The statute law on medical relief for the sick poor has been supplemented by orders of the Poor Law Commissioners, now the Local Government Board.

By the G.O. July 24, 1847, the words "medical relief" include relief by surgical as well as medical attendance (Art. 227).

In the administration of medical relief to the sick poor, the objects to be kept in view are: (1) to provide medical aid for all persons who are really destitute; (2) to prevent medical relief from generating or encouraging pauperism, and with this view to withdraw from the labouring classes, as well as from the administrators of relief, and the medical officers, all motives for applying for or administering medical relief, unless where the circumstances render it absolutely necessary (Glen, *Poor Law Orders*, (1898), 257).

Workhouse Medical Officer: how appointed.—The workhouse medical officer is, like the district medical officer, appointed by the guardians (G.O. 1847, Art. 153). The appointment is made by a majority of the guardians present at a meeting of the board, consisting of more than three guardians, or by three guardians if no more be present. Every such appointment shall, as soon as the same has been made, be reported to the Commissioners (now Local Government Board) by the clerk (G.O. 1847, Art. 155). The guardians may, by special resolution, require any candidate to attend personally before their board for examination, and may pay such reasonable expenses incurred by such candidate as they shall deem proper (G.O. August 19, 1867, Art. 5). No appointment to any of the offices specified in Art. 153 shall be made under this Order, unless a notice that the question of making such appointment will be brought before the board has been given and entered on the minutes at one of the two ordinary meetings of the board next preceding the meeting at which the appointment is made, or unless an advertisement giving notice of the consideration of such appointment shall have appeared in some public paper by the direction of the guardians, at least seven days before the day on which such appointment is made; provided that no such notice or advertisement

shall be necessary for the appointment of an assistant or temporary substitute (G.O. 1847, Art. 156). The guardians shall not, by advertisement or other public notice, printed or written, invite tenders for the supply of medicines, or for the medical attendance on the paupers of the union, unless such advertisement or notice shall specify the district or place for which such supply of medicines and such attendance is required, together with the amount of salary or other remuneration (G.O. 1847, Art. 157).

As the appointment of a workhouse medical officer may last for a lifetime, a contract is still necessary, but need not be approved by the Local Government Board (see Circular, March 10, 1874). It should be made under the seal of the guardians (see *Dyke* v. *St. Pancras Guardians*, 1872, 27 L.T. 342), in which Martin B. said:

"Had it been the case of a medical man suddenly called in by the board of guardians to attend a pauper then and there suffering under acute disease, or a sudden and dangerous fracture of limb, that might be such a case of necessity [as to render a formal contract impracticable]; but this is a contract for the employment of a gentleman for a certain period of time [in this case three months] in the future, and there is no immediate necessity in it at all; and there is no occasion whatever for the contract being entered into and completed otherwise than under seal."

The general rule is that a corporation can only be bound by a contract under seal, and therefore an appointment by a board of guardians should as a rule be under seal (see *Austin* v. *Bethnal Green Guardians*, 1874, L.R. 9 C.P. 91).

Tenure of Office of Medical Officer.—Every medical officer of a workhouse, duly qualified at the time of his appointment according to the regulations of the Poor Law Board then in force, shall hold his office until he shall die

or resign, or be proved to be insane by evidence which the Poor Law Board shall deem sufficient, or become legally disqualified to hold such office or be removed by the Poor Law Board (Medical Appointments Order, May 25, 1857). The office is held during good conduct (*Donahoo* v. *L.G.B.* 1882, 46 L.T. 300; 30 W.R. 334). As to the discretionary power of the Local Government Board to remove officers under this article, see *Teather and the Poor Law Commissioners*, 1850, 19 L.J. M.C. 70; 15 J.P. 36; *Dunbar* v. *Ardee Union*, 1897, 2 I.R. 76).

Qualifications of Medical Officer.—Before the Medical Act, 1858, the qualifications of a poor-law medical officer were prescribed by Art. 168 of the G.O. 1847, but this article has since that Act been superseded.

By the Medical Act, 1858 (as amended by the Acts of 1859 and 1860), no person can hold any appointment as medical officer in any workhouse unless registered under that Act before January 1, 1861.

In consequence of the Medical Act, 1858, a general Poor Law Order was issued on December 10, 1859, which provided that after March 1, 1860, no person should be qualified to be appointed to the office of medical officer under any of the previous orders unless he was registered under the Medical Acts, 1858 and 1859, and was qualified by law to practise both medicine and surgery in England and Wales, such qualifications being established by the production to the board of guardians of a diploma, certificate of a degree, licence, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office (Art. 1 of the Medical Officers' Qualification Order, December 10, 1859).

A list of the diplomas, degrees, or licences which are

admitted by the guardians is given in a circular of the Poor Law Board dated January 3, 1860. It should be noted that by the terms of the order foreign degrees do not appear to be a qualification as not being granted "by competent legal authority in Great Britain or Ireland."

By the Medical Act, 1876, restrictions to granting qualifications for registration under the Medical Act, 1858, on the ground of sex were removed, and women can now be appointed medical officers of workhouses. There is no legal objection to a workhouse medical officer being also district medical officer.

Cases may, however, arise when the guardians may find it difficult or impracticable to obtain a medical officer with the necessary qualifications. Provision for such cases was made by the G.O. of 1847, Art. 169, which except so far as it refers to Art. 168 is still in force. The article is as follows:

"Provided always, that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to procure a person residing within the district in which he is to act, and duly qualified [*in one of the four modes recited in Art.* 168], to attend on the poor in such district, or that the only person resident within such district, and so qualified, shall have been dismissed from office by the Commissioners, or shall be unfit or incompetent to hold the office of medical officer, then and in such case the guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ a person not qualified [*as required by Art.* 168], and shall forthwith transmit a copy of such minute to the Commissioners for their consideration; and the Commissioners may permit the employment by such guardians of any person duly licensed to practise as a medical man, although such person be not qualified [*in one of the four modes required by Art.* 168]" (G.O. 1847, Art. 169).

Surgical Operations on Pauper.—"The Board recommend that, under ordinary circumstances, a case in which a serious operation is required should not be treated

in a workhouse or at the patient's home, but should be sent to a public hospital. When, however, the latter course is not practicable, or when the operation is not of a serious character, the Board are prepared, in any case where an anæsthetic has been required, to consider an application from the guardians for sanction to the payment to the medical officer of a reasonable sum in respect of any assistance which it was necessary for him to obtain in connection with the administration of the anæsthetic, or of any other cost incurred in connection with its use" (Circular Letter by Local Government Board, November 1, 1894—Glen's *Poor Law Orders* (1898), p. 367).

Apart from the above intimation it would seem that the medical officer of a workhouse is not entitled to any special fee for operations, the provisions of Art. 177 of the G.O. 1847 applying only to operations by the district medical officer on outdoor paupers.

