

The law relating to public health and local government : including the law relating to the removal of nuisances injurious to health, the prevention of diseases, and sewer authorities, with the statutes and cases / by W. Cunningham Glen.

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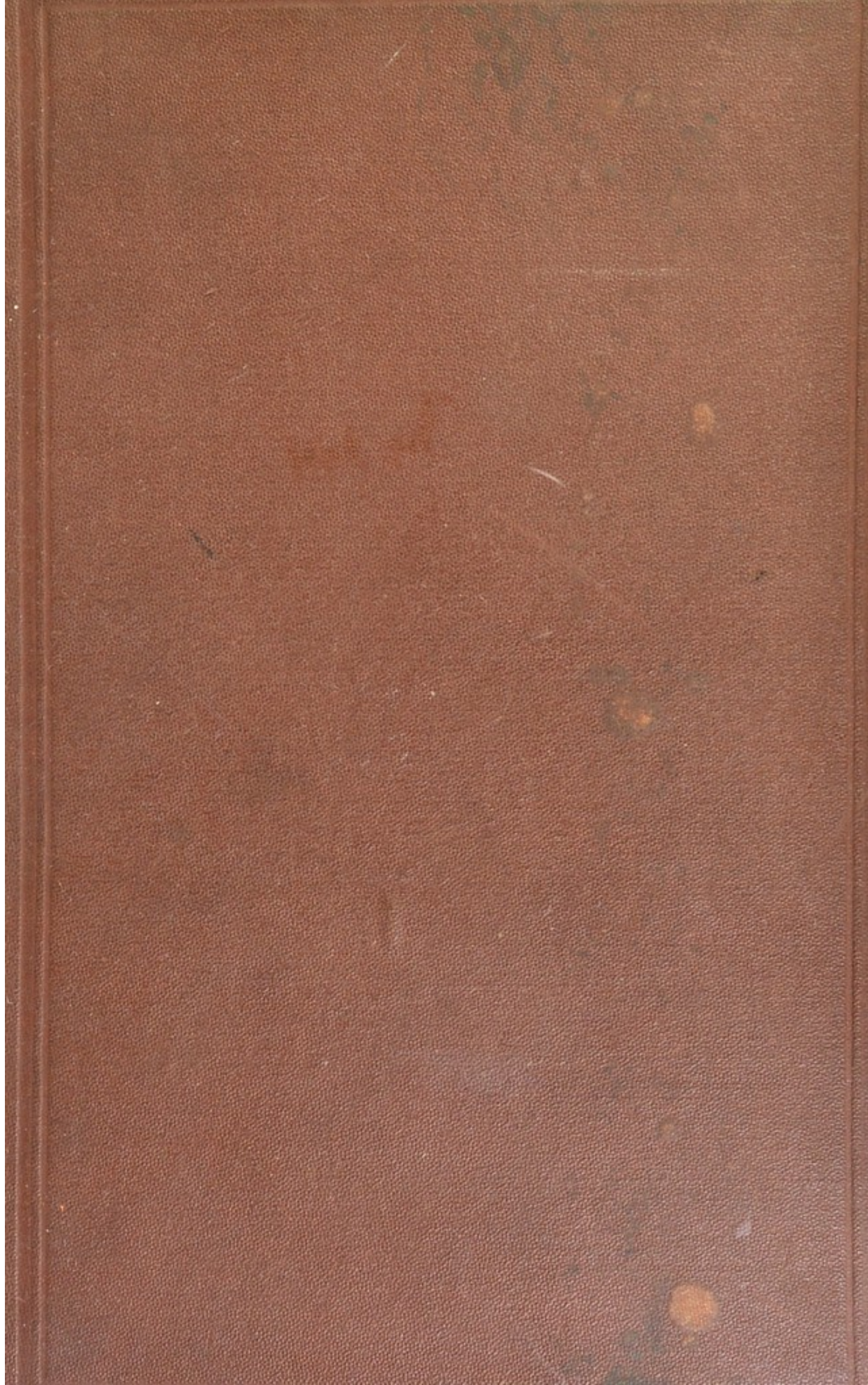
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THE
Law relating to Public Health



AND
LOCAL GOVERNMENT:

INCLUDING THE LAW RELATING TO
THE REMOVAL OF NUISANCES INJURIOUS TO HEALTH,
THE PREVENTION OF DISEASES, AND
SEWER AUTHORITIES,

WITH THE
Statutes and Cases.

BY
W. CUNNINGHAM GLEN,
BARRISTER-AT-LAW.

FIFTH EDITION.

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PREFACE.

THE FIRST EDITION of this work was published shortly after the passing of the Local Government Act, 1858, the Second in the year 1862, the Third in 1864, the Fourth in 1866, and the present—the Fifth Edition—is now published.

The arrangement of the original work has been preserved, but the several chapters have been greatly extended in respect of their subject-matter.

The work is comprised in Six Parts: the First Part treats of the formation of the districts of the Local Boards, the constitution of those Boards, their election and general powers; the Second Part, of their powers as to sanitary matters and the local government of towns; the Third Part, of the powers of Local Boards as to rating, raising money on mortgage of the rates, purchase of lands, audit of accounts, contracts, arbitration, legal proceedings, bye-laws, and other miscellaneous subjects; the Fourth Part, of the removal of nuisances injurious to health; the Fifth Part, of sewage utilization and the constitution of sewer authorities under the Acts of 1865, 1866, 1867, and 1868; and the Sixth Part, of the law relating to the prevention of epidemic, endemic, and contagious diseases.

The plan of the work places before the reader, at one view, the whole of the law upon each particular subject embraced in it.

Not only during the interval of each edition of this work have additions been made by the Legislature to the Sanitary Laws, but very numerous decisions have been pronounced by the Courts of Law upon the construction of the Public Health and Local Government Acts. The whole of the decisions will be found incorporated

in the text of the chapters to the subject to which they severally relate. Those which bear upon the pollution of rivers by the sewage of towns being discharged into them are of peculiar importance, as the subject of the preservation of rivers from pollution now demands the serious attention of the local authorities.

Several entirely new chapters have been added; and some of those contained in the former Editions have been re-written or subdivided into sections, so as to keep each particular subject separate, and thus make the work more easy of reference.

One of the new chapters relates to the powers of sewer authorities under the Sewage Utilization Act, 1865, and the Sanitary Acts, 1866, 1867, and 1868, which give improved facilities for the sewerage of suburban districts. Another is of peculiar importance, treating of the drainage, storage, and distribution of water, and is contributed by Mr. P. B. Cunningham, Civil Engineer of Her Majesty's Indian Government Service.

The law relating to the establishment of public baths and wash-houses, common lodging-houses, dwelling-houses for the labouring classes, Workshop Regulation Act, and free public libraries, has been fully set forth in the chapters relating to those matters;—so also with regard to the drainage of towns into the river Thames, and the preservation for the use of the public of commons or open spaces in the neighbourhood of the metropolis. In a separate chapter, Mr. M'Cullagh Torrens' measure for the establishment of Artizans' and Labourers' Dwellings has received due attention.

The law relating to the removal of nuisances injurious to health, and the prevention of diseases, has been entirely revised; and with that part of the work has been incorporated the new provisions of the Sanitary Acts, 1866 and 1868, which give greater facilities for the removal of nuisances by the action of the local authorities. There have also been incorporated in it the views of some of the best authorities on the subject of disinfection, water supply, and other cognate subjects.

The Appendix comprises the whole of the Public Health, Local Government, Public Health and Local Government (Supplemental), Nuisances Removal and Diseases Prevention Acts, and the Acts incorporated with those Acts; as also the Quarantine Act, 1825, the Workshop Regulation Act, and some others.

The work contains the whole of the law of "Local Self-Government," in relation to the conservation of the Public Health, and to all those numerous matters upon which life, health, and property depend.

As showing the importance which is now attached to sanitary science, it is stated, in the Report of the Select Committee on Scientific Institutions, that it is contemplated that, among other branches of scientific knowledge, the laws of health shall be taught to young children in every elementary school. Again, the Ennis Sanitary Committee, in a memorial dated the 10th of January, 1867, to the Commissioners of National Education in Ireland, say :—

"1st. That very great and almost universal ignorance of sanitary science and hygiene prevails in this country.

"2nd. That no system of National Education can be considered satisfactory which does not convey some information on the principles of hygiene, such knowledge being universally and indispensably necessary.

"3rd. That a great amount of the sickness and mortality in this country depends on preventable causes; and although the Sanitary Committee does not think that all the sickness and mortality from such causes would be prevented by a more general knowledge of sanitary laws, still there can be no doubt that they may be considerably abated.

"4th. That, as it appears that no treatise or manual containing any information on sanitary matters is included among the books used in the National Schools to the pupils, in which especially some elementary knowledge of sanitary science is peculiarly necessary, the Committee beg that the National Board of Education should have a suitable manual on the subject of popular hygiene prepared and introduced as a normal element of education in all their schools."

In reply to this memorial, the Commissioners have announced (March, 1867) that they have an elementary work on sanitary science in course of preparation.

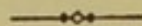
The learned Coke in the epilogue to his Commentary upon Littleton says: "I had once intended, for the ease of our students, to have made a table (index) to these Institutes; but when I considered that tables and abridgements are most profitable to them that make them, I have left that work to every studious reader." This is undoubtedly true

as regards the student, for it is only by laborious study that he can make himself master of the subject of which his author treats. An index, however elaborate, cannot make the student familiar with his author; nevertheless, to a work which is required for constant reference an index is indispensable, and great pains have been taken to make the index to the present edition so complete that any subject may be at once found by reference to it.

Mr. Algernon C. Bauke, of the Poor Law Board, has again undertaken the duty of revising the whole of the proof sheets. Indeed, without his aid the present edition could not have been published so soon as it has been.

5, *Elm Court, Temple,*
1st March, 1869.

TABLE OF CONTENTS.



	PAGE
INTRODUCTION	1

PART I.

CHAPTER I.

FORMATION OF DISTRICTS.

§ 1. Districts under the Public Health Act, 1848	6
§ 2. Districts under the Local Government Act, 1858	10
§ 3. Adoption of Local Government Act by Places not having defined Boundaries	15
§ 4. Partial adoption of Local Government Act	18
§ 5. Abandonment of Local Government Act	19
§ 6. Transfer of Powers of Trustees under Local Acts	20
§ 7. General Provisions as to adoption of the Local Government Act	21
§ 8. Appeal against adoption of the Local Government Act	23

CHAPTER II.

CONSTITUTION OF LOCAL BOARDS.

§ 1. Local Boards of Health	25
§ 2. Local Government Boards	26
§ 3. Transfer of Powers of Local Boards to Municipal Corporations	27

CHAPTER III.

QUALIFICATION OF MEMBERS OF LOCAL BOARDS.

§ 1. Local Boards of Health	28
§ 2. Local Government Boards	30

CHAPTER IV.

Disqualification of Members of Local Boards	32
---	----

CHAPTER V.

Division of Districts into Wards	36
--	----

CHAPTER VI.

ELECTION OF LOCAL BOARDS.

	PAGE
§ 1. Generally	38
§ 2. In particular Districts	51

CHAPTER VII.

Continuance in Office of Local Boards	56
---	----

CHAPTER VIII.

Proceedings of Local Boards	58
---------------------------------------	----

CHAPTER IX.

Appointment of Officers by Local Boards	61
---	----

CHAPTER X.

Provisional Orders of Secretary of State	67
--	----

PART II.

CHAPTER I.

ON DRAINAGE AND THE STORAGE AND DISTRIBUTION OF WATER.

§ 1. On the Source of Fresh Water and natural Drainage	70
§ 2. On the Flow of Water	71
§ 3. On Water-Works and Drainage-Works	78

CHAPTER II.

SEWERAGE OF DISTRICTS.

§ 1. Public Sewers	88
§ 2. Contract and Specification of Sewerage Works	112
§ 3. Removal of Sewage matter	117
§ 4. Drainage into the River Thames	130

CHAPTER III.

Ditches, Drains, etc.	138
-------------------------------	-----

CHAPTER IV.

Cleansing Streets, removing Filth, etc.	141
---	-----

CHAPTER V.

House Drainage, Sewerage, and Purification	145
--	-----

CHAPTER VI.

MANAGEMENT OF STREETS.

	PAGE
§ 1. Paving, Lighting, and improving Streets	155
§ 2. Specification and Conditions of Levelling, Paving, Flagging, and Channelling Streets	170
§ 3. Improving Line of Streets and Removing Obstructions	172
§ 4. Naming Streets and Numbering Houses	176
§ 5. Lighting Streets	176
§ 6. Public Clocks	178
§ 7. Public Pleasure-Grounds	178
§ 8. Management of Commons	181

CHAPTER VII.

HIGHWAYS.

§ 1. Management of Highways	183
§ 2. Locomotives on Highways	192

CHAPTER VIII.

REGULATION OF BUILDINGS.

§ 1. New Buildings	199
§ 2. Ruinous or Dangerous Buildings	209
§ 3. Precautions to be taken during Repairs	211

CHAPTER IX.

Water Supply	212
------------------------	-----

CHAPTER X.

PUBLIC BATHS AND WASH-HOUSES, AND PUBLIC BATHING.

§ 1. Adoption of Acts in Boroughs	232
§ 2. Adoption of Acts in Local Board of Health Districts	232
§ 3. Powers, Duties, and Rights of Local Boards	233
§ 4. Provision of Public Baths and Wash-houses	235
§ 5. Management of Public Baths and Wash-houses	239

CHAPTER XI.

Common Lodging-Houses	243
---------------------------------	-----

CHAPTER XII.

LABOURING CLASSES' LODGING-HOUSES.

§ 1. Their Establishment	257
§ 2. Advances of Public Money towards their Erection	266

CHAPTER XIII.

ARTIZANS' AND LABOURERS' DWELLINGS.

§ 1. Preliminary	272
§ 2. Appointment of Officer of Health	274

	PAGE
3. Report of Officer of Health on Premises	274
4. Report of Householders on Premises	275
5. Procedure after receiving Report	275
6. Appeal against Order of Local Authority	276
7. Service of Notices on Owners.	278
8. Execution of Works	278
9. Demolition of Premises.	279
10. Determination of Tenancies	279
11. Application to Justices	280
12. Charging Order on Premises	280
13. Expenses of Local Authority	282
14. Borrowing Powers	282
15. Service of Notices, &c.	283
16. Penalties	283

CHAPTER XIV.

Establishment of Markets	284
------------------------------------	-----

CHAPTER XV.

Slaughter-houses	294
----------------------------	-----

CHAPTER XVI.

Inspection of Places for Sale of Butchers' Meat	297
---	-----

CHAPTER XVII.

Offensive Trades	298
----------------------------	-----

CHAPTER XVIII.

Prevention of Smoke	304
-------------------------------	-----

CHAPTER XIX.

Obstructions and Nuisances in Streets	307
---	-----

CHAPTER XX.

Extinguishing Fires	312
-------------------------------	-----

CHAPTER XXI.

Places of Public Resort.	313
----------------------------------	-----

CHAPTER XXII.

Hackney Carriages	318
-----------------------------	-----

CHAPTER XXIII.

Burial of the Dead	322
------------------------------	-----

CHAPTER XXIV.

Bakehouse Regulation Act	331
------------------------------------	-----

CHAPTER XXV.