In the case assumed by the Board the medical officer obtained assistance and then applied to the guardians, or such assistance was obtained at his request, but the case may occur where the workhouse medical officer is not, in the opinion of the guardians, sufficiently competent to cope with the difficulty, and yet declines to have any assistance. Will the guardians be justified in calling in a second medical adviser? According to Erle J. they would (see dictum in *Haigh* v. *N. Brierley Union*, 1858, 5 Jur. N.S. 511 at 512, 28 L.J. Q.B. 61 at 65). The Board would probably sanction the extra cost occasioned in a proper case, but in a case of doubt they might call upon the guardians to justify their action. These remarks are not confined to surgical operations, but extend to medical cases as well.

It is not, as a rule, justifiable to use force to compel a pauper to undergo an operation, even though it is apparently the only chance of saving his life. Unless the medical officer can certify that the patient is not

of sound mind he ought not to perform the operation without the consent of the patient (see OPERATIONS).

Duties of Medical Officer.—The duties of a medical officer of a workhouse must be discharged by him in person. This is prescribed by Arts. 198-200 of the G.O. 1847, which are as follows:

"Art. 198.—In every case not otherwise provided for by this Order, every officer shall perform his duties in person, and shall not entrust the same to a deputy, except with the special permission of the Commissioners on the application of the guardians.

"Art. 199.—Every medical officer shall be bound to visit and attend personally, as far as may be practicable, the poor persons entrusted to his care, and shall be responsible for the attendance on them.

"Art. 200.—Every medical officer shall, as soon as may be after his appointment, name to the guardians some legally qualified medical practitioner to whom application for medicines or attendance may be made, in the case of his absence from home, or other hindrance to his personal attendance, and who will supply the same at the cost of such medical officer, and the name and residence of every medical practitioner so named shall be forwarded by the clerk to each relieving officer, and to the overseers of every parish in the district of such medical officer."

There is some ambiguity in the use of the expression "medical officer" in Arts. 199 and 200, whether it is applicable to the workhouse medical officer as well as to the district medical officer, where the two offices are held by different persons. These articles are, however, merely an extension of the regulation in Art. 198 that every officer shall perform his duties in person, and seem as applicable in the one case as the other.

It would seem that the medical officer cannot expressly delegate to his partner or assistant the duties of his office, but merely suggest his name to the guardians as a substitute in case of necessity. Such substitute should

be duly registered under the Medical Act, 1858. The guardians may object to the person suggested. A guardian of the union may be the appointed substitute of a medical officer (see Glen's *Poor Law Orders* (1898), p. 380 note).

The duties of every medical officer appointed by the guardians, whether he be the medical officer for a workhouse or for a district, are prescribed by Art. 205 of the G.O. July 24, 1847, and include giving to the guardians, when required, any reasonable information respecting the case of any pauper who is or has been under his care; making any such written report relative to any sickness prevailing among the paupers under his care as the guardians or the Commissioners (now the Local Government Board) may require of him; attending any meeting of the board of guardians when requested by them to do so; giving a certificate under his hand in every case to the guardians, or the relieving officer, or the pauper on whom he is attending, of the sickness of such pauper or other cause of his attendance, when required to do so; in keeping the books prescribed by this Order, employing, so far as practicable, the terms used or recommended in the regulations and statistical nosology[1] issued by the Registrar-General; and also showing when the visit or attendance made or given to any pauper was made or given by any person employed by himself.

Art. 207 of the same Order also prescribes the following duties of the medical officer for the workhouse: (1) To attend at the workhouse at the periods fixed by the guardians, and also when sent for by the master or matron. (2) To attend duly and punctually upon all poor persons in the workhouse requiring medical attendance,

[1] Nosology is the science which treats of the classification of diseases.

and according to his agreement to supply the requisite medicines to such persons. The term "medical attendance" includes surgical attendance (Art. 227), and "medicines" includes all medical and surgical appliances (Art. 227). A truss has been held to fall within this definition (*Tiley* v. *Brentford Guardians*, 1888, 85 L.T. Jo. 11). (3) To examine the state of the paupers on their admission into the workhouse, and to give the requisite directions to the master according to Arts. 91 and 92. (4) To give directions and make suggestions as to the diet, classification and treatment of the sick paupers, and paupers of unsound mind, and to report to the guardians any pauper of unsound mind in the workhouse whom he may deem to be dangerous, or fit to be sent to a lunatic asylum. (5) To give all necessary instructions as to the diet or treatment of children, and women suckling children, and to vaccinate such of the children as may require vaccination. (6) To report in writing to the guardians any defect in the diet, drainage, ventilation, warmth, or other arrangements of the workhouse, or any excess in the number of any class of inmates, which he may deem to be detrimental to the health of the inmates. (7) To report in writing to the guardians any defect which he may observe in the arrangements of the infirmary, and in the performance of their duties by the nurses of the sick. (8) To make a return to the guardians, at each ordinary meeting, in a book prepared according to the Form (Q) thereunto annexed, and to insert therein the date of every attendance, in conformity with Art. 205, and the other particulars required by such form to be inserted by the medical officers, and to enter in such return the death of every pauper who shall die in the workhouse, together with the apparent cause thereof. (9) To enter in the commencement of such book according to the Form (R) thereunto

annexed, the proper dietary for the sick paupers in the house in so many different scales as he shall deem expedient.

"The report required by Art. 207 (6) (*supra*) must now be made in a book, to be termed 'The Workhouse Medical Officer's Report Book' (to be supplied by the guardians), in which he shall enter in writing, duly and punctually and under the correct dates, every report required by the previous orders to be made by him to the board of guardians as to defects in the diet, drainage, ventilation, warmth, and other arrangements of the workhouse; as to any excess in the number of any class of inmates which he may deem to be detrimental" (Workhouse Medical Officers Order, April 4, 1868).

Medical Examination of Pauper on Admission.—As soon as a pauper is admitted to the workhouse he should be placed in some room appropriated for the reception of paupers, and should then be examined by the medical officer (G.O. 1847, Art. 91). If the medical officer, upon such examination, pronounce the pauper to be labouring under any disease of body or mind, the pauper should be placed in the sick ward, or in such other ward as the medical officer should direct (Art. 92). If the medical officer pronounce the pauper to be free from any such disease, the pauper should be placed in the part of the workhouse assigned to the class to which he may belong (Art. 93).

Casual Paupers.—The regulations respecting the admission, clothing, and searching of paupers shall not apply to any casual poor wayfarer, unless the guardians shall so direct, or unless he is compelled to remain in the workhouse from illness or other sufficient cause, in which case he shall be admitted regularly as an inmate (Art. 97). If the casual pauper is sick or infirm the medical officer of the workhouse or casual ward shall

prescribe the dietary for such pauper (G.O. December 18, 1882, Art. 10). In the event of any casual pauper being ill, the master of the workhouse or the superintendent of the casual ward shall, as soon as practicable, obtain the attendance of the medical officer, who shall give directions as to the treatment of such pauper, and if, in the opinion of the medical officer, the pauper cannot be properly treated in the casual ward, he shall be transferred to a sick ward of the workhouse, and be deemed to be an ordinary inmate thereof (G.O. December 18, 1882, Art. 13).

Classification of Paupers.—In the classification of paupers it is the duty of the guardians from time to time to consult the medical officer, and thereupon make such arrangements as they may deem necessary with regard to persons labouring under any disease of body or mind (G.O. 1847, Art. 99).