Workshop Regulation Act	PAGE 334
-----------------------------------	-------------

CHAPTER XXVI.

Stipendiary Magistrates.	344
----------------------------------	-----

CHAPTER XXVII.

Free Public Libraries	347
---------------------------------	-----

PART III.

CHAPTER I.

DISTRICT FUND AND RATES.

§ 1. District Fund	352
§ 2. General District Rates	353
§ 3. Special District Rates	378
§ 4. Private Improvement Expenses	379
§ 5. Water Rates	383
§ 6. Highway Rates	385
§ 7. Burial Rates	398
§ 8. Appeals against Rates	398
§ 9. Mortgage of Rates	403

CHAPTER II.

Purchase of Lands	411
-----------------------------	-----

CHAPTER III.

Audit of Accounts	416
-----------------------------	-----

CHAPTER IV.

Contracts	427
---------------------	-----

CHAPTER V.

Arbitration	432
-----------------------	-----

CHAPTER VI.

Legal Proceedings	437
-----------------------------	-----

CHAPTER VII.

Bye-laws	451
--------------------	-----

CHAPTER VIII.

Miscellaneous Provisions	455
------------------------------------	-----

PART IV.

CHAPTER I.

REMOVAL OF NUISANCES.

	PAGE
Preliminary Observations	466
1. The Local Authority	469
2. Committees of Local Authority	472
3. Appointment of Inspectors of Nuisances	473
4. Expenses of Local Authority	475
5. What are deemed Nuisances	477
6. Authority to inspect Premises and order Works to be done	481
7. Authority to Nuisance Authorities in Metropolis to provide Hospitals for the Sick	487

CHAPTER II.

1. Procedure before Justices	489
2. Order for Abatement of Nuisances	495
3. Costs of Local Authority	499
4. Disinfecting Premises	503
5. Carriages for conveyance of Infected Persons	504
6. Removal of Sick to Hospitals	504
7. Mortuary Houses	505
8. Ditches, Drains, etc., adjoining Highways	505
9. New Sewers	508
10. Construction of Sewers and Provision of Wells and Pumps by Church-wardens and Overseers in Populous Parishes	517
11. Fouling Water with Gas-washings	519
12. Exposing for Sale Meat unfit for food	520
13. Noxious Trades and Manufactures	522
14. Removal of Manure and Refuse	525
15. Overcrowded Dwelling-houses	526
16. Cellar Dwellings	527

CHAPTER III.

1. Services of Notices, etc., and Proof of Resolutions of Local Authority.	529
2. Legal Procedure	529
3. Penalties	531
4. Appeals	531
5. Protection of Local Authority and their Officers	535

PART V.

SEWAGE UTILIZATION.

1. Sewer Authorities	536
2. Committees of Sewer Authorities	538
3. Rates in Drainage Districts	539
4. Special Drainage Districts	540
5. Union of Sewage Districts	542

	PAGE
§ 6. Powers of Sewer Authorities	544
§ 7. Distribution of Sewage	547
§ 8. User of Sewers of Sewer Authority	547
§ 9. Prevention of Pollution of Rivers	549
§ 10. Supply of Water by Sewer Authorities	549
§ 11. Power of Sewer Authorities to provide Hospitals	550
§ 12. Saving as to Powers	551
§ 13. Recovery of Penalties	551

PART VI.

PREVENTION OF DISEASES.

§ 1. When the Privy Council may put the Diseases Prevention Act in force	552
§ 2. Directions and Regulations of the Privy Council	553
§ 3. Local Authorities and their Powers	555
§ 4. Officers of Health	559
§ 5. Medical Aid to Sick on Board Vessels	561
§ 6. Quarantine	563
§ 7. Public Exposure of Persons labouring under Infectious Diseases	563
§ 8. Public Vaccination	565

APPENDIX OF STATUTES.

APPENDIX (A).

SANITARY AND LOCAL GOVERNMENT ACTS.

11 & 12 Vict. c. 63.

An Act for promoting the Public Health (31st August, 1848)	567
--	-----

18 & 19 Vict. c. 116.

An Act for the better Prevention of Diseases (14th August, 1855)	624
--	-----

18 & 19 Vict. c. 121.

An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849 (14th August, 1855)	626
---	-----

21 & 22 Vict. c. 97.

An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health (2nd August, 1858)	644
---	-----

21 & 22 Vict. c. 98.

An Act to amend the Public Health Act, 1848, and to make further provision for the Local Government of Towns and populous Districts (2nd August, 1858)	646
--	-----

22 & 23 Vict. c. 3.	
An Act to amend and make perpetual "The Public Health Act, 1858 " (1st April, 1859).	PAGE 682
23 & 24 Vict. c. 77.	
An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases (6th August, 1860)	682
24 & 25 Vict. c. 61.	
An Act to amend the Local Government Act (1st August, 1861)	687
26 Vict. c. 17.	
An Act to amend the Local Government Act, 1858 (11th May, 1863)	695
26 & 27 Vict. c. 117.	
An Act to amend the Nuisances Removal Act for England, 1855, with respect to the seizure of Diseased and Unwholesome Meat (28th July, 1863)	697
28 & 29 Vict. c. 75.	
An Act for facilitating the more useful application of Sewage in Great Britain and Ireland (29th June, 1865)	698
29 & 30 Vict. c. 41.	
An Act to amend the Nuisances Removal and Diseases Prevention Act, 1860 (28th June, 1866)	701
29 & 30 Vict. c. 90.	
An Act to amend the law relating to Public Health (7th August, 1866)	702
30 & 31 Vict. c. 113.	
An Act for facilitating the Distribution of Sewage Matter over Land, and otherwise amending the Law relating to Sewer Authorities (20th August, 1867)	716
31 & 32 Vict. c. 115.	
An Act to amend the Sanitary Act, 1866 (31st July, 1868)	720

APPENDIX (B).

PUBLIC HEALTH AND LOCAL GOVERNMENT SUPPLEMENTAL ACTS.

1. *Public Health Supplemental Acts.*

12 & 13 Vict. c. 94 (1849)	724
13 & 14 Vict. c. 32 (1850)	724
13 & 14 Vict. c. 90 (1850, No. 2)	724
13 & 14 Vict. c. 108 (1850, No. 3)	725
14 & 15 Vict. c. 80 (1851)	725

	PAGE
14 & 15 Vict. c. 98 (1851, No. 2)	725
14 & 15 Vict. c. 103 (1851, No. 3)	726
15 & 16 Vict. c. 42 (1852)	726
15 & 16 Vict. c. 69 (1852, No. 2)	726
16 Vict. c. 24 (1853)	726
16 & 17 Vict. c. 126 (1853, No. 2)	727
17 & 18 Vict. c. 53 (1854)	727
18 & 19 Vict. c. 125 (1855)	727
19 & 20 Vict. c. 26 (1856)	727
20 Vict. c. 3 (1857)	727
20 & 21 Vict. c. 22 (<i>Aldershott</i>)	727
21 Vict. c. 10 (1858)	728

2. Local Government Supplemental Acts.

22 Vict. c. 31 (1859)	728
22 & 23 Vict. c. 11 (1859)	728
23 & 24 Vict. c. 44 (1860)	728
23 & 24 Vict. c. 118 (1860)	729
24 & 25 Vict. c. 39 (1861)	730
24 & 25 Vict. c. 128 (1861)	730
25 & 26 Vict. c. 25 (1862)	731
26 & 27 Vict. c. 32 (1863)	731
26 & 27 Vict. c. 64 (1863)	732
27 & 28 Vict. c. 26 (1864)	733
27 & 28 Vict. c. 83 (1864)	733
28 Vict. c. 24 (1865)	733
28 Vict. c. 25 (1865)	734
28 Vict. c. 41 (1865)	735
28 & 29 Vict. c. 108 (1865)	735
28 & 29 Vict. c. 110 (1865)	736
29 Vict. c. 24 (1866)	736
29 & 30 Vict. c. 79 (1866)	737
29 & 30 Vict. c. 106 (1866)	738
29 & 30 Vict. c. 107 (1866)	739
30 Vict. c. 21 (1867)	740
30 & 31 Vict. c. 49 (1867)	741
30 & 31 Vict. c. 65 (1867)	741
30 & 31 Vict. c. 67 (1867)	742
30 & 31 Vict. c. 83 (1867)	742
30 & 31 Vict. c. 123 (1867)	743
31 & 32 Vict. c. x. (1868)	743
31 & 32 Vict. c. lxxxiv. (1868)	744
31 & 32 Vict. c. lxxxv. (1868)	744
31 & 32 Vict. c. lxxxvi. (1868)	745
31 & 32 Vict. c. clii. (1868)	745
31 & 32 Vict. c. cliii. (1868)	746

APPENDIX (C).

INCORPORATED CLAUSES OF CONSOLIDATION ACTS.

Lands Clauses Consolidation Acts, 1845, 1860.

8 Vict. c. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature (8th May, 1845)	748
---	-----

23 & 24 Vict. c. 106.

	PAGE
An Act to amend the Lands Clauses Consolidation Acts, 1845, in regard to sales and compensation for land, by way of a rent-charge, annual feu duty, or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Acts (20th August, 1860)	787

Markets and Fairs Clauses Act.

10 Vict. c. 14.

An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets or Fairs (23rd April, 1847)	790
---	-----

The Commissioners' Clauses Act, 1847.

10 Vict. c. 16.

An Act for consolidating in one Act certain provisions usually contained in Acts with respect to the constitution and regulation of Bodies of Commissioners appointed for carrying on undertakings of a public nature (23rd April, 1847)	799
--	-----

Towns Improvement Clauses Act.

10 & 11 Vict. c. 34.

An Act for consolidating in one Act certain provisions usually contained in Acts for Paving, Draining, Cleansing, Lighting, and Improving Towns (21st June, 1847)	802
---	-----

Towns Police Clauses Act.

10 & 11 Vict. c. 89.

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns (22nd July, 1847)	812
---	-----

APPENDIX (D).

PUBLIC WORKS LOAN ACTS.

16 & 17 Vict. c. 40.

An Act for altering the mode of Repayment of Advances by the Public Works Loan Commissioners under the Public Health Act, 1848, and other Acts (8th July, 1853)	826
---	-----

24 & 25 Vict. c. 80.

An Act to authorize Advances of Money out of the Consolidated Fund for carrying on Public Works and Fisheries, for employment of the Poor, and for facilitating the Construction and Improvement of Harbours; and for other purposes (6th August, 1861)	828
---	-----

APPENDIX (E).

The Quarantine Act.

6 Geo. 4, c. 78.

- An Act to repeal the several Laws relating to the performance of Quarantine, and to make other provisions in lieu thereof (27th June, 1825) . 833

Protection of Ornamental Grounds in Cities and Boroughs.

26 Vict. c. 13.

- An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs (4th May, 1863) 849

Bakehouse Regulation Act.

26 & 27 Vict. c. 40.

- An Act for the Regulation of Bakehouses (13th July, 1863) 852

Workshop Regulation Act.

30 & 31 Vict. c. 146.

- An Act for Regulating the Hours of Labour for Children, Young Persons, and Women, employed in Workshops, and for other purposes relating thereto (21st August, 1867) 855

TABLE OF STATUTES.

	PAGE		PAGE
43 Eliz. c. 2.	364	3 & 4 Wm. 4, c. 90 s. 33. . . .	368
— s. 4	394	— 50.	520
21 Jac. 1, c. 7	309	4 & 5 Wm. 4, c. 76, s. 68. . . .	29, 483
14 Car. 2, c. 12	329	— 99.	423
5 & 6 W. & M. c. 11	420	5 & 6 Wm. 4, c. 33.	420
8 & 9 Wm. 3, c. 3	420	— c. 50	156, 184
9 Anne, c. 20, s. 5	42	— s. 23	167, 394
5 Geo. 2, c. 19, s. 23	420	— 27.	386, 387
17 Geo. 2, c. 3	371	— 29.	386, 387
— s. 1	371	— 30.	391
— c. 38, s. 12	31	— 31.	393
— ss. 7-12	394	— 32.	393
27 Geo. 2, c. 20, s. 2	395	— 33.	394
11 Geo. 3, c. xix	377	— 34.	394, 516
13 Geo. 3, c. 78, ss. 30-45	387	— 45.	506
21 Geo. 3, c. xlvii	377	— 54.	506
28 Geo. 3, c. lxiv	377	— 67. 509, 513, 514	
34 Geo. 3, c. 4	26, 27	— 68. 509, 513, 514	
— c. civ	377	— 69.	184
41 Geo. 3, c. 23, ss. 1, 2, 3, 7 . . .	394	— 105.	511, 516
52 Geo. 3, c. lxxii	26, 377	— c. lxix	377
53 Geo. 3, c. 92	730	— c. 76	20, 315, 467
54 Geo. 3, c. 170, s. 11	377, 393	— s. 9	28
— s. 12	394	— 11.	386
57 Geo. 3, c. 29, ss. 59 & 60	142	— 15.	348
— c. 93	394	— 28.	28, 29, 35
3 Geo. 4, c. 126, s. 104.	390	— 44.	36
— 114.	507	— 50.	30
— 115.	508	— 52.	33
4 Geo. 4, c. 95, s. 78	189	— 69.	21
6 Geo. 4, c. 78	563	— 70.	60
7 & 8 Geo. 4, c. 17.	394	— 75.	21
9 Geo. 4, c. 61	313	— 90.	142, 444
1 & 2 Wm. 4, c. 22.	320	— 91.	444
— s. 20	320	— 132.	401, 444
2 & 3 Wm. 4, c. 120	318	— 142.	468
3 & 4 Wm. 4, c. 22.	424	6 & 7 Wm. 4, c. 71, s. 69. . . .	388
— c. 30, s. 1	169, 390	— 70.	388, 389
— c. 90	176, 424	— 90.	389

	PAGE		PAGE
6 & 7 Wm. 4, c. 89, s. 3 . . .	505	9 & 10 Vict. c. 74, s. 4 . . .	232
_____ c. 96 . . .	363	_____ 9 . . .	233
_____ s. 1 . . .	40, 363,	_____ 10 . . .	233
_____	365	_____ 11 . . .	233
_____ 6 . . .	397	_____ 12 . . .	233
7 Wm. 4 & 1 Vict. c. 68, s. 2 . . .	505	_____ 13 . . .	234
_____ c. 45, s. 2 . . .	43, 371	_____ 14 . . .	234
_____ c. 69, s. 8 . . .	389	_____ 15 . . .	234
1 Vict. c. 78, s. 44 . . .	416	_____ 21 . . .	235
1 & 2 Vict. c. 110 . . .	4	_____ 22 . . .	235
_____ s. 13 . . .	411	_____ 23 . . .	236
2 & 3 Vict. c. 47, s. 42 . . .	317	_____ 24 . . .	235, 236
_____ s. 54 . . .	309	_____ 25 . . .	236
_____ c. 62, s. 3 . . .	390	_____ 26 . . .	237
_____ c. 71, s. 14 . . .	495	_____ 27 . . .	237
_____ c. 93, s. 10 . . .	474	_____ 28 . . .	238
3 & 4 Vict. c. 61, s. 15 . . .	11	_____ 29 . . .	238
_____ c. 89 . . .	387	_____ 30 . . .	235
4 & 5 Vict. c. 45 . . .	424	_____ 31 . . .	238
5 Vict. c. 7 . . .	387	_____ 32 . . .	238
5 & 6 Vict. c. 35, s. 102 . . .	405	_____ 33 . . .	239
_____ c. 97, s. 3 . . .	449	_____ 34 . . .	239
_____ 4 . . .	446, 448	_____ 35 . . .	240
_____ 5 . . .	448	_____ 36 . . .	240
6 Vict. c. 18, s. 4 . . .	43	_____ 38 . . .	240
6 & 7 Vict. c. 36, s. 1 . . .	390	_____ 39 . . .	234
_____ c. 37, s. 9 . . .	11, 16	_____ 40 . . .	235
_____ c. 73, s. 37 . . .	63	_____ c. 80 . . .	261, 350
_____ c. 86 . . .	320	_____ c. 93 . . .	461
_____ s. 8 . . .	319	_____ c. cccxlv . . .	377
7 & 8 Vict. c. 101, s. 31 . . .	327	10 Vict. c. 16 . . .	464
_____ 32 . . .	422	_____ c. xxx. s. 10 . . .	40
_____ 35 . . .	420	10 & 11 Vict. c. 14 . . .	285
_____ 36 . . .	421	_____ s. 12 . . .	285
8 Vict. c. 16 . . .	236, 261	_____ 13 . . .	285, 286
_____ c. 18 . . .	236, 261,	_____ 14 . . .	286
_____	268, 464	_____ 15 . . .	287
_____ s. 3 . . .	273	_____ 16 . . .	287
_____ 25 . . .	433	_____ 21 . . .	287
_____ 68 . . .	456	_____ 22 . . .	287
_____ 69 . . .	217	_____ 23 . . .	287
_____ 92 . . .	148	_____ 24 . . .	287
_____ c. 20, s. 114 . . .	304	_____ 25 . . .	287
_____ 140 . . .	162	_____ 26 . . .	288
8 & 9 Vict. c. 118, s. 15 . . .	480	_____ 27 . . .	288
_____ 73 . . .	480	_____ 28 . . .	288
_____ c. 126, s. 16 . . .	62	_____ 29 . . .	289
_____ 17 . . .	62	_____ 30 . . .	289
9 & 10 Vict. c. 74, s. 1 . . .	232	_____ 31 . . .	289
_____ 2 . . .	232, 233,	_____ 32 . . .	289
_____	235, 236	_____ 33 . . .	289
_____ 3 . . .	232	_____ 34 . . .	289

	PAGE		PAGE
10 & 11 Vict. c. 14, s. 35 . . .	289	10 & 11 Vict. c. 34, s. 108 . . .	304, 306
_____ 36 . . .	290	_____ 121 . . .	227
_____ 37 . . .	290	_____ 122 . . .	227
_____ 38 . . .	290	_____ 123 . . .	227
_____ 39 . . .	290	_____ 124 . . .	227, 228
_____ 40 . . .	290	_____ 125 . . .	294
_____ 41 . . .	290	_____ 126 . . .	294, 295
_____ 42 . . .	290, 291,	_____ 127 . . .	295
_____	453	_____ 128 . . .	295, 453
_____ 43 . . .	291	_____ 129 . . .	295
_____ 44 . . .	292	_____ 130 . . .	295
_____ 45 . . .	292	_____ 131 . . .	296
_____ 46 . . .	292	_____ 143 . . .	178
_____ 47 . . .	292, 293	_____ 149 . . .	162
_____ 48 . . .	293	_____ 210 . . .	297
_____ 49 . . .	293	_____ c. 61, s. 3 . . .	234
_____ c. 15, s. 21 . . .	230	_____ 4 . . .	236
_____ 22 . . .	230	_____ 5 . . .	240
_____ c. 16 . . .	32, 268	_____ 7 . . .	241
_____ s. 9 . . .	32	_____ c. 89, s. 21 . . .	307
_____ 15 . . .	32, 34	_____ 22 . . .	307
_____ c. 17, s. 42 . . .	228	_____ 23 . . .	307
_____ 59 . . .	227	_____ 24 . . .	307
_____ c. 34 . . .	187	_____ 25 . . .	307
_____ ss. 9, 11 . . .	475	_____ 26 . . .	307
_____ s. 12 . . .	560	_____ 27 . . .	307
_____ 24 . . .	100	_____ 28 . . .	307, 308
_____ 48 . . .	187	_____ 29 . . .	309
_____ 49 . . .	187, 461	_____ 30 . . .	312
_____ 50 . . .	9	_____ 31 . . .	312
_____ 53 . . .	163	_____ 32 . . .	312
_____ 64 . . .	176	_____ 33 . . .	312
_____ 65 . . .	176	_____ 34 . . .	313
_____ 66 . . .	172	_____ 35 . . .	313
_____ 67 . . .	172	_____ 36 . . .	314
_____ 68 . . .	172, 199	_____ 37 . . .	318
_____ 69 . . .	169, 172	_____ 38 . . .	318
_____ 70 . . .	169, 172	_____ 39 . . .	318
_____ 71 . . .	175	_____ 40 . . .	318
_____ 72 . . .	175	_____ 41 . . .	318
_____ 73 . . .	176	_____ 42 . . .	318
_____ 74 . . .	169, 174	_____ 43 . . .	318
_____ 75 . . .	209	_____ 44 . . .	318
_____ 76 . . .	210	_____ 45 . . .	318
_____ 77 . . .	211	_____ 46 . . .	319
_____ 78 . . .	211	_____ 47 . . .	319
_____ 79 . . .	211	_____ 48 . . .	319
_____ 80 . . .	211	_____ 49 . . .	319
_____ 81 . . .	211	_____ 50 . . .	319
_____ 83 . . .	156, 211	_____ 51 . . .	319
_____ 101 . . .	560	_____ 52 . . .	319
_____ 102 . . .	561	_____ 53 . . .	319

	PAGE		PAGE
10 & 11 Vict. c. 89, s. 54 . . .	319	11 & 12 Vict. c. 63, s. 9 . . .	7
_____ 55 . . .	319	_____ 10 . . .	8, 9
_____ 56 . . .	319	_____ 11 . . .	10, 353
_____ 57 . . .	320	_____ 12 . . .	25, 28,
_____ 58 . . .	320	_____	56, 58
_____ 59 . . .	320	_____ 13 . . .	26, 56, 57
_____ 60 . . .	320	_____ 14 . . .	50, 51, 57
_____ 61 . . .	320	_____ 15 . . .	26
_____ 62 . . .	320	_____ 16 . . .	29, 30
_____ 63 . . .	320	_____ 17 . . .	30
_____ 64 . . .	320	_____ 18 . . .	33, 57
_____ 65 . . .	320	_____ 19 . . .	32, 33,
_____ 66 . . .	320	_____	34, 35
_____ 67 . . .	320	_____ 20 . . .	14, 38, 40,
_____ 68 . . .	320, 454	_____	41, 106
_____ 69 . . .	242	_____ 21 . . .	42
11 & 12 Vict. c. xxxvii . . .	377	_____ 22 . . .	42
_____ c. 42, ss. 29, 30 . . .	495	_____ 23 . . .	14, 43
_____ c. 43 . . .	66, 210	_____ 24 . . .	43, 45, 46
_____	315, 333,	_____ 25 . . .	45
_____	527	_____ 26 . . .	45, 46
_____ s. 11 . . .	65, 153,	_____ 27 . . .	47, 49
_____	161, 210,	_____ 28 . . .	46, 49
_____	373, 438,	_____ 29 . . .	35, 49,
_____	441, 454,	_____	374
_____	531	_____ 30 . . .	50, 353
_____ 27 . . .	534	_____ 31 . . .	26
_____ 31 . . .	530	_____ 32 . . .	26
_____ 33 . . .	495	_____ 33 . . .	27
_____ c. 44. . . .	66, 391	_____ 34 . . .	58, 59
_____ s. 6 . . .	534	_____	453
_____ c. 63, sch. (A) . . .	44	_____ 35 . . .	59
_____ sch. (F) . . .	462	_____ 36 . . .	60, 159
_____ s. 1 . . .	1	_____ 37 . . .	61, 64,
_____ 2 . . .	2, 25,	_____	283, 353,
_____	26, 38,	_____	453, 474
_____	39, 58,	_____ 38 . . .	64, 163
_____	64, 65,	_____ 39 . . .	65
_____	91, 93,	_____ 40 . . .	64, 353,
_____	106, 147,	_____	523, 526,
_____	155, 184,	_____	560
_____	212, 399,	_____ 41 . . .	88
_____	400, 411,	_____ 42 . . .	88, 353
_____	434, 435,	_____ 43 . . .	90, 91, 94
_____	443, 462,	_____ 44 . . .	91
_____	463	_____ 45 . . .	93, 94,
_____ 3 . . .	1	_____	109, 121,
_____ 4 . . .		_____	140
_____ 5 . . .		_____ 46 . . .	94, 121,
_____ 6 . . .	} expired	_____	125, 127
_____ 7 . . .		_____ 47 . . .	104
_____ 8 . . .	6	_____ 48 . . .	105

	PAGE		PAGE
11 & 12 Vict. c. 63, s. 49 . .	146, 147	11 & 12 Vict. c. 63, s. 81 . .	326, 327,
_____ 50 . .	9, 164,	_____	453
_____	227, 517,	_____ 82 . .	325, 326,
_____	518	_____	361
_____ 51 . .	151, 152,	_____ 83 . .	326
_____	153	_____ 84 . .	121, 411,
_____ 52 . .	153	_____	414, 455
_____ 53 . .	<i>repealed</i>	_____ 85 . .	427, 430
_____ 54 . .	145, 146	_____ 86 . .	153
_____ 55 . .	<i>repealed</i>	_____ 87 . .	153, 185,
_____ 56 . .	141	_____	282, 352,
_____ 57 . .	153, 353	_____	353
_____ 58 . .	92, 138,	_____ 88 . .	9, 364,
_____	353	_____	368, 369
_____ 59 . .	143	_____ 89 . .	357, 358,
_____ 60 . .	153, 154,	_____	359, 360,
_____	481	_____	361, 362
_____ 61 . .	<i>repealed</i>	_____ 90 . .	379
_____ 62 . .	294	_____ 91 . .	169, 380,
_____ 63 . .	297, 521	_____	382
_____ 64 . .	298, 299,	_____ 92 . .	380, 382
_____	453, 525	_____ 93 . .	383
_____ 65 . .	144	_____ 94 . .	383, 384
_____ 66 . .	243, 245,	_____ 95 . .	<i>repealed</i>
_____	246, 453,	_____ 96 . .	377
_____	527	_____ 97 . .	377
_____ 67 . .	208, 209,	_____ 98 . .	363, 379
_____	527, 528	_____ 99 . .	363, 364
_____ 68 . .	155, 156	_____ 100 . .	364
_____ 69 . .	158, 159,	_____ 101 . .	371
_____	160, 161,	_____ 102 . .	371
_____	162, 163,	_____ 103 . .	371, 372,
_____	164, 165,	_____	373, 374,
_____	169, 431,	_____	400, 443
_____	432, 435,	_____ 104 . .	375
_____	436	_____ 105 . .	376, 436
_____ 70 . .	163, 166,	_____ 106 . .	377
_____	167	_____ 107 . .	<i>repealed</i>
_____ 71 . .	157, 353	_____ 108 . .	404
_____ 72 . .	<i>repealed</i>	_____ 109 . .	405
_____ 73 . .	169, 170,	_____ 110 . .	405
_____	201, 352, 414	_____ 111 . .	381, 406,
_____ 74 . .	178, 179	_____	407
_____ 75 . .	212, 215,	_____ 112 . .	381
_____	436	_____ 113 . .	<i>repealed</i>
_____ 76 . .	225, 226,	_____ 114 . .	408
_____	384, 550	_____ 115 . .	249, 451,
_____ 77 . .	226	_____	452
_____ 78 . .	226, 227	_____ 116 . .	249, 451
_____ 79 . .	228, 440	_____ 117 . .	167, 183,
_____ 80 . .	228, 229,	_____	184, 352,
_____	353, 440	_____	371, 381

	PAGE
11 & 12 Vict. c. 63, s. 118 . .	96, 183
119 . .	<i>repealed</i>
120 . .	382
121 . .	4
122 . .	<i>repealed</i>
123 . .	158, 432, 433
124 . .	433
125 . .	434
126 . .	434, 435
127 . .	435
128 . .	436
129 . .	49, 246, 249, 379, 400, 437, 438, 454
130 . .	438, 450
131 . .	438, 439
132 . .	439
133 . .	34, 49, 352, 440, 441
134 . .	438
135 . .	398, 399, 400, 401, 442, 443
136 . .	401
137 . .	377, 401, 436, 444, 452
138 . .	444, 445, 446
139 . .	431, 446, 447, 448, 449, 457
140 . .	249, 419, 431, 446, 447
141 . .	<i>repealed</i>
142 . .	9
143 . .	90
144 . .	94, 96, 98, 101, 109, 127, 156, 353, 436, 456, 457, 459
145 . .	<i>repealed</i>
146 . .	376
147 . .	462
148 . .	400, 439, 462

	PAGE
11 & 12 Vict. c. 63, s. 149 . .	255, 364, 455, 456
150 . .	95, 160, 440
151 . .	463
c. 91, s. 4 . .	421
c. 107 . .	521
c. 112, ss. 69, 70 . .	458
s. 128 . .	446
c. 123, s. 3 . .	502
12 Vict. c. 14 . .	394
s. 1 . .	395, 396
2 . .	396
3 . .	396
4 . .	396
5 . .	396
6 . .	397
8 . .	397
12 & 13 Vict. c. 45, s. 1 . .	443, 533, 534
3 . .	534
5 . .	534
11 . .	534
c. 92, s. 2 . .	314
3 . .	314
c. 94 . .	569, 724
s. 8 . .	177, 353, 596
9 . .	10, 572
10 . .	25, 569
13 Vict. c. 21, s. 4 . .	411
c. 35 . .	183, 184
13 & 14 Vict. c. 32 . .	724
c. 32, s. 6 . .	375
c. xxxvii . .	377
c. 43, s. 12 . .	762
c. 65 . .	<i>repealed</i>
c. 90 . .	724
c. 90, s. 4 . .	10, 572
c. 99, s. 1 . .	392
3 . .	392
4 . .	392
5 . .	392
6 . .	392
9 . .	393
10 . .	391
c. 108 . .	62, 725
14 & 15 Vict. c. 2, s. 14 . .	251
c. 28 . .	246, 466
s. 3 . .	247, 467
4 . .	247, 353
5 . .	247