Notice of Infectious Disease.—Every medical officer appointed by the guardians after February 28, 1879, whether for a district or a workhouse, shall immediately upon the occurrence of any case of contagious, infectious, or epidemic disease of a dangerous character amongst the pauper patients under his care give notice thereof to the clerk of the sanitary authority of the urban or rural sanitary district, as the case may be, within which he acts as medical officer, or to the medical officer of health of such authority.

He shall also furnish from time to time to the medical officer of health of such sanitary authority such information with respect to the cases of sickness and the deaths amongst the pauper patients under his care as the Local Government Board may direct, and whenever the Local Government Board shall make regulations for all or any of the purposes specified in s. 134 of the Public Health

Act, 1875, he shall observe such regulations as far as the same relate to or concern his office (G.O. February 12, 1879).

A similar duty is imposed upon every medical officer appointed by the guardians after August 1, 1879, for a separate workhouse school (Separate Workhouse Schools Order, June 21, 1879).

Diseased Pauper leaving Workhouse.—Any pauper suffering from bodily disease of an infectious or contagious character who absconds or escapes from or leaves any workhouse or asylum during the period for which he may be detained therein may be ordered to be taken back to such workhouse or asylum, there to remain until he shall be cured or otherwise lawfully discharged therefrom, and when cured may be punished (Pauper Inmates Discharge and Regulation Act, 1871).

Appointment of Workhouse Nurse.—The nurse is an officer of the workhouse and is appointed by the guardians, and such appointment should, as a rule, be made by contract under seal and in the same manner as in the case of the medical officer (see above). Assistant nurses should also be paid officers of the workhouse (Circular Letter, May 5, 1865 Glen 434). In an emergency a temporary nurse may be engaged by the master, under the advice of the medical officer (G.O. 1897, Art. 5).

Qualifications of Nurse.—"No person shall hold the office of nurse who is not able to read written directions upon medicines" (G.O. 1847, Art. 165) or "without having had such practical experience in nursing as may render him or her a fit and proper person to hold such office" (G.O. 1897, Art. 2).

Similar qualifications are required in an assistant nurse, whether male or female, except in the case of a female assistant nurse where there is a superintendent nurse (G.O. 1897, Art. 2).

So also, unless there is a superintendent nurse, a temporary nurse engaged in an emergency must be similarly qualified (G.O. 1897, Art. 5).

Employment as Nurse of Pauper Inmate.—Formerly pauper inmates were employed as nurses or assistant nurses in the sick wards of the workhouse, and this practice was expressly sanctioned by the G.O. 1847 (Art. 99 (4) and (5)). Such employment is now forbidden by the Nursing in Workhouses Order, 1897 (*post*).

Matron as Sick Nurse.—It should be noticed that amongst the duties of the matron of the workhouse is that of taking proper care of sick paupers and of providing the proper diet for them (G.O. 1847, Art. 210 (12)). She also has certain duties in connection with the sick wards (G.O. 1847, Art. 210 (6) and (11)). In cases, however, where a qualified nurse is in charge, the duties of the matron, so far as treatment of the sick goes, must be merely nominal, and in any case would be subject to the directions of the medical officer.

Appointment of Nurse.—The guardians should be satisfied that the nursing staff by day and by night is fully equal to the proper nursing of the sick, and that they should give their most careful consideration to any representations which might be made to them on the subject by the medical officer of the workhouse in the discharge of his prescribed duty. They should also be careful when they make appointments of nurses that the persons appointed are, by training and experience, fully equal to the responsible duties which they have to discharge (Circular Letter of the Local Government Board, January 29, 1895, Glen 407).

Dismissal of Nurse or Assistant Nurse.—A workhouse nurse or assistant nurse may be dismissed by the guardians without the consent of the Local Government

Board; but every such dismissal, and the grounds thereof, shall be reported to the Board (G.O. 1847, Art. 188). This rule is not affected by the Appointment of Assistant Officers Order, August 19, 1867. As to Ireland, see *McGuigan* v. *Belfast Union*, 1885, 18 L.R. Ir. 89.

Nursing in Workhouses Order, 1897.—By the Nursing in Workhouses Order, 1897, of the Local Government Board (August 6, 1897) some important modifications were made in the existing law and practice as to the nursing of the sick poor in workhouses.

The Order, after referring to the regulations existing under previous orders with regard to the appointment of persons to the office of nurse, and the qualification, remuneration, and duties of such persons, prescribes the following regulations, which are to come into force on September 29, 1897, which date is referred to as the commencement of this Order:

"Notwithstanding anything contained in any of the orders above referred to, no pauper inmate of the workhouse shall be employed to perform the duties of a nurse in the sick or lying-in wards of the workhouse, or be otherwise employed in nursing any pauper in the workhouse who requires nursing" (Art. 1 (1)).

This article in effect rescinds Art. 99 (4) and (5) of the G.O. 1847 so far as concerns the sick.

"No pauper inmate of the workhouse shall be employed as an attendant in the sick or lying-in wards of the workhouse, or upon any pauper in the workhouse who requires nursing, unless such inmate shall be approved by the medical officer of the workhouse for the purpose, and shall act under the immediate supervision of a paid officer of the guardians" (Art. 1 (2)).

"No person shall be appointed by the guardians to the office of nurse or assistant nurse in the workhouse without having had such practical experience in nursing as may render him or her a fit and proper person to hold such

office: provided that this article shall not apply in the case of a female assistant nurse in a workhouse where there is a superintendent nurse as required by Art. 3 of this Order" (Art. 2).

"Where at the commencement of this Order the staff of female nurses and assistant nurses in the workhouse consists of three or more persons, the guardians shall either appoint a superintendent nurse, or, with our consent, direct that one of the nurses shall be a superintendent nurse" (Art. 3 (1)).

"Where at the commencement of this Order there is not a staff of three female nurses and assistant nurses in the workhouse, but the guardians subsequently propose that there should be such a staff, and also where any superintendent nurse ceases to hold office, the guardians shall appoint a superintendent nurse" (Art. 3 (2)).

"Any superintendent nurse appointed after the commencement of this Order shall, unless we dispense with the requirement, be a person qualified for the appointment by having undergone, for three years at least, a course of instruction in the medical and surgical wards of any hospital or infirmary being a training school for nurses, and maintaining a resident physician or house surgeon" (Art. 3 (3)).

"It shall be the duty of the superintendent nurse to superintend and control the other nurses and assistant nurses in the workhouse in the performance of their duties; but such superintendence and control shall, in all matters of treatment of the sick, be subject to the directions of the medical officer of the workhouse, and in all other matters to the directions of the master and matron of the workhouse, so far as the orders in force in the poor-law union and the lawful directions of the guardians may require or permit" (Art. 4 (1)).

"The provisions of the orders in force in the poor-law union applicable to the mode of appointment, remuneration, and tenure of office of a nurse at the workhouse shall apply to every superintendent nurse appointed under this Order: provided that no such superintendent nurse shall be dismissed without our consent" (Art. 4 (2)).