	PAGE		PAGE
14 & 15 Vict. c. 28, s. 6 . . .	248	14 & 15 Vict. c. 103 . . .	726
7 . . .	248	8. 5 . . .	216
8 . . .	249	15 & 16 Vict. c. 42 . . .	726
9 . . .	249	8. 3 . . .	305
10 . . .	249	4 . . .	365
11 . . .	249	13 . . .	93, 155, 158, 596
12 . . .	250	14 . . .	38, 56, 575
13 . . .	250	c. 69 . . .	726
14 . . .	251	8. 2 . . .	95
15 . . .	252	4 . . .	52
16 . . .	252	5 . . .	127
c. 34 . . .	471	c. 80, s. 42 . . .	479
8. 2 . . .	257	c. 85 . . .	322
3 . . .	257	8. 2 . . .	329
4 . . .	258	c. 85, ss. 11, 14 . . .	323
5 . . .	258	16 Vict. c. 24 . . .	291, 726
6 . . .	258	8. 5 . . .	365
7 . . .	258	6 . . .	139
8 . . .	259, 352, 353	7 . . .	185
9 . . .	259	8 . . .	185
10 . . .	259	9 . . .	185
11 . . .	259	10 . . .	185
12 . . .	260	16 & 17 Vict. c. 40, s. 1 . . .	404
13 . . .	260	c. 41 . . .	467
31 . . .	261	8. 3 . . .	248
32 . . .	261	4 . . .	248
33 . . .	261	5 . . .	248
35 . . .	261	6 . . .	250
36 . . .	262	7 . . .	249
37 . . .	262	8 . . .	250
38 . . .	262, 263	9 . . .	250, 251, 482
39 . . .	263	10 . . .	247, 467
40 . . .	263	11 . . .	251
41 . . .	263	12 . . .	251
42 . . .	263	c. 62 . . .	521
43 . . .	263	c. 126 . . .	727
45 . . .	264	c. 128 . . .	466
46 . . .	264	8. 1 . . .	302, 524
47 . . .	264	c. 134 . . .	322
48 . . .	264	8. 1 . . .	323
49 . . .	264	17 & 18 Vict. c. 53 . . .	727
50 . . .	264	8. 2 . . .	185
51 . . .	264	c. 87 . . .	322
52 . . .	264	c. 97, s. 15 . . .	772
c. 36 . . .	620	c. 104, s. 188 . . .	562
c. 39, s. 2 . . .	392	430 . . .	370
c. 50 . . .	367	523 . . .	562
c. 80 . . .	725	525 . . .	562
c. 90 . . .	667	c. 125, s. 68 . . .	62, 63
c. 98 . . .	725		
8. 12 . . .	185		

	PAGE		PAGE
17 & 18 Vict. c. 134	322	18 & 19 Vict. c. 120, s. 225 . .	97, 461
_____ c. ccxix. s. 3	54	_____ 238	52
_____ 4	54	_____ c. 121	331
18 & 19 Vict. c. 70. . . .	347	Schedule Form A. . . .	482
_____ s. 2	347	„ Form C. . . .	482, 483
_____ 3	347	„ Form D. . . .	489
_____ 4	348	„ Form E. . . .	489, 493,
_____ 5	349	_____ 497	
_____ 6	349	„ Form G. . . .	531
_____ 7	349	„ Form H. . . .	502
_____ 15	350	„ Form I. . . .	503
_____ 16	350	„ Form K. . . .	503
_____ 17	350	18 & 19 Vict. c. 121, s. 2 . .	467, 468,
_____ 18	350	_____ 469, 481,	
_____ 19	350	_____ 495, 501,	
_____ 20	350	_____ 519, 532,	
_____ 21	351	_____ 548, 556	
_____ 22	351	_____ 3	repealed
_____ 23	351	_____ 4	466
_____ 25	351	_____ 5	472, 473,
_____ c. 79, s. 2	327	_____ 529	
_____ c. 105, s. 12	327	_____ 6	repealed
_____ c. 116, s. 5	552	_____ 7	repealed
_____ 6	553, 554,	_____ 8	477, 480,
_____ 7	561	_____ 522	
_____ 8	554	_____ 9	repealed
_____ 9	558	_____ 10	251, 482
_____ 10	559	_____ 11	482, 483,
_____ 11	552, 554	_____ 484, 489,	
_____ 12	552, 553	_____ 496, 498,	
_____ 14	561, 562	_____ 531	
_____ 15	554, 558,	_____ 12	482, 485,
_____ 16	559	_____ 486, 489,	
_____ c. 120	559	_____ 490, 491,	
_____ s. 69	2	_____ 494, 495,	
_____ 73	105	_____ 498	
_____ 76	105	_____ 13	486, 494,
_____ ss. 77, 110	206	_____ 495, 496,	
_____ s. 81	460	_____ 497, 499	
_____ 86	153, 487	_____ 14	486, 494,
_____ 87	506, 507	_____ 496, 497, 498	
_____ 88	506, 507	_____ 15	497
_____ 96	450	_____ 16	494, 495,
_____ 106	460	_____ 499, 532	
_____ 132	450	_____ 17	493
_____ 133	560	_____ 18	493
_____ 134	474	_____ 19	498, 499,
_____ 135	331, 470,	_____ 500, 501,	
_____ 143	558	_____ 502, 503,	
_____ 211	97, 461	_____ 530, 531	
	173, 201	_____ 20	497, 502,
	487	_____ 503	

	PAGE		PAGE
18 & 19 Vict. c. 121, s. 21	505	19 & 20 Vict. c. 26	727
22	508, 509,	S. 2	178
	510, 511,	4	51
	512, 513,	c. 107, s. 1	304
	514, 515,	20 Vict. c. 3	727
	516, 517,	c. 19, s. 1	470
	532	20 & 21 Vict. c. 22	51, 727
23	519	c. 31	479, 480
24	519, 520	c. 35	322
25	519, 529	c. 43	66, 291,
26	repealed		385, 391,
27	522, 523		535
28	524	S. 2	203, 373,
29	526		438, 494,
30	524, 525,		534
	530, 532	4	400
31	483, 493,	6	534
	529, 549	c. 50, s. 2	20, 21
32	529	3	21
33	530	c. 81	322
34	494, 530	S. 4	323, 324
35	494, 502,	23	328
	530	c. 83	308
36	531	21 Vict. c. 10	728
37	531	21 & 22 Vict. c. 73, s. 1	66
38	503, 523,	2	66
	524, 531,	c. 90	523
	534	S. 34	64
39	530	36	64
40	497, 499,	c. 91, s. 47	352
	530, 532,	c. 97, s. 1	553, 554
	533, 534	3	560
41	534	4	559
42	535	5	559
43	466, 467,	6	559
	471, 480,	7	554
	524	13	repealed
44	467	c. 98, sch. (A)	13
45	467	S. 1	2
c. 122	39	2	25, 376
sch. 1	200	3	2
S. 3	39	4	2
73	39, 210	5	2
103	210	6	27
c. 125	727	7	465
S. 82	365	8	2, 261,
c. 128	322		263, 264, 325
S. 15	368	9	3
18	327, 329,	10	409
	330	11	57
19	322	12	11, 314,
20	322		315, 465

	PAGE		PAGE
21 & 22 Vict. c. 98, s. 13 . . .	10, 11,	21 & 22 Vict. c. 98, s. 39 . . .	188
	12, 13,	40 . . .	188, 189
	14, 15,	41 . . .	188
	46, 186,	42 . . .	167, 452
	314	43 . . .	189
14 . . .	12, 16,	44 . . .	242, 307,
	465		318, 454,
15 . . .	18, 19,		464
	417	45 . . .	172, 176,
16 . . .	15, 16,		178, 199,
	17, 18,		209, 211,
	542		227, 294,
17 . . .	19, 23,		304, 305,
	24		312, 313, 464
18 . . .	15, 24	46 . . .	176
19 . . .	16, 18,	47 . . .	233, 353
	21, 22	49 . . .	323, 324,
20 . . .	17, 22		330, 398
21 . . .	22	50 . . .	284, 285,
22 . . .	22		290, 464
23 . . .	22	51 . . .	226, 384
24 . . .	26, 30,	52 . . .	214
	36, 42,	53 . . .	216
	50, 51	54 . . .	153, 154,
25 . . .	32, 33,		357, 375,
	34		378, 379
26 . . .	27	55 . . .	367, 368
27 . . .	10, 23	56 . . .	362, 363
28 . . .	139, 511,	57 . . .	382, 403,
	512		404, 409
29 . . .	95	58 . . .	380
30 . . .	94, 121,	59 . . .	381
	127	60 . . .	416, 417,
31 . . .	139, 140,		418, 419,
	512		422, 423,
32 . . .	141, 142,		444
	144, 352,	61 . . .	59, 245
	452, 453	62 . . .	381, 462
33 . . .	146	63 . . .	159, 161,
34 . . .	147, 152,		381, 462
	176, 200,	64 . . .	432
	201, 202,	65 . . .	382, 438
	203, 204,	66 . . .	462
	205, 206,	67 . . .	352, 441
	207, 453	68 . . .	106, 107,
35 . . .	199, 200		121
36 . . .	201	69 . . .	107, 108
37 . . .	166, 183,	70 . . .	108
	185, 186,	71 . . .	108
	187, 353,	72 . . .	108
	361, 385	73 . . .	109, 214
38 . . .	163, 169	74 . . .	109, 214

	PAGE		PAGE
21 & 22 Vict. c. 98, s. 75	68, 93, 121, 375, 411, 412, 413, 414	23 & 24 Vict. c. 64, s. 3	325, 423
_____ 76	60	_____ c. 66	64
_____ 77	10, 67, 68	_____ c. 68, s. 20	191
_____ 78	406	_____ 22	388, 394
_____ 79	3	_____ 23	387
_____ 80	3	_____ c. 77	331
_____ 81	4, 15, 24, 383	_____ s. 1	466
_____ 82	27, 52, 53	_____ 2	467, 469, 470
22 Vict. c. 1	322, 328	_____ 3	<i>repealed</i>
_____ s. 1	328	_____ 4	475, 476, 516, 557, 558
_____ c. 21	64	_____ 5	472
_____ c. 27	179, 180	_____ 6	470
_____ c. 31	728	_____ 7	227, 518, 550
_____ s. 2	185	_____ 8	519
_____ c. 32	441	_____ 9	473, 483
_____ c. 35	29, 37	_____ 10	555
22 & 23 Vict. c. 1	554	_____ 11	556, 557, 558
_____ c. 3	553	_____ 12	504, 559
_____ c. 11	728	_____ 13	482, 498
_____ s. 1	414	_____ 14	561
_____ c. 32, s. 3	29	_____ 15	469
_____ c. 66	177	_____ 16	<i>repealed</i>
23 Vict. c. 16, s. 12	106, 140, 175	_____ c. 84	521
_____ c. 27, s. 6	315	_____ c. 112, s. 33	368, 386
_____ 40	309	_____ 40	110
23 & 24 Vict. c. 7	64	_____ 41	110
_____ c. 30	179	_____ c. 118	729
_____ s. 2	180	_____ c. 139, s. 9	308
_____ 3	180	_____ c. 145, Part 2	268
_____ 4	180	_____ c. 146	177
_____ 5	180	24 & 25 Vict. c. 39	730
_____ 6	180	_____ c. 61	2
_____ 7	180	_____ s. 1	11
_____ c. 44	728	_____ 2	18, 169
_____ s. 2	321	_____ 3	417
_____ 3	293	_____ 4	94, 121, 127, 140
_____ 4	242	_____ 5	95, 127, 140
_____ c. 51, s. 1	423, 424	_____ 6	95, 127, 140,
_____ 2	424	_____ 7	95, 121, 127, 140
_____ 3	424	_____ 8	105
_____ 4	424	_____ 9	186
_____ 6	424	_____ 10	184
_____ c. 64	322	_____ 12	378
_____ s. 1	324, 398		
_____ 2	325, 398, 409		

	PAGE		PAGE
24 & 25 Vict. c. 61, s. 13	378	25 & 26 Vict. c. 102, s. 77	161
14	3,404	96	501
15	417,420	98	202
16	167	106	447,450
17	168	c. 103, s. 28	362,387
18	412	36	394
19	406	26 Vict. c. 13	179
20	226,383	c. 17	2
21	329,454	s. 2	14,183
22	414	s. 3	23, 24
23	380,381	s. 4	19, 20
24	138,144, 158,374, 438,456	s. 5	39, 61
25	321,454	s. 7	20
26	184	26 & 27 Vict. c. 32	731
27	68,414	c. 33, s. 20	316
28	173,174	c. 40, s. 2	331
29	5	3	331
30	2	4	332
31	2	5	332
c. 70, s. 3	192	6	332
4	193	7	333
6	195	8	333
7	196	9	333
8	193	c. 63	111
12	197	c. 64	191,732
13	197	c. 65, s. 26	370
15	192	c. 70, ss. 8,9	696
c. 79	177	c. 78	190
c. 80	266,405	c. 93, s. 12	226
c. 96, s. 31	180,181	c. 95	521
ss. 81,82,83,84	417	c. 97	344
c. 97, s. 52	309	s. 2	346
c. 128	730	3	344,454
s. 2	366	4	345
3	409	6	345
c. 133	110	7	345,346
s. 4	110,111	c. 112	191
16	110	c. 117	484
c. 134	32	s. 1	520
s. 156	374	2	520,521
25 Vict. c. 22, s. 13	316	3	521
25 & 26 Vict. c. 25	731	38	521
c. 61, s. 6	697	c. 124, s. 3	481
7	183,695	4	481
41	14,183	6	481
c. 66, s. 4	310	7	481
c. 82, s. 1	372	27 Vict. c. 14	111
c. 100, s. 1	409,410	c. 18, sch. C	41
2	410	s. 14	41
c. 102, s. 75	174	27 & 28 Vict. c. 26	733
		c. 47, s. 2	555
		c. 64	314

	PAGE		PAGE
27 & 28 Vict. c. 64, s. 2 . . .	314	28 & 29 Vict. c. 83, s. 12 . . .	197
_____ 4 . . .	315	_____ 13 . . .	192
_____ 5 . . .	315	_____ c. 90, s. 29 . . .	504
_____ 7 . . .	316	_____ 30 . . .	312
_____ 9 . . .	314	_____ c. 102, s. 98 . . .	173
_____ 10 . . .	317	_____ c. 108 . . .	349, 735
_____ c. 68, s. 1 . . .	53	_____ s. 1 . . .	736
_____ 2 . . .	53	_____ 2 . . .	191, 730,
_____ 3 . . .	53	_____ 732	
_____ c. 83 . . .	733	_____ 4 . . .	52, 53, 57
_____ s. 2 . . .	366	_____ 5 . . .	54
_____ 3 . . .	366	_____ 6 . . .	31, 53
_____ 4 . . .	52	_____ 7 . . .	59
_____ 5 . . .	31	_____ 8 . . .	376
_____ c. 101, s. 3 . . .	510	_____ 9 . . .	54
_____ 5 . . .	186, 187	_____ 10 . . .	55
_____ 33 . . .	510	_____ 11 . . .	55
_____ c. 110 . . .	441	_____ 12 . . .	42, 55
_____ c. 114 . . .	111, 121,	_____ 14 . . .	377, 402
_____ 547		_____ 15 . . .	402
_____ s. 15 . . .	547	_____ 16 . . .	402, 403
28 Vict. c. 23 . . .	111	_____ 17 . . .	403
_____ c. 24 . . .	733	_____ 18 . . .	403
_____ s. 2 . . .	734	_____ 19 . . .	403
_____ c. 25 . . .	734	_____ 20 . . .	376
_____ c. 28 s. 2 . . .	185, 735	_____ 21 . . .	377
_____ c. 41 . . .	735	_____ 22 . . .	351
28 & 29 Vict. c. 75, sch. . . .	537	_____ c. 110 . . .	69, 736
_____ c. 75 . . .	121	_____ c. 126, s. 56 . . .	46
_____ s. 2 . . .	536	_____ c. 127, s. 3 . . .	442
_____ 3 . . .	536	_____ 4 . . .	442
_____ 4 . . .	544	_____ 5 . . .	442
_____ 5 . . .	545	_____ 6 . . .	442
_____ 6 . . .	546	29 Vict. c. 24, s. 2 . . .	366
_____ 7 . . .	546	_____ c. 24 . . .	736
_____ 8 . . .	546	_____ ss. 3, 4 . . .	737
_____ 9 . . .	546	_____ c. 28, s. 1 . . .	266
_____ 10 . . .	549	_____ 2 . . .	266
_____ 11 . . .	549	_____ 3 . . .	266
_____ 12 . . .	546	_____ 4 . . .	266, 277,
_____ 13 . . .	547	_____ 268	
_____ 14 . . .	547	_____ 5 . . .	268
_____ c. 77, s. 2 . . .	316, 317	_____ 6 . . .	268
_____ 4 . . .	317	_____ 7 . . .	268
_____ 5 . . .	317	_____ 9 . . .	269
_____ c. 83, s. 1 . . .	192	_____ c. 33 . . .	111
_____ 3 . . .	194, 195	29 & 30 Vict. c. 35 . . .	566
_____ 5 . . .	193	_____ c. 41, s. 2 . . .	492, 533
_____ 6 . . .	195, 196	_____ c. 69, s. 8 . . .	310
_____ 7 . . .	194	_____ c. 72, s. 4 . . .	270
_____ 8 . . .	195	_____ c. 79 . . .	737
_____ 10 . . .	198	_____ s. 2 . . .	191

	PAGE		PAGE
29 & 30 Vict. c. 80	III	29 & 30 Vict. c. 90, s. 36 . . .	209, 253,
_____ c. 89	130	_____	528
_____ s. 2	130	_____ 37	487, 550
_____ 52	130	_____ 38	564
_____ 62	131	_____ 40	556
_____ 63	131	_____ 41	251, 527
_____ 64	132, 133,	_____ 42	527
_____	136	_____ 43	233, 352,
_____ 65	132	_____	353
_____ 66	132	_____ 44	324
_____ 67	133	_____ 45	516, 546
_____ 68	133	_____ 46	2, 25, 411,
_____ 69	133	_____	427, 444,
_____ 90	133	_____	455, 470,
_____ c. 90	2	_____	520, 538
_____ s. 1	2	_____ 47	170, 411,
_____ 2	536	_____	413
_____ 3	536	_____ 48	445, 446
_____ 4	538, 539	_____	490, 538
_____ 5	540	_____ 49	89, 212,
_____ 6	541, 542	_____	455, 472,
_____ 7	541	_____	536, 537,
_____ 8	542, 547,	_____	545
_____	548	_____ 50	226, 550
_____ 9	548	_____ 51	563
_____ 10	548	_____ 52	563
_____ 11	549, 550	_____ 53	525
_____ 13	519, 550	_____ 54	138, 143,
_____ 14	466, 475,	_____	144, 152,
_____	548	_____	158, 229,
_____ 15	469	_____	245, 246,
_____ 16	471, 484	_____	437, 531
_____ 17	471	_____ 55	465, 551
_____ 18	522, 523	_____ c. 106	738
_____ 19	477, 478,	_____ s. 3	737
_____	526	_____ ss. 2, 5	738
_____ 20	481, 482	_____ s. 4	20
_____ 21	489, 490	_____ c. 107	739
_____ 22	503	_____ s. 2	366
_____ 23	503, 564	_____ s. 3	740
_____ 24	504	_____ c. 113, s. 5	421
_____ 25	504, 564	_____ s. 18	364, 468
_____ 26	504	_____ c. 114, s. 1	350
_____ 27	505	_____ 2	349
_____ 28	326, 505	_____ 3	348
_____ 29	504	_____ 4	348
_____ 30	478	_____ 6	349
_____ 31	484	_____ 10	351
_____ 32	478	_____ c. 122	181
_____ 33	476, 477	_____ s. 2	181
_____ 34	500	_____ 6	181
_____ 35	252	_____ 24	181

	PAGE		PAGE
29 & 30 Vict. c. 122, s. 25 . . .	182	30 & 31 Vict. c. 146, sch. 1 . . .	335, 336,
_____ 26 . . .	182	_____	337
_____ c. cccxix . . .	465	_____ sch. 2 . . .	334, 335
30 Vict. c. 21 . . .	740	_____ sch. 3 . . .	341
_____ s. 2 . . .	740	_____ s. 2 . . .	334
_____ ss. 3, 4 . . .	191, 740	_____ 4 . . .	335
_____ c. 28, s. 1 . . .	267	_____ 5 . . .	331, 334
_____ c. lvi . . .	727, 732	_____ 6 . . .	337, 338
_____ c. ci. s. 3 . . .	130	_____ 7 . . .	338
_____ 4 . . .	130, 133	_____ 8 . . .	338, 339
_____ 5 . . .	130	_____ 9 . . .	339
30 & 31 Vict. c. 49 . . .	741	_____ 10 . . .	339
_____ c. 65 . . .	741	_____ 11 . . .	339
_____ c. 67 . . .	742	_____ 12 . . .	340
_____ s. 1 . . .	725	_____ 13 . . .	334
_____ 2 . . .	725	_____ 14 . . .	340
_____ c. 83 . . .	231, 742	_____ 15 . . .	340
_____ s. 1 . . .	742	_____ 16 . . .	341
_____ 2 . . .	730	_____ 17 . . .	341, 342
_____ 3 . . .	178	_____ 18 . . .	342
_____ 12 . . .	366	_____ 19 . . .	343
_____ c. 84 . . .	565	_____ 20 . . .	343
_____ s. 27 . . .	566	31 & 32 Vict. c. x. . . .	743
_____ 28 . . .	566	_____ ss. 3, 4 . . .	744
_____ 29 . . .	565	_____ c. 36, s. 1 . . .	481
_____ 31 . . .	565	_____ c. 37 . . .	10
_____ 32 . . .	566	_____ s. 2 . . .	555
_____ c. 102, s. 7 . . .	392	_____ 4 . . .	555
_____ c. 103, s. 5 . . .	331	_____ c. 56, s. 3 . . .	310
_____ c. 106, s. 4 . . .	41	_____ 4 . . .	310, 311
_____ c. 113, s. 2 . . .	536, 537	_____ 5 . . .	311
_____ 3 . . .	545	_____ c. lxxxiv . . .	744
_____ 4 . . .	546	_____ c. lxxxv . . .	744
_____ 5 . . .	547	_____ c. lxxxvi . . .	745
_____ 7 . . .	542	_____ s. 2 . . .	745
_____ 8 . . .	542	_____ c. III . . .	192
_____ 9 . . .	541	_____ c. 115 . . .	2
_____ 10 . . .	542	_____ s. 2 . . .	439, 492,
_____ 11 . . .	543	_____	533
_____ 12 . . .	543	_____ 4 . . .	146, 152,
_____ 13 . . .	543	_____	470, 544, 545
_____ 14 . . .	543	_____ 5 . . .	142, 470,
_____ 15 . . .	127	_____	544
_____ 16 . . .	487, 550	_____ 6 . . .	538
_____ 17 . . .	539, 540,	_____ 7 . . .	153, 544
_____	541	_____ 8 . . .	89
_____ 18 . . .	540	_____ 9 . . .	551
_____ 19 . . .	551	_____ 10 . . .	487, 551
_____ c. 123 . . .	743	_____ 11 . . .	548, 549
_____ ss. 2, 3 . . .	743	_____ c. 121, s. 24 . . .	521
_____ s. 4 . . .	743	_____ c. 122, s. 27 . . .	17, 140,
_____ 5 . . .	743	_____	321, 471

	PAGE		PAGE
31 & 32 Vict. c. 130, sch. 1	272, 282, 353	31 & 32 Vict. 130, s. 23	279
_____ sch. 2	281	_____ 24	280
_____ s. 1	272	_____ 25	280
_____ 2	272	_____ 26	281
_____ 3	273, 274	_____ 27	281
_____ 4	274	_____ 28	281
_____ 5	254, 272	_____ 29	282
_____ 6	274	_____ 30	282
_____ 7	275	_____ 31	282, 353
_____ 8	275	_____ 32	282
_____ 9	276	_____ 33	283
_____ 10	277	_____ 34	283
_____ 11	277	_____ 35	283
_____ 12	154, 275	_____ 36	283
_____ 13	275	_____ 37	277
_____ 14	277	_____ 38	283
_____ 15	278, 281	_____ 41	277
_____ 16	278	_____ c. clii	745
_____ 17	278	_____ c. cliii	746
_____ 18	278	_____ s. 1	746, 747
_____ 19	279	_____ 2	746
_____ 20	279	_____ 4	746
_____ 21	279	_____ 5	746
_____ 22	280	_____ 6	747

TABLE OF CASES.

	PAGE		PAGE
Ackroyd v. Smith	285	Backhouse, Reg. v.	42
Acton v. Blundell	216, 220	Bailey v. Cuckson	354, 448
Aldborough, Reg. v.	93	Bailey v. Stephens	285
Alston v. Grant	101	Baker v. Marsh	28, 30
Amys, app., Creed, resp.	489	Balston v. Bensted	220
Anderton, app., Rigby, resp.	205	Bamford v. Turnley	299, 301
Anderton v. Birkenhead	205	Barber v. Jessop	7
Angell, app., Paddington, resp.	390	Barker, Rex v.	463
Arnold v. Gravesend	10	Barnes v. Ward	461
Ashley's case	492	Barnett, Rex v.	564
Ashton-under-Lyne v. Slater	188	Barnsley v. Sedgwick	60, 159
Attorney-General v. Andrews	355	Bassett, <i>Ex parte</i>	496, 498
Attorney-General v. Birmingham		Bateman v. Ashton-under-Lyne	429
Town Council	102	Bauman v. St. Pancras	174
Attorney-General v. Birmingham	125	Bavin v. Hutchinson	372
Attorney-General v. Bradford Na-		Baxendale v. McMurry	219
vigation Company	92	Bayley v. Aldred	309
Attorney-General v. Cambridge		Bayley, app., Wilkinson, resp.	159, 433
Consumers Gas Company	158	Bayley v. Wolverhampton Water-	
Attorney-General v. Colney Hatch		works Co.	215
Lunatic Asylum	479	Beardmore v. Tredwell	300
Attorney-General v. Kingston-		Beaver v. Manchester	156
upon-Thames	100	Bennett, Reg. v.	17, 321
Attorney-General v. Luton	126	Bentley's, Dr., case	206
Attorney-General v. Metropolitan		Best, Reg. v.	390
Board of Works	90	Bickett v. Morris	224
Attorney-General v. Norwich	354, 355	Bidder v. Croydon	100
Attorney-General v. Richmond		Biddulph v. St. George, Hanover	
.	92, 490, 509, 513	Square	141
Attorney-General v. Sawyer	99	Bignold v. Clarke	307
Attorney-General v. Sheffield Gas		Bird, <i>Ex parte</i>	4, 15, 24
Consumers Co.	102, 157	Bird v. Elwes	492, 500
Attorney-General v. Southampton		Bird, Reg. v.	15
.	179, 354	Birmingham Waterworks Co.,	
Attorney-General v. Staffordshire		Reg. v.	368
Copper Extracting Co.	525	Blackburn v. Parkinson	162, 163, 437
Attorney-General v. Wigan	354	Blanshard, Reg. v.	49
Austin v. Lambeth	147	Blechingdon v. Dand	394
Austin v. Milton - next - Sitting-		Blizard, Reg. v.	48
bourne	534	Blyth v. Birmingham Waterworks	
Austin, <i>Ex parte</i>	534	Co.	101
Avery, Reg. v.	45	Blything v. Warton	501

	PAGE		PAGE
Bodkin, Reg. v.	516	Chanter v. Glubb	388
Bogg v. Pearse	61	Charinton v. Johnson	395
Bold v. Williams	156	Chasemore v. Richards	216, 219
Boulton v. Crowther	156	Chelmsford v. Chelmsford	369
Bourne v. Lowndes	286	Cheshire JJ., Rex v.	463
Bowling v. Bailey	35, 374	Clark v. Cuckfield	428
Boyce v. Higgins	34	Clarke, app., Hoggins, resp.	308
Bradford v. Hopwood	433	Clarke v. Paddington	94
Bradford Navigation, Reg. v.	92	Clayton v. Fenwick	9
Bradshaw, Reg. v.	374, 395, 401, 434	Cleve v. Mahany	299
Brady v. Southampton	156, 456	Clothier v. Webster	97, 461
Brecknock JJ., Reg. v.	423	Cobham v. Holcombe	445
Brecon v. Edwards	286	Coe v. Wise	458
Bridgewater Trustees, apps., Bootle- cum-Linacre, resps.	140	Cole v. Coulton	313
Briggs, Reg. v.	48	Collen v. Wright	163
Brighton v. North	354	Cooke v. Forbes	301
Brighton v. Stenning	295	Cooper, Reg. v.	60
Brine v. Great Western Railway Co.	97	Cooper v. Wandsworth	207
Broadbent v. Ramsbottom	220, 225	Cooper, app., Woolley, resp.	306
Brodhurst, Reg. v.	400, 443	Cornwell v. Metropolitan Com- missioners of Sewers	157
Broughton Local Board of Health, <i>In re</i>	401	Cotton, Reg. v.	490
Broughton, <i>In re</i>	186	Cousins v. Stockbridge	318
Brown v. Bussell	491	Cowley v. Sunderland (Mayor)	242
Brown v. Clegg	160	Cox v. Midland Counties Railway Co.	429
Brown v. Holyhead	200, 206	Crossley and Sons (Limited) v. Lightowler	99
Brown v. Sargent	101	Cross, Reg. v.	47, 48
Buckle v. Wrightson	318	Crump v. Lambert.	305, 525
Buckinghamshire JJ., Rex v.	388	Cunningham v. Wolverhampton	431
Budge v. Parsons	314	Curtis v. Kent Waterworks Co.	440
Burgess v. Peacock	203, 458	Curtis v. Mach	853
Burland v. Kingston-upon-Hull	360		
Burleigh, Reg. v.	360	Darley v. The Queen	48
Burslem, Reg. v.	96, 99, 458, 459	Darlington, Reg. v.	109
Busby v. Chesterfield Waterworks and Gaslight Co.	226	Davies v. Swansea	431, 449
Bush v. Martin.	60, 63	Davis v. Curling	447
Bush v. Beavan	63	De Caux v. Powley	292
		Delany v. Metropolitan Board of Works	447
Caley v. Kingston-upon-Hull.	160	Denbighshire, JJ., Reg. v.	423
Cambridge, Reg. v.	37	Derby (Earl of) v. Bury Improve- ment Commissioners	513
Cambridgeshire JJ., Reg. v.	469	Derriman's Settlement, <i>In re</i>	415
Cane v. Chapman	62	Devon JJ., Rex v.	388
Cardiff v. Cardiff Waterworks Co.	18	De Winton v. Brecon (Mayor)	408
Cary v. Kingston-upon-Hull	160	Dickenson, Reg. v.	173, 444
Carlyon, Rex v.	389	Dickenson v. Grand Junction Canal Co.	220, 221, 222
Casswell v. Cook	285	Digby v. West Ham	143
Cator v. Lewisham.	92, 127	Doe v. Benham.	469
Cavey v. Leadbitter	301		
Cawkwell v. Russell	148		
Chambers v. Reid	450		