"If in an emergency it appears to the medical officer of the workhouse that the employment of a temporary nurse is required for the proper treatment of any case or cases

in the workhouse, and he informs the master of the workhouse in writing accordingly, it shall be the duty of the master to engage a person to act as nurse until the next meeting of the guardians, and the guardians shall pay the reasonable remuneration of the person so engaged: provided that where there is no superintendent nurse appointed under Art. 3 of this Order no person shall be engaged under this article without having had such practical experience in nursing as may render him or her a fit and proper person to hold the office of nurse" (Art. 5).

Order not Applicable to Separate Infirmary.—"This Order shall not apply to any infirmary or school which is under administration separate from the workhouse" (Art. 6).

Duties of Nurse.—The duties of a nurse for the workhouse prescribed by law are (1) to attend upon the sick in the sick and lying-in wards, and to administer to them all medicines and medical applications, according to the directions of the medical officer; (2) to inform the medical officer of any defects which may be observed in the arrangement of the sick or lying-in ward; (3) to take care that a light is kept at night in the sick ward (G.O. 1847, Art. 213).

District Nurse.—Before 1892 the guardians were not expressly empowered to appoint a nurse to attend any sick poor out of the workhouse, but where a person entitled to require relief on account of sickness could not safely be moved to the workhouse infirmary, the guardians would have been justified in sending a nurse to attend such person under their ordinary powers.

Now by the District Nurses Order of January 27, 1892, the guardians may from time to time as they may think fit, with the approval of the Local Government Board, appoint one or more persons to act as nurse or nurses of the sick poor relieved by the guardians out of any workhouse, such persons to be termed "district nurses" (Art. 1). The provision in force in the union and

separate parish applicable to the mode of appointment, remuneration, and tenure of office of a nurse at any workhouse shall apply to any district nurse appointed under the provisions of this Order (Art. 2). No person shall be appointed to the office of district nurse who has not undergone, for one year at the least, a course of instruction in the medical and surgical wards of a hospital or infirmary being a training school for nurses and maintaining a resident physician or house surgeon (Art. 3). The duties to be performed by a district nurse shall be (1) to attend duly and punctually as a nurse upon any poor person or persons in receipt of medical relief when directed by the guardians, or upon receipt of a written or printed order from any relieving officer in any case in which such officer may be authorised, by regulations to be prescribed by the guardians, to give such order; (2) to obey the directions of the district medical officer in attendance upon any poor person in regard to the nursing and treatment of such person; (3) to keep a record, in such form and containing such particulars as may be prescribed by the guardians, in regard to cases which she attends; (4) to perform such other duties in relation to her office as the guardians may from time to time direct (Art. 4). No district nurse shall undertake the duties of a midwife (Art. 5).

PRISON INFIRMARIES

Different Kinds of Prisons.—There are four different kinds of prisons, namely: (1) Local Prisons, (2) Convict Prisons, (3) Naval Prisons, and (4) Military Prisons; and each kind has its special rules, which include provisions for prisoners requiring medical and surgical relief.

Statutory Powers to make Prison Rules.—The Prison Act, 1865, prescribes a list of general regulations with respect to the government of prisons (s. 20 and Schedule I.), and in addition authorises the justices to make further additional rules (s. 21). The Prison Act, 1898, further gives power to the Secretary of State to make rules for the government of local and convict prisons (s. 2). The Naval Discipline Act, 1866, authorises the Admiralty to make rules for naval prisons (s. 81: see also s. 8 of the Naval Discipline Act). By the Army Act, 1881, the Secretary of State, and in India the Governor-General, may make rules for military prisons (s. 133 (2)).

Local and Convict Prison Rules.—The rules in force as to local prisons are dated April 21, 1899, and were made by the Secretary of State under the Prison Act, 1898. The Convict Prison Rules were also issued by the Secretary of State on the same date.

Naval Prison Rules.—The rules in force as to naval prisons are dated May 1, 1900, and were made by the Admiralty under s. 81 of the Naval Discipline Act, 1866.

Military Prison Rules.—The rules in force as to military prisons were made by the Secretary of State for War under s. 133 of the Army Act, 1881, and were issued with Army Orders dated October 1, 1899.

Rules provide for Infirmary.—In all cases provision is made for an infirmary or proper place for the reception of sick prisoners (Local Prison Rules, r. 3; Convict Prison Rules, r. 2; Military Prison Rules, r. 112; Naval Prison Rules, r. 95).

Medical Treatment of Prisoners.—Other rules relating to the medical treatment of prisoners are as follows: Local Prison Rules, rr. 110, 166-84; Convict Prison Rules, rr. 101, 157-75; Military Prison Rules, rr. 42-56, 69; Naval Prison Rules, rr. 58, 93-108.

Duties and Qualifications of Medical Officer.—In all cases the duties of the medical officer are prescribed, and under the Naval Prison Rules there is also an infirmary warder (r. 58). As to the qualification necessary for medical officers of prisons, see Medical Act, 1858, s. 36, and amending Acts (see OFFICERS AND SERVANTS).

Death in Prison.—It is the duty of the coroner of the district to hold an inquest on the body of every prisoner who may die within the prison (Prison Act, 1865, s. 48), and death in prison is one of the cases mentioned in the Coroners Act, 1887, as rendering an inquest necessary (s. 3 (1)). For other cases, see article DEATH IN HOSPITAL. No officer of the prison nor any prisoner therein nor any person engaged in any sort of trade or dealing with the prison can be a juror on such inquest (see Prison Act, 1865, s. 68, and Coroners Act, 1887, s. 3 (1), which latter Act repeals s. 44 of the Prison Act, 1877).

In the case of every such inquest the coroner should not confine the inquiry to the question of blame, if any, of the prison officials, but should hold a complete inquiry

into the cause of death. Thus in a case where a man received a blow on the head in the course of a quarrel, under circumstances which might have justified a verdict of manslaughter, the finding of the jury that the deceased prisoner died from an injury occasioned before his admission to the prison was held insufficient, and a further inquiry as to how he came by such injury was ordered (*R.* v. *Graham*, 1905, 93 L.T. 370).

RATES, TAXES, AND DUTIES

District and Poor Rates.—Hospitals generally are not exempt from rates. This was settled in 1875 by the decision of the House of Lords in *St. Thomas's Hospital* v. *Stratton*, 1875, L.R. 7 H.L. 477. In some cases, however, they are specially exempt by Act of Parliament (see Derby Improvement Act, 1825; *Hall* v. *Derby*, 1885, 16 Q.B.D. 163; and Tudor on *Charities*, 421-3).

Corporation Duty.—By the Customs and Inland Revenue Act, 1885, s. 11, a duty was imposed at the rate of 5 per cent. upon the "annual value," income or profits (subject to certain deductions) of property belonging to bodies, corporate or incorporate, which escaped liability to probate, legacy, or succession duties. This duty is commonly called corporation duty, and was imposed by way of compensation to the revenue for loss of death duties in respect of bodies or associations which never die.

"Annual value" in the case of a body owning land should be assessed in the same way as under Schedule A of the Income Tax Act, 1853 (*Surrey County Cricket Club*, 1901, 2 K.B. 400).

Exemption of Charitable Bodies.—Such duty is subject to exemption in favour of property of the following description:

"Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable

purpose, or for the promotion of education, literature, science, or the fine arts" (Customs, etc., Act, 1885, s. 11 (3); see *Gresham*, 1897, 13 T.L.R. 362).

As to the meaning of "science" in this exemption, see *Inland Revenue* v. *Forrest*, 1890, 15 A.C. 334; *Royal College of Surgeons*, 1899, 1 Q.B. 871.

Royal College of Surgeons.—In the case of the *Royal College of Surgeons*, 1899, 1 Q.B. 871, the history and constitution of the Royal College of Surgeons of England were examined by the Court of Appeal, and it was held that the college was established with two main functions—that is, not merely for the promotion of science and surgery, but also for the encouragement and promotion of the practice of surgery, and that so far as concerns property which may be legally appropriated and applied to its second main function, such property was not exempt, while the property appropriated and applied to the promotion of the science of surgery was exempt.

Medical Schools.—A similar question might well arise in the case of medical schools (see MEDICAL SCHOOLS).

Voluntary Hospitals.—Voluntary hospitals and other charitable institutions are clearly exempt so long as the income or profits are applied for relief of the sick and not divided amongst the members. The fact that the income of the hospital is partly derived from payments of patients would not of itself deprive them of this exemption (see Hewitt on *Corporation Duty*, pp. 10, 11, citing opinion of Attorney-General, Hansard, 3rd series, vol. 299, 1711).

Income Tax.—Under the Income Tax Act, 1842, hospitals have a right to the following allowances or exemptions: (1) in respect of hospital buildings and premises (not in the occupation of an officer whose income amounts to £150 a year, or of any person occupying at a rent);

(2) in respect of the repairs of such buildings and premises; (3) in respect of the rents and profits of lands, tenements, and hereditaments belonging to them, so far as they are applied to "charitable purposes" (s. 61, No. VI., and see *Bray* v. *Lancashire JJ.*, 1889, 22 Q.B.D. 484); (4) in respect of their stock or dividends, so far as applicable for "charitable purposes" only (s. 88, Schedule C, third rule); (5) in respect of annual profits charged under Schedule D, so far as applied to charitable purposes only (see *St. Andrew's Hospital* v. *Shearsmith*, 1887, 19 Q.B.D. 624).

Meaning of "Charitable Purposes."—The phrase "charitable purposes" in these sections is used in the wide sense of "charity," as interpreted by English law, and is so applicable in Scotland, although in Scotch law it has a narrower meaning (*Income Tax Commissioners* v. *Pemsel*, 1891, A.C. 531; see *Blair* v. *Duncan*, 1902, A.C. 37).

Certificate of Exemption by Charity Commissioners.—As to stock in the funds, whether standing in the names of the Official Trustees of Charitable Trust Funds, or of private trustees, the Charity Commissioners may certify to the Bank of England that it is exempt from income tax (Charitable Trusts Act, 1855, s. 28). When once a claim for exemption is allowed no further claim is necessary, the dividends being paid free of tax until there is a change of trustees.

Profit Hospitals not exempt.—Income tax exemptions do not apply to profit hospitals which receive payments from patients, and are merely commercial undertakings (see *St. Andrew's Hospital* v. *Shearsmith*, 1887, 19 Q.B.D. 624; *Needham* v. *Bowers*, 1888, 21 Q.B.D. 437; *Cawse* v. *Nottingham Lunatic Hospital*, 1891, 1 Q.B. 585; *Mary Clark Home* v. *Anderson*, 1904, 2 K.B. 645).

Part of Institution carried on for Profit.—If a portion of the main charitable institution is used with a view to commercial profit, not only can exemption not be claimed for such portion, but the profits of the subsidiary undertaking cannot be set off against the losses of the other portion (see *Religious Tract Society* v. *Forbes*, 1896, 33 Sc. L.R. 289; *Grove* v. *Young Men's Christian Association*, 1903, 88 L.T. 696).

Medical Schools and Nursing Homes.—This principle would seem applicable to such subsidiary undertakings as medical schools, nursing homes, and the like.

Inhabited House Duty.—By the House Tax Act, 1803, as amended by the House Tax Acts, 1808 and 1851, and the Customs and Inland Revenue Acts, 1867, s. 25; 1871, s. 31; 1878, s. 13; 1881, s. 24; 1890, ss. 25, 26; 1891, s. 4, and Revenue Act, 1903, s. 11, a duty is imposed upon inhabited dwelling-houses according to their annual value.

The duty varies according to the purposes for which the house is occupied and used, and ranges from the rate of *2d.* to *9d.* in the pound.

Exemption of Hospitals.—The exemption as to hospitals is contained in Exemptions—Case 4 of Schedule (B) of the House Tax Act, 1808, and is as follows: "Any hospital, charity school, or house provided for the reception or relief of poor persons."

The word "hospital" here clearly includes, even if it includes more, institutions for the relief of physical ailments, provided that such institutions are charitable; for the motive of the exemption is charity (*Mary Clark Home* v. *Anderson*, 1904, 2 K.B. 645).

Where Paying Patients.—The fact that certain patients contribute to the cost of their support and treatment does not necessarily deprive a hospital of its charitable character and consequent right to exemption (*Chalmers*

Hospital v. *Edinburgh*, 1881, 8 R. 577; *Mary Clark Home* v. *Anderson* (above)).

Self-supporting Institutions.—But if, at the time when the alleged liability to taxation arises, it has become entirely self-supporting, it is not exempt even though originally a charitable foundation: *Musgrave* v. *Dundee Royal Lunatic Asylum*, 1895, 22 R. 784; see also *Needham* v. *Bowers*, 1888, 21 Q.B.D. 436; *Charterhouse School* v. *Lamarque*, 1890, 25 Q.B.D. 121; *Cawse* v. *Nottingham Lunatic Hospital*, 1891, 1 Q.B. 585.

Residence within Precincts of Hospital.—A house in the grounds of the Royal Infirmary, Edinburgh, in which the medical superintendent resided, as required by the regulations, was held to be part of the infirmary, and therefore within the exemption (*Wilson* v. *Fasson*, 1883, 10 R. 870; 48 J.P. 361, following *Jepson* v. *Gribble*, 1876, 1 Ex. D. 151 (lunatic asylum)).

Income Tax Exemption compared.—The exemption from inhabited house duty which we have been considering may be compared with that in the Income Tax Act, 1842, s. 61, Rule No. VI: see *Needham* v. *Bowers* (above).

Land Tax.—The first statute containing explicit directions for assessing and collecting land tax in England and Wales was the 4 Will. & Mary c. 1, the provisions of which were for the most part embodied in Acts of Parliament annually passed to continue the tax until the Land Tax Act, 1797, under which the land tax has since been collected. By the Land Tax Perpetuation Act, 1798, the land tax, as then collected, was made perpetual, subject to redemption. Various amending Acts have been passed.