	PAGE		PAGE
Doe d. Peter Hopley v. Young	33	Francomb v. Freeman	492
Dorling v. Epsom	362	Freud v. Dennett	430
Dover Gaslight Co. v. Dover (Mayor)	158	Frewin v. Hastings	69, 170, 413
Downing Coll. v. Purchas.	394	Fullford, Reg. v.	173
Draper, app., Sperring, resp.	494	Galloway v. Commonalty and Citi- zens of London and the Metro- politan Railway Co., and the Mayor, Commonalty, and Citi- zens of London v. Galloway	173
Dublin Town Council, Reg. v.	356	Gascoign, Reg. v.	186
Duignan v. Walker	29	Gaved v. Martyn	93
Dukinfield, Reg. v.	167	Gee, Reg. v.	470, 490, 513
Duncan v. Findlater	457	Gloucester, Reg. v.	62
Dyer v. Best	64	Gloucester JJ., Reg. v.	401
East India Co. v. Skinner	394	Gloucester, Reg. v.	444
East London Waterworks Co., Reg. v.	367	Godmanchester, Reg. v.	91
Ecclesiastical Commissioners and Courtenay v. St. James and St. John, Clerkenwell	174	Goldsmid v. Tunbridge Wells Improvement Commissioners 100, 102	
Eddleston v. Crossley and Sons (Limited)	225	Gosse, Reg. v.	516, 530
Eddleston v. Francis	379, 438	Gough v. Hardman	35
Eddleston, app., Francis, resp. 38, 153, 381		Gray v. Pullen	460
Eddowes, Reg. v.	31	Great Western Railway Co. and Maud and Bullock, apps., West Bromwich Improvement Com- missioners, resps.	163
Edmundson, <i>In re</i>	441	Great Western Railway Co. v. Denchworth.	390
Edwards v. Lowndes	62	Great Western Railway Co., Reg. v.	163
Elias v. Nightingale	264	Greene, Reg. v.	61, 473
Ellis v. Bridgenorth	284, 285	Greig v. Bendeno	314
Ellis v. Sheffield Gas Consumers Company.	449	Griffiths, Reg. v.	50, 56
Ellison's Estate, <i>In re</i>	415	Grimshaw, Reg. v.	61
Elwood v. Bullock	452	Grosvenor v. Hampstead Junction Railway Co.	148
Embrey v. Owen	218, 220	Gwatkin, app., Chepstow Water- works Co., resps.	385
Epsom, Reg. v.	509	Haigh v. North Bierley	428
Everett v. Grapes	142	Halifax, Reg. v.	459
Ewart v. Cochrane.	129	Hall v. Bristol	456
Ewell, Reg. v.	476	Hall v. Taylor	62, 446, 460, 473
Evans v. Smith	299	Ham, <i>In re</i>	498
Fairie, Reg. v.	303, 524	Hammersmith Rent-Charge Case	206
Farr v. Boston	362	Hampshire JJ., Reg. v.	533
Fawcett v. Foulis	394	Hampton, Reg. v.	40
Felkin, app., Berridge, resp.	3	Hannant v. Foulger	316
Felkin v. Berridge.	203	Hans Ringland v. Burslem	459
Felkin v. Herbert (Lord)	95, 96	Harden, Reg. v.	502
Fielden v. Blackburn	103	Hardy, Reg. v.	465
Fielding, Reg. v.	401	Hargreaves v. Taylor	145, 496
Filby v. Combe	142	Harper v. Forbes and Sisson	329
Finnis, Reg. v.	423	Harring v. Stockton	439, 441
Fisher v. Howard	317		
Fitzgerald v. Champneys	156		
Flight v. Clarke	138		
Fordham, Reg. v.	390		

	PAGE		PAGE
Harris v. Davison	411	Jewell v. Stead	29
Harrop v. Bayley	23	Jones v. Williams	497
Hartley in re Over Darwen, Reg. v.	297	Kellett v. Tranmere	435
Hartnell v. Ryde Commissioners .	461	Kemp v. Rose	436
Hartshorn, Reg. v.	46	Kendall v. King	62, 446
Hastings, Reg. v.	69	Kent JJ., Reg. v.	357
Hattersley v. Burr	204	Kenyon, Reg. v.	321
Haydock, <i>Ex parte</i>	48	Kershaw, Reg. v.	469
Haywood v. Lowndes	94, 125, 127	King v. Lacey	388
Heath, Reg. v.	394	Kingsbridge, Reg. v.	354
Hendon v. Bowles	490	Kingston-upon-Hull v. Jones . .	163
Hereford (Mayor of) v. Moreton .	177	Kirby, Reg. v.	40
Heriot's Hospital, <i>Feoffees of</i> . .	457	Labalmondiere, app., Addison, resp.	210
Herring, app., v. Metropolitan		Labalmondiere v. Frost	210
Board of Works, resps.	460	Laing v. Whaley	126, 231
Hertford v. Kimpton	502	Lake v. Butler	29, 483
Heyworth, Reg. v.	295	Lamprell v. Billericay	430
Higgins v. Green	387	Langley v. Hammond	129
Higgs v. Goodwin	149	Law v. Dodd	143
Hildreth v. Adamson	227	Lawrence v. Great Northern Rail-	
Hill v. Balls	521	way Co.	97
Hill v. Tupper	224	Leamington, <i>Ex parte</i>	445
Hipkins v. Birmingham and Staf-		Lee v. Stevenson	105, 129
fordshire Gaslight Co.	230, 519	Le Feuvre v. Lankester	29, 35
Hodgkinson v. Ennor	126	Le Feuvre v. Miller	371
Hodgson v. Carlisle	364	Leicestershire JJ., Reg. v. . . .	532
Holdsworth v. Barsham	434, 435	Lillywhite v. Trimmer	101
Holdsworth v. Wilson	434, 435	Linford, Reg. v.	423
Hole v. Barlow	298, 300	Lingwood v. Stowmarket Co. . .	103
Hole v. Commissioners of Milton .	148	Lister v. Lobley	506
Holford v. Copeland	394	Liverpool New Cattle Market Co.,	
Holland (Lady), app., Kensington		apps., Hodson, resp.	298
Vestry, resps.	159	Liverpool (Recorder), Reg. v. . .	365
Holliday v. St. Leonard's, Shore-		Do. JJ. do.	372, 511
ditch	460	Liverpool, <i>Ex parte</i>	495
Hollis v. Marshall	34	Llanelly Board of Health, <i>Ex</i>	
Hopkins v. Swansea	454	<i>parte</i>	446, 455
Hopley, Doe, v. Young	33	Local Board of Health, Waterloo-	
Howarth v. Manchester	294	with-Seaforth, apps., Bibby, resp.	440
Howell v. Worcester	427	Lockhouse and Wilson, Reg. v. .	
Howitt v. Manfull	57		44, 46, 48
Hull JJ., Reg. v.	60, 369	Lofthouse, Reg. v.	46, 48
Hutchins v. Chambers	372, 373	London and Blackwall Railway	
Hyams v. Webster	461	Co. v. Limehouse	155
Illingworth v. Montgomery	164	London, Chatham, and Dover Rail-	
Isle of Wight Ferry Co., apps.,		way Co. v. Mayor, &c. of London	155
Ryde Co., resps.	473, 489, 533	London Dock Co. v. Sinnott . . .	431
Itchin Bridge Co. v. Southampton	448	London Gaslight Co. v. Chelsea .	177
Jacomb v. Dodgson	153, 161	London and North-Western Rail-	
Jenkins, Reg. v.	497	way Co. v. St. Pancras	161
		Longton Gaslight Co., Reg. v. . .	157

	PAGE		PAGE
Lowndes v. Horne	389	Morell v. Harvey	387
Loxdale, Rex v.	492	Morrell v. Martin	394, 395
Ludlow v. Charlton	430	Morton v. Bramner	372
Lundie, Reg. v.	452	Moulton Overseers, <i>Ex parte</i>	363
Luscombe, Reg. v.	369	Mourilyan, app., Labalmondiere,	
Luton v. Davis	373	resp.	39
Lyndon v. Standbridge	143	Musson, Reg. v.	17, 321
Luscombe v. Steer	300	New River Co., apps., Johnson,	
Mace v. Philcox	242	resp.	97, 217
Macey v. Metropolitan Board of		Newport Dock Co. v. Newport	368
Works	96	Newport, Reg. v.	161
Manchester (Mayor of) v. Chapman	161	Newton v. Ellis	449
Manchester, Sheffield, and Lin-		Nicholson v. Fields	32
colnshire Railway Co. v. Work-		Nicholson, Reg. v.	175
sop	102	Norbury (Earl) v. Kitchin	218
Manchester, Sheffield, and Lin-		Norfolk Commissioners of Sewers,	
colnshire Railway Co. v. Wood	304	Reg. v.	354
Manchester Waterworks Co., Rex v.	394	North-Eastern Railway Co., apps.,	
McCannan v. Sinclair	18	Scarborough, resp.	362
Marshall v. Pitman	374	North-Eastern Railway Co., apps.,	
Marson v. London, Chatlam, and		Tynemouth, resp.	9, 370
Dover Railway Co.	148	Northowram and Clayton, Reg. v.	11, 16
Mashiter's Appeal	377	Nottingham Waterworks Co., Rex v.	437
Mason v. Bibby	160, 440	Nowell v. Worcester	431
Mason v. Birkenhead	447	Nuttall v. Bracewell	218, 223
Mason v. Hill	217	Oldaker v. Hunt	126, 411
Matlock Bath District, <i>In re</i>	16	Ormerod v. Chadwick	12, 370
Medway Navigation Co. v. Rom-		Owens, Reg. v.	42, 49
ney (Earl of)	214	Oxfordshire JJ., Reg. v.	391
Meek v. Langdon	177	Parkinson, Reg. v.	37
Meek v. Whitechapel	101	Parnaby v. Lancaster Canal Co.	458
Mersey Docks and Harbour Board		Parry v. Croydon Commercial Gas	
Trustees v. Gibbs and others	457	and Coke Co.	230
Metcalf, <i>Ex parte</i>	50	Parsons, <i>Ex parte</i>	91
Metropolitan Board of Works,		Parsons v. St. Matthew, Bethnal	
Reg. v.	98	Green	156
Metropolitan Board of Works v.		Paynter v. The Queen	370
Clever	202	Pearson v. Kingston-upon-Hull	206
Metropolitan Board of Works,		Pease, Rex v.	92
apps., Cox, resp.	202	Pedder v. Preston	64
Metropolitan Commissioners of		Pedley, Rex v.	146
Sewers, Reg. v.	458	Peck v. Waterloo and Seaforth	106, 160
Meyer v. Harding	65	Pentney v. Lynn Paving Commis-	
Middleton, Reg. v.	494, 510, 511, 532	sioners	93
Midland Railway Co. v. Birming-		Peters v. Clarson	97, 456, 506
ham	370	Peto, Reg. v.	368
Minor v. Gilmore	218	Peto v. West Ham	368
Moir v. Munday	454	Pilcher v. Stafford	565
Morland v. Cook	129	Pinckney v. Ewens	302
Morley v. Greenhalgh	314	Pollard, Reg. v.	463
Morley, Rex v.	394		

	PAGE		PAGE
Pontey, Reg. v.	369	St. Luke, Middlesex, v. Lewis	153, 487
Pope v. Whalley	286	St. Margaret's, Westminster, Pav-	
Popham v. Pickburn	58	ing Commissioners, Rex v. . .	428
Poplar District Board of Works v.		St. Martin-in-the-Fields, Reg. v. .	48
Knight	104	St. Marylebone v. Viret	105
Poulsum v. Thirst	447, 450	St. Mary, Islington, Reg. v. . .	167
Powles v. Hider	320	St. Pancras v. Batterbury	437, 461, 502
Price, Rex v.	492	St. Pancras, Reg. v.	48
Pryor v. West Ham	448	Salop JJ., Reg. v.	41, 364
Purnell v. Wolverhampton Water-		Sanders v. St. Neot's	429
works Co.	228	Saunders v. Owen	61
Pyer v. Carter	128, 129	Saunders, Reg. v.	388
		Savage v. Brook	291
Rand, Reg. v.	439	Secretary of State, Home Depart-	
Rann v. Pickin	389	ment, <i>In re</i> Lymington, Reg. v. .	465
Rawlins v. West Derby	43	Schofield v. Schunck	480
Rawstone v. Taylor	220	Scott v. Liverpool	433
Rawstron v. Taylor	225	Scott v. Manchester	449
Reddin v. Metropolitan Board of		Sheil v. Sunderland	204
Works	148	Shortland, Reg. v.	369
Ricardo v. Maidenhead	400, 443	Shrewsbury and Birmingham Rail-	
Richardson v. Gladwin	40	way Co. v. London and North-	
Richardson v. Tubbs	391	Western Railway Co.	430
Richmond v. Dean and Chapter of		Shrewsbury, Paving Trustees,	
St. Paul's	491	Rex v.	394
Ringland v. Burslem	459	Shropshire JJ., Reg. v. . . .	391, 511
Ringland v. Lowndes	361, 435	Sidebotham, Reg. v.	201
Roberts v. Clarke	301	Sinkin, <i>Ex parte</i>	532
Roberts v. Rose	104	Sims v. Matlock Bath	318
Robins v. Merry	174	Slawston, Reg. v.	529
Robinson, Reg. v.	48	Slee v. Bradford	200
Rogers v. Maenamara	319	Smart v. West Ham	61, 473
Rook v. Liverpool (Mayor) . . .	385	Smith v. Redding	11
Rose, Reg. v.	388, 401, 444, 452	Smith v. Waghorn	144
Rotherham, Reg. v.	360	Somerhill v. Coley	49
Rowell v. Hartlepool	99, 358	Southampton and Itchin Floating	
Ruck v. Williams	101, 460	Bridge Co. v. Southampton	
Rutledge v. Farnham	428		96, 101, 457
Russell v. St. Botolph, Bishops-		South Wales Railway Co. v. Swan-	
gate	329	sea	370
Russell v. Shenton	139, 146	Spokes v. Banbury	103
Russell v. Trickett	428	Staffordshire JJ., Reg. v. . . .	297
Ryan v. Thompson	501	Stainton v. Metropolitan Board of	
		Works	217
Saberton, <i>In re</i>	374	Stainton v. Woolrych	98
Saffron Walden, Reg. v.	29, 483	Stevens v. Evans	437
St. George, Hanover Square, v.		Stevens v. Gourlay	200
Sparrow	174	Stephens, Reg. v.	303
St. Helen's Smelting Co. (Limited)		Stewart, Reg. v.	327, 356
v. Tipping	299	Stockport Waterworks Company	
St. John Westgate and Elswick,		v. Potter	94, 214, 230, 302
Reg. v.	328	Stokes v. Grissell	29, 483