Exemption of certain Hospital Sites.—Sites actually occupied by hospitals in existence at the time were by the Land Tax Act, 1797, exempted from land tax (ss. 25-9), and the land originally exempted retains its exemption

although it may have passed out of the possession of the hospital (see *St. Thomas's, St. Bartholomew's, and Bridewell Hospitals* v. *Hudgell*, 1901, 1 Q.B. 364).

Death Duties.—Under this head are included (1) account duty, (2) estate duty, (3) legacy duty, (4) settlement estate duty, (5) succession duty.

Account Duty.—Charitable gifts made within twelve months of the donor's death were, like other gifts, liable to account duty under the Customs, etc., Act, 1881, s. 38, as amended by the Customs, etc., Act, 1889, s. 11 (*A.-G.* v. *Booth*, 1894, 63 L.J. Q.B. 356; 10 R. 175; 10 T.L.R. 334), and would have been liable to estate duty, which has superseded the account duty (Finance Act, 1894, ss. 1, 2 (1) (c), and First Schedule). By the last-mentioned Act, the property affected extends to real property and is no longer limited to "voluntary" dispositions (see *A.-G.* v. *Johnson*, 1903, 1 K.B. 617).

Estate Duty.—In ascertaining the value of the property of a deceased person for purposes of estate duty, it must be remembered that a promised contribution to a charitable institution cannot be deducted as a debt (*Hudson*, 1885, W.N. 100; 54 L.J. Ch. 811; 33 W.R. 819).

Legacy and Succession Duties.—Property given to hospitals is liable to legacy or succession duties at the full 10 per cent. rate (see *Harris* v. *Howe*, 1861, 29 B. 261; *A.-G.* v. *Jewish Colonisation Assocn.*, 1901, 1 Q.B. 123; *A.-G.* v. *Johnson*, 1903, 1 K.B. 617).

Free of Duty.—A gift by will of property "free of duty" charges the duty upon the general estate of the testator, if sufficient.

SAMARITAN FUND

What is a Samaritan Fund?—Hospital Sunday and Saturday Funds.—"Nearly all the hospitals in the United Kingdom have Samaritan Societies or funds, and every endeavour is made to secure the well-being of the patients after their discharge. The Hospital Sunday and Saturday Funds now set aside a percentage of their receipts each year with the object of providing surgical appliances, artificial limbs, and other necessary articles to enable the patients to obtain a livelihood on leaving the hospitals. The interest on this money is devoted (*a*) to the purchase of surgical and other appliances for poor patients, especially out-patients; (*b*) to provide tickets for convalescent hospitals, and to pay the travelling expenses of patients thus sent to the seaside or to their own homes; (*c*) to provide stimulants and other articles of comfort to poor women in confinement at their own homes; (*d*) to enable the physicians and surgeons of the out-patient department to supply dinners and other medical comforts; (*e*) to provide poor sick children who are brought to the hospital as out-patients with milk on the recommendation of the medical officers; (*f*) to afford assistance to poor patients on leaving the hospital in the form of allowances of five shillings per week for three or more weeks, or special grants so that they may be able to recruit their strength before resuming work; and (*g*) in addition, to grant assistance occasionally to the families of patients while the bread-winners are in the hospital" (Burdett's *Hospitals and Asylums of the World*, vol. iii. 865).

Whether General Funds of Hospital applicable.—Whether the general funds of a hospital can properly be applied for any of the purposes above mentioned is at least, as a question of the law of the trusts, open to question. It is therefore advisable to accumulate a special

fund for this object, and to ear-mark it as such. Its position then will be that of a subsidiary institution in connection with the hospital, much on the same footing as a convalescent home (see CONVALESCENT HOMES). There seems, however, no objection when such a fund has been started to inform general subscribers that, unless a wish to the contrary is expressed, a percentage of the subscriptions will be added to the Samaritan Fund.

VIVISECTION

Vivisection: how Relevant to Hospital Law.—The law relating to the practice of vivisection is relevant to the law of hospitals, inasmuch as the Legislature expressly sanctions this practice in medical schools (see later in this Article), and those hospitals which are connected with medical schools may be materially affected (see evidence of the Hon. Stephen Coleridge in Report of King Edward's Hospital Fund for London on Financial Relations between Hospitals and Medical Schools, February 1905, as to which report see article MEDICAL SCHOOLS).

Meaning of Vivisection.—The word vivisection literally means the cutting of a living body, but is used generally to mean any experiment, whether surgical or medical, on the bodies of living animals, as opposed to human beings. It is clear that a mere experiment upon a living human being, and not for purposes of cure, would amount to malpractice, and render a practitioner liable to criminal proceedings.

History of Law of Vivisection.—As regards animals, however, the law formerly gave no protection, and experiments causing pain were freely practised on living animals for scientific purposes. The present law as to vivisection is now mainly governed by the Cruelty to Animals Act, 1876; but this Act is only one of a series of statutes for the prevention of cruelty to animals, one of the earliest of which was passed in 1822, and in order to understand

the later Act it is necessary to state how some of the main provisions of the earlier Acts were interpreted by the courts of law. The Act of 1822 (3 G. IV. c. 71) was called "An Act to prevent the cruel and improper treatment of cattle," and empowered magistrates to inflict a penalty on any person who should wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle. An Act in 1833 (3 & 4 W. IV. c. 19) contained a section (s. 29) prohibiting bear-baiting and cock-fighting within five miles of Temple Bar. These two enactments were repealed by an Act of 1835 (5 & 6 W. IV. c. 59), but in substance re-enacted with more extensive provisions. In this Act the word "torture" was introduced, and the provisions of the first enactment extended to "dogs" and "domestic animals." The enactment as to baiting was extended to any animal, whether domestic or wild. In 1837, by the statute 7 W. IV. and 1 V. c. 66, the statute 5 & 6 W. IV. c. 59 was extended to Ireland, and one moiety of the penalty was to be paid to such dispensary, hospital, or infirmary as the justice might direct.

Cruelty to Animals Act, 1849.—These two Acts of 1835 and 1837 were in turn repealed by the Cruelty to Animals Act, 1849, which was an Act to consolidate and amend the several laws relating to the cruel and improper treatment of animals. This Act is still in force, and is the principal Act for the prevention of cruelty to animals. By s. 2 any person who "tortures" any "animal" is subject to a penalty. It might have been supposed that these words were wide enough to include vivisection if the operation was conducted so as to cause pain to the animal, and also that any animal included wild animals; but as to the first point, decided cases

show that this is not the construction, and as to the second the Act itself, by its own definition (s. 29), restricts the meaning of "animal" to cattle and domestic animals. The Act was held to apply to the cutting of cocks' combs, which was done partly to make them more fit for fighting and partly for exhibition purposes. Cleasby B. in this case laid down that whenever the purpose for which the act is done is to make the animal more serviceable for the use of man the statute ought not to be held to apply. Kelly C.B. said:

"Now I admit that there are some acts which are cruel in the extreme, and no legislation can make them otherwise, yet they are perfectly lawful and not within the Act, because they are done for some lawful purpose—as, for instance, the cutting of horses. The purpose and object may be such as to legalise acts which would otherwise be within the statute. So as to the much milder operations upon sheep and dogs and many other cases might be put" (*Murphy* v. *Manning*, 1877, 2 Ex. D. 307).

So, spaying sows has been held to be lawful (*Lewis* v. *Fermor*, 1887, 18 Q.B.D. 532), but not dishorning cattle (*Ford* v. *Wiley*, 1889, 23 Q.B.D. 203); but as to the last see *contra*, *R.* v. *M'Donagh*, 1891, 28 L.R. Ir. 204, and *Renton* v. *Wilson*, 1888, 15 R. Just. Cas. 84. It would seem that guilty knowledge is necessary (*Greenwood* v. *Backhouse*, 1902, 86 L.T. 566). The above cases show the line taken by the Courts in the construction of this Act in considering the meaning of "cruelty" and "torture."

Cruelty to Animals Act, 1854.—The Act of 1854 amended the Act of 1849 in some minor details, but extended the definition of "animal" in the earlier Act to every kind of domestic animal, and the word under both Acts was held not to include a lion (*Harper* v. *Marcks*, 1894, 2 Q.B. 319); or a tame seagull (*Yates* v. *Higgins*, 1896, 1 Q.B. 166).

Wild Animals in Captivity Protection Act, 1900.—Following upon, and probably in consequence of, these latter decisions the Wild Animals in Captivity Protection Act, 1900, was passed, whereby the word "animal" in the later Act means any bird, beast, fish, or reptile which is not included in the Cruelty to Animals Acts, 1849 and 1854 (s. 1). This Act does not extend the meaning of animal under the Acts of 1849 and 1854, but supplements it by legislating specially for animals not included in the other Acts. It is important to observe that this Act does not apply to any act permitted by the Cruelty to Animals Act, 1876, which is the Act relating to vivisection, and which we will now proceed to examine.

Cruelty to Animals Act, 1876: Prohibition of Painful Experiments on Animals.—The Act which was founded on the unanimous report of a Royal Commission and might aptly have been called the Vivisection Act, is called the Cruelty to Animals Act, 1876. The preamble is as follows: "Whereas it is expedient to amend the law relating to cruelty to animals by extending it to the cases of animals which for medical, physiological, or other scientific purposes are subjected when alive to experiments calculated to inflict pain," and provides that "a person shall not perform on a living animal any experiment calculated to give pain, except subject to the restrictions imposed by this Act" (s. 2). The maximum penalty for the first offence is £50, for the second or any subsequent offence £100 or three months' imprisonment (s. 2). The Act contains no definition of "animal," but provides that the Act shall not apply to invertebrate animals (s. 22). Special protection is given to dogs, cats, horses, asses, and mules (s. 5). There appears to be nothing on the face of the Act except the preamble to restrict the meaning of animal to

the sense in which it is used in the Acts of 1849 and 1854, and the later Act of 1900, by expressly preventing its application to this Act, is some indication that the Legislature intended to include every kind of animal except invertebrate animals.

Vivisection in Medical Schools and Hospitals.—Amongst other restrictions imposed by the 1876 Act is the following: "The experiment shall not be performed as an illustration of lectures in medical schools, hospitals, colleges, or elsewhere" (s. 3(5)).

To this restriction, however, the Legislature adds the following important exception:

"Provided always that experiments may be performed under the foregoing provisions as to the use of anæsthetics by a person giving illustrations of lectures in medical schools, hospitals or colleges, or elsewhere, on such certificate being given as in this Act mentioned, that the proposed experiments are absolutely necessary for the due instruction of the persons to whom such lectures are given with a view to their acquiring physiological knowledge or knowledge which will be useful to them for saving or prolonging life or alleviating suffering."

Royal Commission on Vivisection.—A Royal Commission issued on the 17th September 1906 to "inquire into and report upon the practice of subjecting live animals to experiments, whether by vivisection or otherwise; and also to inquire into the law relating to that practice, and its administration; and to report whether any, and if so what, changes are desirable." This inquiry is still proceeding, but four interim reports with minutes of evidence have already been published (Cd. 3325–6, 3461–2, 3756–7, 3955–6).

VOLUNTARY HOSPITALS

Meaning of "Voluntary" Hospitals.—"Voluntary hospitals" means, in this work, charitable institutions supported by voluntary gifts, as opposed to those institutions which are supported by compulsory rate or those which are merely commercial, and are established for the sake of gain. Used in this sense, therefore, voluntary hospitals include endowed as well as unendowed hospitals. This classification of hospitals has been already explained (see INTRODUCTION).

Unendowed Hospitals.—An unendowed hospital is one which has been formed by a number of persons who, contributing towards it themselves, collect contributions from others which may be either used as income or invested and reserved as capital according to the needs of the institution. In its origin it is established entirely by voluntary contributions, although later it may receive special endowments.

Endowed Hospitals.—Endowed hospitals are institutions which are established by a gift of a permanent nature, and are subject to express trusts. Such gift is termed an "endowment." Besides such endowment an endowed hospital may be and generally is further maintained by voluntary contributions, and as already explained is in this work classed as a voluntary hospital.

Royal and Private Foundations.—Endowed hospitals, if founded by the king, are called "royal foundations"; if by one or more subjects, are called "private foundations.'

If the king and a subject join in a foundation, the king is the founder; but if a hospital is founded by a subject alone, however small the endowment, and the king afterwards endow it, even with lands of greater value, yet is the subject still the founder (2 Inst. 68). Royal foundations are generally established by charter, and private foundations by deed, during life or by will (see INCORPORATION and GIFTS).

Endowed Hospitals subject to Charity Commission.—Endowed hospitals, and unendowed hospitals having any special endowment, are, to the extent of their endowment, subject to the jurisdiction of the Charity Commissioners. The Commissioners have no jurisdiction in respect of the property of hospitals which are wholly supported by voluntary contributions, and as regards those which are supported partly by voluntary contributions and partly by income arising from any "endowment," their jurisdiction is confined to such income (Charitable Trusts Act, 1853, s. 62).

Meaning of "Endowment."—A difficulty sometimes arises as to the precise meaning of the word "endowment." By s. 66 of the last-named Act the term means and includes "all lands and real estate whatsoever of any tenure and any charge thereon or interest therein, and all stocks, funds, moneys, securities, investments, and personal estate whatsoever which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof." The following propositions are submitted as a summary of the law: (1) A gift of land may be an endowment if the intention to make it so is clearly expressed, but is not necessarily so if made in general terms (*Sons of Clergy* v. *Skinner*, 1893, 1 Ch. 178). (2) The mere fact that a charity possesses land on which its buildings are erected and which it occupies, but which is supported otherwise solely by voluntary subscriptions, does

not render it a charity in receipt of income arising from any endowment (see *Stockport Ragged, etc., Schools*, 1898, 2 Ch. 687; *Clergy Orphan Corporation*, 1894, 3 Ch. 145; but see per Cozens-Hardy M.R., *A.-G.* v. *Mathieson*, 1907, 2 Ch. 383). (3) The mere purchase of land out of voluntary contributions to be held upon trust for the general purposes of the institution does not constitute an endowment (*Church Army*, 1906, 94 L.T. 559; *Society for Teachers of Deaf and Whittle*, 1907, 2 Ch. 486). (4) If, however, trusts are declared of a permanent nature so that the proceeds of sale of the land must be re-invested in land and cannot be applied as income, then an endowment is constituted even though power is reserved to revoke or vary the trusts (*A.-G.* v. *Mathieson*, 1907, 2 Ch. 383).