	PAGE		PAGE
Strand District Board of Works,		Waller v. Manchester (Mayor)	214
Reg. v.	140	Wallington, app., White, resp.	165
Street, Reg. v.	354	Wallington, app., v. Willes, resp.	383
Suffield v. Brown	128	Walter v. Selfe	299
Sunderland v. Herring	162	Wanstead v. Hill	299
Surrey JJ., Reg. v.	390	Warblington, <i>Ex parte</i>	12
Sutcliffe v. Booth	126, 224	Ward v. Lee	446
Sutton v. Norwich (Mayor)	125	Ward v. Lowndes	358
Sutton v. Spectacle-Makers' Co.	356	Wardle v. Brocklehurst	126
Swaine v. Great Northern Ry. Co.	303	Ware v. Regent's Canal Co.	99
Sweet, app., Seager, resp.	377	Warner, Reg. v.	515
Sweetman v. Guest	373	Warwickshire JJ., Reg. v.	148, 374, 400, 443
Swinburne v. Robinson	189	Waterloo - with - Seaforth L.B.H.,	
Swinford v. Keble	21	apps., Bibby, resp.	440
Swire v. Burley	359	Watkins v. Reddin.	197
Taff Vale Railway Co., Reg. v.	370	Watson v. Commissioners of Milton	148
Tait v. Carlisle	369	Wedmore v. Bristol	201
Tamworth (Mayor of), Reg. v.	356	Wednesbury v. Stevenson	64, 163
Tart, Reg. v.	45	Westbury-on-Severn, Reg. v.	43
Tatham, Reg. v.	514	West Middlesex Waterworks Co.,	
Taylor, app., Metropolitan Board		Reg. v.	215
of Works, resps.	173	Westwick, <i>Ex parte</i> , v. Notting-	
Tear v. Freebody	201	ham Corporation	200
Thomas, app., Williams, resp.	166	Whaley v. Laing	231
Thomson v. Waterlow	129	Wheeler v. Cooper	394
Thompson v. Charnock	433	Whipp, Reg. v.	371
Thompson v. Lapworth	377	Whitchurch v. Fulham Board of	
Thornton v. Nutter	93	Works	161
Tidswell v. Whitworth	166	White, Reg. v.	49
Tinkler v. Wandsworth	484, 485, 487	White, Rex v.	479
Todmorden, <i>In re</i>	17, 24	White and Ward, Rex v.	303
Tomlins v. Great Stanmore	496	Whitehouse v. Birmingham Canal	
Tottenham, Reg. v., <i>Ex parte</i> Perry	373	Co.	101
Toxteth Park, Reg. v.	369	Willes v. Wallington	165
Tozer v. Child	49	William v. Heath	225
Tranmere v. Kellett	435	Wilson, app., Hall, resp.	732
Triggs v. Lester	309	Wilson v. Halifax	156, 447
Tucker v. Rees	205	Wiltshire, app., Baker, resp.	285, 286
Tulk v. Metrop. Board of Works	179	Wiltshire v. Willett	286
Twopenny, Reg. v.	374	Womersley v. Church	126, 217
Usher v. Woodman.	419	Woolley v. Kay	32, 34
Vantandillo, Rex v.	564	Wood, Reg. v.	401, 444, 452
Vauxhall Bridge Co. v. Lambeth.	177	Workshop v. Marris	353
Waddington v. City of London		Workshop, Reg. v.	357, 363, 364, 456
Union.	357	Worrall Waterworks Co. v. Lloyd	414
Waite v. Garston	205	Worthington v. Hulton	357
Walker v. Great Western Railway		Worthington v. Sudlow	163
391, 395, 429		Yorkshire (W. R.) JJ., Reg. v.	399
Walker, app., Evans, resp.	305	Young, app., Grattbridge, resp.	467, 521
		Young v. Edwards'	206



A TREATISE
ON THE
LAW OF PUBLIC HEALTH
AND THE
LOCAL GOVERNMENT OF TOWNS.

—♦—
INTRODUCTION.

THE ACT for promoting the Public Health, which received the Royal assent on the thirty-first of August, 1848, recited that, Whereas further and more effectual provision ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and that it was expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof should, as far as practicable, be placed under one and the same local management and control, subject to the general supervision therein provided; and enacted that the Act might from time to time be applied to any part of England and Wales, except the City of London and the Liberties thereof, the parts within the limits of certain Commissions of Sewers bearing date at Westminster, the thirtieth day of November, 1847, also the parts within the limits of a certain other Commission of Sewers bearing date at Westminster, the fourth day of December in the same year (both of which Commissions have since expired), and the parts subject to the jurisdiction of the Commissioners acting in the execution of the Act of 5 Geo. IV., for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, and in the execution of the several Acts for extending the jurisdiction of those Commissioners.

Public Health
Act, 1848.
11 & 12 Vict.
c. 63, s. 1.

Limits of Act.
Ib.

This Act is to be cited in other Acts of Parliament, and in legal instruments and other proceedings, as "The Public Health Act, 1848."

Short Title.
Ib. s. 3.

It was amended, and further provision made for the local government of towns and populous districts, by an Act which received the Royal assent on the second of August, 1858, and which for all purposes is to be cited as "The Local Government Act, 1858." This latter Act applies to the whole of

Local Govern-
ment Act,
1858.
21 & 22 Vict.
c. 98.

Short Title.

21 & 22 Vict. c. 98, s. 1. England and Wales, except the parts comprised within the limits of the metropolis, as defined by the Metropolis Local Management Act, 18 & 19 Vict. c. 120. It is to be construed together with, and to be deemed to form part of, the Public Health Act, 1848, and words used in it are to be interpreted in the sense assigned to them in that Act: byelaws framed under it are to be subject to confirmation, enforced, and dealt with in all other respects as byelaws under the Public Health Act (as to which see *post*), and the provisions of each of the Acts shall, so far as may be consistent with the provisions of the Local Government Act, respectively be applicable to all matters and things arising under the other Act.

Ib. s. 4.

The Local Government Act, 1858, was amended by the 24 & 25 Vict. c. 61, 26 Vict. c. 17, 29 & 30 Vict. c. 90, and 31 & 32 Vict. c. 115, the provisions of which will be adverted to hereafter. It is only necessary here to state, that in citing the 24 & 25 Vict. c. 61, it shall be sufficient to use the words and figures "Local Government Act (1858) Amendment Act, 1861;" and in citing the 26 Vict. c. 17, it may be cited as "The Local Government Act Amendment Act, 1863." Both Acts are incorporated with the Public Health Act, 1848, and Local Government Act, 1858, all of which are to be read as if they were one Act.

Short Title.
24 & 25 Vict.
c. 61, s. 31.

Acts incorpo-
rated.
Ib. s. 30.

Sanitary Act,
1866.

The 29 & 30 Vict. c. 90, is to be cited for all purposes as "The Sanitary Act, 1866," the 31 & 32 Vict. c. 115, as "The Sanitary Act, 1868."

29 & 30 Vict.
c. 90, s. 1.
Incorporation
of Local
Boards.
Ib. s. 46.

Section 46 of the Sanitary Act, 1866, incorporates Local Boards, to be designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers upon them.

When to take
effect.
21 & 22 Vict.
c. 98, s. 5.

The Local Government Act took effect from the first day of September, 1858, in places where the Public Health Act, 1848, was already in force wholly or partially; but nothing contained in it is to affect the qualification and number of the members of Local Boards of Health, or any power, right, privilege, or liability of any Board of Improvement Commissioners exercising powers of the Public Health Act, 1848, or of any town council or Local Board of Health, under or by virtue of any general or local Act of Parliament other than the Public Health Act.

Not to affect
qualification
or powers of
Local Boards.
Ib.

Exercise of
powers which
required
sanction of
General Board
of Health.
Ib. s. 8.

Whenever the sanction, consent, direction, or approval of the General Board of Health is required by law to the exercise of the powers of Local Boards of Health or Boards of Improvement Commissioners, such powers, from the first day of September, 1858, are to be exercised without such sanction, consent, direction, or approval, or any sanction, consent, direction, or approval in lieu thereof, except in so far as is provided by the Local Government Act: all sanctions for the mortgage of rates given by the General Board of Health before the passing of that Act were however to continue in full force and effect

until all moneys the borrowing of which was thereby sanctioned had been borrowed.

Where, however, the sanction, consent, direction, or approval of the General Board of Health is rendered requisite in or by any local Act of Parliament to the due exercise of any of the powers vested thereby in any Local Board of Health or Board of Improvement Commissioners, such powers, or any of them, shall and may be henceforth exercised with and under the sanction, consent, direction, and approval of one of Her Majesty's principal Secretaries of State, and not otherwise.

All proceedings, contracts, matters, and things respectively, begun or made under any section of the Public Health Act, 1848, repealed by the Local Government Act, may be proceeded with and enforced as if no such repeal had taken place, and all powers exercised (*i.e.* as it seems, actually exercised at the time of the passing of the Local Government Act), or byelaws made under any such section, are to continue in force until the new powers and byelaws authorized by the Local Government Act are brought into operation, and no such repeal is to affect any decree or order of the High Court of Chancery, or (*quære*, judgment) of any other Court of Justice, that has been obtained previously to the passing of that Act.

The provision in s. 72 of 11 & 12 Vict. c. 63, which required certain notices to be given before laying and making a building upon any new street, is repealed by 21 & 22 Vict. c. 98, s. 9, except as to "proceedings, matters, and things, respectively begun or made," under any section of the former Act; but, *semble*, where the proper notices had been given and plans lodged under the 11 & 12 Vict. c. 63, this was a "matter or thing begun or made" within s. 9 of 21 & 22 Vict. c. 98, although little or nothing appeared to have been done towards the formation of the streets of which notice had been given. (1)

The Secretary of State is to report annually to Parliament on the execution of the Local Government Act, to make or direct such inquiries as are thereby directed, and to appoint from time to time such officers, clerks, and servants as he may require for the purposes of the Act, and at his pleasure to remove them, and their salaries and allowances are to be fixed by the Lords of the Treasury.

Any officer directed by the Secretary of State to inquire into any matter into which such Secretary is empowered to direct inquiry under the Act, for the purposes of such inquiry has all the powers vested in superintending inspectors: that is to say—during any inquiry under the Act, he is empowered to summon before him any persons whomsoever, and to examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry, and he may by summons require any parochial officer, or any officer of or acting under any cor-

Sanction, &c., of Secretary of State when necessary.
24 & 25 Vict. c. 61, s. 14.

Proceedings, contracts, &c., under 11 & 12 Vict. c. 63, may be proceeded with.
21 & 22 Vict. c. 98, s. 9.

Secretary of State to provide for execution of Act.
Ib. s. 79.

Powers for inquiry directed by Secretary of State.
Ib. s. 80.

(1) *Felkin App., Berridge Resp.*, 15 C. B. (N. S.) 257.

Power to
summon
witnesses, call
for plans,
rates, &c.
11 & 12 Vict.
c. 63, s. 121.

poration, guardians or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of Parliament in force within the district or place to which the inquiry may relate, to produce before him any surveys, plans, sections, rate-books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of the inquiry; he may also examine, inspect, or take copies of any such books, surveys, plans, sections, and documents, or any of them, or part of them; and whosoever wilfully disobeys any such summons, or prevents the officer from examining, inspecting, or taking such copies, or refuses to answer any question put to him by the officer for the purposes of the inquiry, is liable to a penalty not exceeding five pounds: no person can however be required to attend in obedience to any summons unless the reasonable charges of his attendance shall have been paid or tendered to him; and no person is required in any case, in obedience to any summons, to travel more than ten miles from his place of abode.

Orders of
Secretary of
State.
21 & 22 Vict.
c. 98, s. 81.

All orders made by the Secretary of State in pursuance of the Act are binding and conclusive in respect of the matters to which they refer; and any such Secretary may make orders as to the costs of any appeal to him under the Act, and the parties by whom they are to be borne; and every such order may be made a rule of one of the superior Courts of law, on the application of any party named therein.

If costs be awarded against the Local Board, and be not paid pursuant to the order of the Secretary of State, they may be enforced by mandamus. With regard to the enforcement of costs upon rules of Court, the statute 1 & 2 Vict. c. 110, which contains the provisions on the subject, should be referred to.

Decision of
Secretary of
State final.

Upon an application for a mandamus after an appeal to the Secretary of State, the Court of Queen's Bench refused a rule, holding that the principle on which the decision of the Court of Quarter Sessions is final, unless the Justices state a case for the opinion of the Court, applies to an order of the Secretary of State under the Public Health Acts. Per Lord Campbell, C.J., where the legislature says that the decision of the Secretary of State is to be final, it means that it is to be final in law and in fact; and per Hill, J., there is no machinery in the Statute by which the order can be made a rule of Court; if there were, possibly it might be quashed, if bad on the face of it. (1) The Statute, however, it will be perceived, expressly enacts that every such order may be made a rule of one of the superior Courts of law on the application of any party named herein.

(1) *Ex parte Bird*, 28 L. J. (N. S.) Q. B. 223; 5 Jur. (N. S.) 1009; 33 L. T. 162; 1 E. & E. 391.

Doubts having existed whether Local Boards of Health, constituted under or by virtue of Local Acts, are affected by the provisions of "The Local Government Act, 1858," or by the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," and it being desirable to remove such doubts, it is enacted, That all the provisions of "The Local Government Act, 1858," as amended by the 24 & 25 Vict. c. 61, and of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," as amended by the "Act to amend the Acts for the Removal of Nuisances and Prevention of Diseases," which Acts are hereinafter designated the General Acts, shall extend and apply to all Local Boards of Health constituted under or by virtue of Local Acts, with and subject to the two following qualifications (that is to say):

Application
of General
Acts to Local
Boards, con-
stituted under
Local Acts.
24 & 25 Vict.
c. 61, s. 29.

(1.) Provisions of the General Acts opposed to or restrictive of the provisions (whether adopted or original) of any such Local Act shall be of no force in the district for which the Local Act was passed:

(2.) Wherever the General Acts and a Local Act contain provisions for effecting the same or a similar object, but in different modes, the Local Board of Health may proceed under the General Acts or the Local Act:

And every future Act for amending or repealing any of the General Acts aforesaid shall, subject to such qualifications, also extend and apply to every such Local Board of Health.

P A R T I.

CHAPTER I.

FORMATION OF DISTRICTS.

§ 1. DISTRICTS UNDER THE PUBLIC HEALTH ACT, 1848.

THE manner in which districts under Local Boards of Health were constituted under the Public Health Act, 1848, will be treated of in the first place; and then the mode of adoption of the Local Government Act, 1858 (as amended by the 24 & 25 Vict. c. 61, and 26 Vict. c. 17, and subsequent Acts), will be explained.

If information should be required as to the places in which either of the Acts have been adopted, reference may be made to a return to the House of Commons (No. 80, 1867), showing the names of such places, their population and rateable value, and the local Acts applicable to each place.

Preliminary
inquiry.
11 & 12 Vict.
c. 63, s. 8.

After the passing of the Public Health Act, 1848, upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, parish, or place having a known or defined boundary, not being less than thirty in the whole, or where it appeared or could be ascertained from the last return of the Registrar-General that the number of deaths annually, during the period in respect whereof the return was made, had on an average exceeded the proportion of twenty-three to a thousand of the population, the General Board of Health were empowered to direct a superintending inspector to visit such city or other place, and to make public inquiry, and to examine witnesses, as to the sewerage, drainage, and supply of water, the state of the burial-grounds, the number and sanitary condition of the inhabitants, and as to any local Acts of Parliament in force for paving, lighting, cleansing, watching, regulating, supplying with water, or improving the city or place, or having relation to the purposes of the Act, also as to the natural drainage areas, and the existing municipal, parochial, or other local boundaries, and the boundaries which might be most advantageously adopted for the purposes of the Act, and as to any

other matters in respect whereof the Board desired to be informed, for the purpose of enabling them to judge of the propriety of reporting to Her Majesty, or making a provisional order.