Dealings with Land held as Endowment.—Where land is held as an endowment the consent of the Charity Commissioners is generally necessary before any sale, lease, or mortgage can be effected. The cases in which this is necessary, and the powers of hospitals to deal with land, are stated elsewhere (see LAND).

Advice given by Charity Commissioners.—In addition to the restrictions on dealing with endowments imposed by the Charitable Trusts Acts, the Commissioners have power to give advice on questions of administration and confer immunity on trustees who act upon such advice (Charitable Trusts Act, 1853, s. 16). They may also arbitrate and sanction compromises (Charitable Trusts Acts, 1853, ss. 23, 64, and 1855, s. 46). In proper cases unendowed hospitals may avail themselves of these privileges.

Power to establish Schemes.—The power of the Charity Commissioners to establish a scheme is often usefully invoked in cases of uncertainty, or to effect some modification of a trust which can no longer be carried out in accordance with the original intention of the donor.

Legal Proceedings.—In any matter relating to the administration of the income of endowments the sanction of the Charity Commissioners is required before legal proceedings can be taken (Charitable Trusts Act, 1853, s. 17). This does not apply to disputes between the hospital authority and third persons (see *Randall* v. *Blair*, 1840, 45 Ch. D. 139; *Rooke* v. *Dawson*, 1895, 1 Ch. 480).

The jurisdiction of the Court to determine a dispute is not thereby ousted (*Shum*, 1904, 91 L.T. 192).

Solicitors' Costs.—Express power is also conferred on the Charity Commissioners to order the taxation of solicitors' costs (Charitable Trusts Act, 1855, s. 40).

Appointment of New Trustees.—The Charity Commissioners may appoint and remove trustees and officers, and may invest the real or personal property of a hospital subject to their jurisdiction in new trustees (Charitable Trusts Act, 1860, s. 2, as restricted by s. 4; and see Charitable Trusts Act, 1862).

Official Trustees.—Charity lands and funds may respectively be vested in the Official Trustee of Charity Lands or in the Official Trustees of Charitable Funds, who are, by the Charitable Trusts Acts, created corporations for the purpose (Charitable Trusts Acts, 1855, ss. 15, 18, and 1887, ss. 4, 5).

Official Trustee of Charity Lands.—As to land, the vesting order is made either by the Court or by the Charity Commissioners. The Official Trustee of Charity Lands has no active duties and cannot interfere in the management of the land.

Official Trustees of Charitable Funds.—As to funds, the money or investments may be transferred to the Official Trustees by the hospital trustees themselves, or on application to the Court or the Charity Commis-

sioners by orders similar to those obtained in the case of land. Official Trustees of Charitable Funds do not administer the income, but merely transmit it to the hospital officials.

Incorporation by Charity Commissioners.—As to the power of the Charity Commissioners under the Charitable Trustees Incorporation Act, 1872, to create charitable corporations, see INCORPORATION.

Voluntary Hospitals regulated by Laws and By-laws.—Voluntary hospitals are regulated by their own laws and by-laws, and, except so far as they have any endowment, are not subject to the jurisdiction of the Charity Commissioners, and are, like other charitable institutions, free to act within the limits imposed by such regulations.

Distinction between Laws and By-laws.—The essential distinction between a law and a by-law lies, of course, in the fundamental nature of the one as opposed to the alterable character of the other. The trusts imposed by the founder are permanent, and cannot be changed, whereas the regulations for carrying such trusts into effect may be varied and adapted to circumstances. In the case of an unendowed hospital, the laws deal with the more important regulations, while the by-laws regulate minor details of administration.

Meaning of "By-law."—A "by-law" has been defined as "a law or ordinance dealing with matters of local or internal regulation made by a local authority, or by the members of a corporation or association" (Murray's *New English Dictionary*).

By-law must not be *ultra vires*.—A by-law must be consistent with the fundamental laws of any institution, and not *ultra vires* (*R.* v. *Cutbush*, 1763, 4 Burr. 2204). In the case of by-laws made by public bodies, such as

a local authority, every by-law must be reasonable (*Kruse* v. *Johnson*, 1898, 2 Q.B. 91 ; and see Home Office Circular dated January 1, 1903, as to Model By-laws, where the leading cases are cited).

By-law must be duly made.—Where certain formalities are prescribed for the making of by-laws, a by-law which has not been made in compliance with such formalities is invalid, and cannot be enforced.

Model By-laws.—The form of laws or by-laws best adapted to any particular institution varies so much with its origin and constitution that it is useless to set out a general form. Care should be taken to comply with the general rules of law mentioned above.

Rights of Subscribers to Voluntary Hospital.—The precise legal status of subscribers to a voluntary hospital is not settled. Their position generally is that of persons who have entrusted money to others for a specific purpose, and corresponds with that of a settlor who has settled his own money on trust. The purpose or trust in this case is the support of the hospital, and the trustees are the governors or managing committee of the institution.

Whether Subscribers can interfere in Management.—How far subscribers have any legal right to interfere in the general management of a voluntary hospital has not, it is believed, been yet challenged ; but it is clear that in the case of abuse they would be entitled to take steps to have it remedied. The practice, however, is to leave the management in the hands of the governors and the persons appointed by them, who send a balance-sheet to each subscriber after the end of the financial year.

Right to sue Committee for Account.—The members of a hospital committee are, in the case of a voluntary hospital, merely agents of the subscribers, and, although some members of the committee cannot sue the others

for an account of moneys received by them for the purposes of the hospital, yet the subscribers themselves can, through the Attorney-General, and with his consent, bring an action against the committee (see *Strickland* v. *Weldon*, 1885, 28 Ch. D. 426; see also, as to the right of a principal to sue his agent for an account, *Mackenzie* v. *Johnston*, 1819, 4 Mad. 373; *Makepeace* v. *Rogers*, 1865, 4 D. J. & S. 649). As to whether there is a resulting trust for the benefit of the subscribers when the purpose for which the gift was made has failed, see *Printers, etc., Society*, 1899, 2 Ch. 184; *Abbott Fund Trusts*, 1900, 2 Ch. 326; *Lead Co.'s, etc., Society*, 1904, 2 Ch. 1906; and *Andrew's Trust*, 1905, 2 Ch. 48.

Liability of Charitable Trustees to Account.—The Public Trustee Act, 1906, has given beneficiaries express powers to call for an account from their trustees (see ACCOUNTS and Public Trustee Rules, 1907).

Relief under Judicial Trustees Act, 1896.—Governors and other persons in a fiduciary position may remember that where a trustee has acted honestly and reasonably, and might fairly be excused for a breach of trust and for omitting to obtain the directions of the Court, express power is conferred upon the Court to give relief (Judicial Trustees Act, 1896, s. 3).

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