Before proceeding upon the inquiry, the inspector was required to give fourteen days' public notice of a time and place at which he would be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry: after the completion of the inquiry he was required to make a report in writing to the General Board of Health, and if upon his report it appeared to the General Board that the boundaries which might be most advantageously adopted for the purposes of the Act were not the same as those of the city, town, borough, parish, or place with respect to which inquiry was made, they were to cause a further inquiry and report to be made to them. The Board were then to cause copies of the reports so obtained to be published, and copies of them to be deposited with the town-clerk, and with the clerk to any commissioners or trustees of the place affected by them, and with the clerk to the justices as well as with the clerk to the Board of Guardians of the union or parish the whole or part of which might be affected by them, or if they related to places not within any corporate borough, the Board were to cause copies of them to be deposited with the churchwardens or overseers of the poor; the copies of the reports so published or deposited were to be accompanied by a notice stating that within a certain time, not being less than one month, written statements might be forwarded to the Board with respect to any matter contained in or omitted from the reports, or any amendment proposed to be made in them; which statements were to be dealt with in like manner as the reports, and both statements and reports were to be open to public inspection.

Inspector's notice of inquiry, and report.
11 & 12 Vict. c. 63, s. 9.

With regard to the application of the Public Health Act, 1848, it has been held that it was legally put in force by an Order in Council, within a parish consisting of a township and certain hamlets, upon the petition of the inhabitants of the parish, though the superintending inspector appointed to inquire as to the parish made his report headed as to the "town," and recommended that the Act should be applied to the "township," the public notice which he gave before entering upon the inquiry having reference to the "parish." (1) The notice in the case of *Barber v. Jessop* was objected to as being insufficient in form and substance, and it was contended that there was no sufficient inquiry; but the Court held that the giving of the notice was not a condition precedent, but refused to say whether the holding of an inquiry was such condition; it was observed by Pollock, C.B., and Bramwell, B., that there really was an inquiry extending over the whole area covered by the

How when error in description of district.

(1) *Barber v. Jessop*, 1 H. & N. 578.

order. There was in fact in that case a substantial though not an exact compliance with the Act as to the preliminary proceedings.

Application of
the Act by
order of Her
Majesty in
Council.
11 & 12 Vict.
c. 63, s. 10.

By provisional
order sanc-
tioned by
Parliament.
Ib.

Exceptions.
Ib.

If afterwards it appeared to the General Board of Health to be expedient that the Act, or any part of it, should be applied to the particular city, town, borough, parish, or place, with respect to which the inquiry was made, they were to report to Her Majesty accordingly; and at any time thereafter, Her Majesty, by and with the advice of her Privy Council, was empowered to order that the Act, or any part of it, should be applied to and be put in full force and operation within the city, etc. If after the inquiry it appeared to the General Board to be expedient that the Act, or any part of it, should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the petition proceeded, or within boundaries where no petition had been presented from the inhabitants, or within any city, town, borough, parish, or place in which any local Act is in force, they were to make a provisional order under their hands and seal of office, with such provisions, regulations, conditions, and restrictions with respect to the application and execution of the Act, or any part of it, and with respect to any local Act, and the repeal, alteration, extension, or future execution of it, as they might think necessary, of which provisional order due publicity was required to be given. In case it should be enacted by any Act of Parliament that the whole or part of any provisional order or orders of the General Board of Health should be confirmed and be absolute, the provisional order or orders so confirmed were to be as binding and of the like force and effect as if they had been expressly enacted by Parliament, and the Act confirming them was to be deemed a public general Act. The provisional order was not to have any force or effect, nor was the Act, or any part of it, to be applied, except for the purposes of inquiry, report, or provisional order, without the previous authority of Parliament. Further, no provisional order, or any altered or amended order, was to be made with respect to the local Act of any waterworks company without the consent of the company, and, except for the purposes of main sewerage, no corporate borough or any part of it could be included in any district not exclusively consisting of the whole or part of one borough, without the previous consent of the council under the common seal of the borough; neither could parts beyond the boundaries of a corporate borough be included in any district comprising the whole or part of any such borough, unless upon the petition of a majority of the owners of property, and ratepayers who would be qualified to vote in the election of members of a Local Board of Health for the parts proposed to be included.

Under 11 & 12 Vict. c. 63, s. 10, a provisional order was made by the General Board of Health, which transferred the

powers vested in commissioners under a local Act to the town council of the borough, acting as the Local Board of Health for the borough, constituted a district under the Act; and directed, amongst other things, that every part of the Public Health Act, 1848, except sect. 50 and part of sect. 88, should be applied to the borough; and that certain sections of the local Act should be repealed, and certain clauses of the Towns Police Clauses Act, 1847, and of the Towns Improvement Clauses Act, 1847, should be incorporated with so much of the local Act as remained unrepealed, and the Public Health Act as applied to the borough. The Local Board, acting under the Public Health Act, having caused certain turnpike-gates to be removed, the trustees refusing to allow the carts of the Local Board to pass without payment of toll, it was held, on an action of trespass, that prohibiting the receipt of tolls by the turnpike trustees within the limits of the corporate district, could not be considered as a regulation or a restriction necessary for the purposes of applying the Public Health Act to the district; and therefore that the provisional order incorporating the 50th sect. of the Towns Improvement Act, 1847, under which the defendant acted, was not authorized under the powers given to the General Board of Health by the 10th sect. of the Public Health Act, 1848; and that the Local Board was not justified in causing the gates to be removed; and judgment therefore went for the plaintiff. (1)

In another case a provisional order was made by the General Board of Health which repealed part of a local Act, and applied certain parts of the Public Health Act, 1848, to the whole of the area of the borough (of Tynemouth). It applied sect. 88 of that Act, except that part of it which provides that "the occupier of any land used only as a railway or canal shall be assessed at one-fourth of the annual value." A railway company having been accordingly assessed in respect of their railway passing through the district to the full annual value, appealed against the rate, and, on a case stated, the Court of Queen's Bench held that the part of the provisional order which applied sect. 88, but excepted the latter part of it, was not authorized by sect. 10 of the Act, but was void. They accordingly ordered the rate to be amended by reducing the assessment on the railway proper to one-fourth its annual value. (2)

All Orders in Council take effect and are to be in full force and operation within the district to which they apply from and after the day specified in them for that purpose; and a copy of every such order is to be published in the *London Gazette* and laid before Parliament; and whenever any provisional order of the General Board of Health was submitted to Parlia-

Powers of
Local Board
as to turnpike
gates.

Publication
of Orders in
Council, &c.
11 & 12 Vict.
c. 63, s. 142.

(1) *Clayton v. Fenwick*, 6 E. & B. 114; 25 L. J. (N. S.) Q. B. 226; 2 Jur. (N. S.) 635.

(2) *North Eastern Railway Company Apprs., Tynemouth Resp.*, W. N. 1868, p. 210.

Reports to be
laid before
Parliament.
11 & 12 Vict.
c. 63, s. 142.

ment for confirmation, that Board was required to present to both Houses of Parliament a copy of all reports of any superintending inspector with respect to the parts to which the provisional order related, and of all memorials forwarded to them with respect to such reports.

Printed copies
of Provisional
Orders.

12 & 13 Vict.
c. 94, s. 9.
13 & 14 Vict.
c. 90, s. 4.

Printed copies of all provisional orders of the General Board of Health were to be delivered to the doorkeepers of both Houses of Parliament for the use of the Members before the first reading of any Bill for their confirmation; and copies of all such orders were also to be furnished by that Board to all persons applying for them between the hours of eleven and five, at their office, or by letter, on payment of the cost of writing or furnishing such copies.

Costs of Pre-
liminary
inquiry.

11 & 12 Vict.
c. 63, s. 11.

For the purpose of defraying the costs incurred by the General Board of Health in putting the Act in force, it was provided: That the costs, charges, and expenses, especially incurred by or under the direction of that Board, or of any superintending inspector in relation to any inquiry, were, to such extent and amount as the Treasury might think proper to direct, to become a charge upon the general district rates levied in the district, and to be repaid to the Treasury by annual instalments not exceeding five, together with the interest at the rate of five per cent.

The 141st section of the 11 & 12 Vict. c. 63 (repealed by 21 & 22 Vict. c. 98, s. 77), provided for the amendment of Orders in Council and Provisional Orders, and for the extension of the Districts formed under the 11 & 12 Vict. c. 63. The repealing Act, however, made special provision for effecting the same objects, as to which see *post*, page 67.

Union of
adjoining
districts.
21 & 22 Vict.
c. 98, s. 27.

Districts which adjoin each other may unite together upon such terms and subject to such conditions as the respective Local Boards may, with the sanction of a Secretary of State, determine.

This provision of the Act is extremely difficult to construe, as it is expressed without much precision. The sanction of the Secretary of State to the union of the districts may be expressed by letter under his own hand or under the hand of one of the under Secretaries. (1) As to the evidence thereof, see 31 & 32 Vict. c. 37.

§ 2. DISTRICTS UNDER THE LOCAL GOVERNMENT ACT, 1858.

Adoption of
Local Govern-
ment Act,
1858.
Ib. s. 12.

The Local Government Act, 1858, may be adopted—

(1.) In corporate boroughs to which the Public Health Act, 1848, has not been applied:—by resolution of the council.

(2.) In other places under the jurisdiction of a Board of Improvement Commissioners, where all or part of the commissioners are elected by ratepayers, or by owners and ratepayers:—by a resolution of such Improvement Commissioners.

(1) *Arnold v. Gravesend*, 25 L. J. (N. S.) Ch. 776.

(3.) In all other places having a known or defined boundary:—by a resolution of the owners and ratepayers:

A district for spiritual purposes, formed under the 6 & 7 Vict. c. 37, s. 9, is entitled, by resolution of its owners and ratepayers (without reference to the proceedings of townships out of which it is formed), to adopt the Local Government Act, as being a place with “a known or defined boundary,” according to the provisions of the Act. (1)

With reference to the meaning of the word “place,” as used in the Beer House Act, 3 & 4 Vict. c. 61, s. 15, in *Smith v. Redding*, (2) Blackburn, J., observed: “It may well be that if a collection of houses has acquired a distinct name it may be a place within the meaning of the statute, and yet it would be within a parish;” and per Lush, J.: “It may be a place of many thousand inhabitants, popularly called a town, made up of several parishes or parts of parishes.”

Ratepayers or owners making a requisition for the summoning of meetings for the purpose of deciding as to the adoption of the Local Government Act, 1858, shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the Act not being adopted, of the costs incurred in relation to such meetings or polls taken in pursuance of any demand made at such meetings, the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in the event of disagreement between them, by any Justice of the Peace acting in and for the place in which it is proposed that the Act shall be adopted.

Meetings for the purpose of passing resolutions for the adoption of the Act in any of the foregoing cases are to be summoned on the requisition in writing of any twenty ratepayers or owners:

1. In corporate boroughs:—by the mayor;
2. In other places under the jurisdiction of Improvement Commissioners:—by the chairman of the commissioners.

3. In places having known and defined boundaries, not being corporate boroughs, or towns under the jurisdiction of Improvement Commissioners:—by the churchwardens or one of them; or if there are no churchwardens—by the overseers or one of them; or if there be none of those officers, or if they in any case neglect, or are unable, or refuse to perform the duties imposed on them—by any person appointed by one of Her Majesty's principal Secretaries of State.

Previous to passing any resolution by any Council or Board Notice of Improvement Commissioners, a month's previous notice of meeting in

(1) *Reg. v. Northowram and Clayton*, 35 L. J. (N. S.) Q. B. 90; L. R. 1 Q. B. 110; 7 B. & S. 110.

(2) L. R. 1 Q. B. 492.

Adoption of
Local Govern-
ment Act,
1858.
21 & 22 Vict.
c. 98, s. 12.

Costs of pro-
ceeding with a
view to adopt-
ing the Act,
when it is not
adopted.
24 & 25 Vict.
c. 61, s. 1.

Summoning
meetings for
adoption of
Act.
21 & 22 Vict.
c. 98, s. 13.

boroughs, &c.
21 & 22 Vict.
c. 98, s. 12.

the meeting, and of the purpose thereof, must be given in the manner in which notices of meetings of the Council or Board of Commissioners are usually given, and two-thirds of the members present must concur in the resolution; and the chairman of the meeting, with the consent of a majority of the members present, may adjourn it from day to day.

Lesser place
included
within limits
of a greater
place.
Ib. s. 14.

In cases where any place authorized to adopt the Act includes within its limits any less place which, if it were not so included, would of itself be authorized to adopt the Act, such less place is not to be entitled to adopt the Act unless the greater place within the limits of which it is included has refused to do so, or unless it has been determined by one of Her Majesty's principal Secretaries of State that it ought, as respects the adoption of the Act, to be excluded from the limits of the greater place.

Notice of
meeting in
places having
defined
boundaries.
Ib. s. 13.

In places having known or defined boundaries, and not being corporate boroughs, or towns under Improvement Commissioners, the summoning officer, upon requisition, is to fix a time and place for holding the meeting, and is forthwith to give notice thereof—

By advertisement in some one or more of the newspapers circulated in the place;

By causing a notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed: *i.e.* of every church and chapel of the Established Church within the district. (1)

Chairman.
Ib.

The meeting, on assembling, shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the meeting from day to day.

Resolutions
how to be
passed at
meeting.
Ib.

The meeting being duly constituted, the chairman shall propose the resolution for the adoption of the Act, and the meeting shall decide for or against such adoption: if, however, any owner or ratepayer shall demand that the question be decided by a poll of the owners and ratepayers, a poll is to be taken by voting papers in accordance with the form in the schedule to the Act, and in the same way, and with the same conditions as to notice of voting, delivery, filling up, collection, examination, declaration of the result, custody of voting papers, penalty for neglect or refusal to comply with the provisions of the Act, scale of votes, and in all other respects as is provided in the Public Health Act, 1848, in respect of the election of Local Boards of Health, as to which, see page 38.

The following is the form of voting paper:—

(1) *Ormerod v. Chadwick*, 16 M. & W. 367; and *Ex parte Warblington*, 18 Jur. 494.

At a meeting held on the _____ day of _____ at the _____ Form of
of _____, in the county of _____ Voting Paper.
it was agreed that the following Resolution should be proposed to the owners and ratepayers :— 21 & 22 Vict.
c. 98. Sch.
Form (A.)

“ That the Local Government Act, 1858, be adopted in the
of _____.”

	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				
	J. S.			

John Smith,
of 19, Fore Street.

N.B.—The ratepayer will put his initials under the heading “in favour” or “against,” according as he votes for or against the resolution. He is also required to subscribe his name and address at full length. If a voter cannot write, he must make his mark instead of initials; but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark. If a proxy vote, he must add after his signature the words, “as proxy for,” with the name of corporation or company for which he is proxy. This paper will be collected on the _____ day of _____, between the hours of _____ and _____.

Take Notice.—“If any person wilfully commits any of the acts following, that is to say, fabricates, in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting-paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting-papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable, on conviction before two Justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour.” (Local Government Act, 1858.)

[Signed by the summoning officer.]

If no poll be demanded, or if the demand for a poll be withdrawn, a declaration by the chairman is to be sufficient evidence of the decision of the meeting. How, if there be no poll.
21 & 22 Vict.
c. 98, s. 13.

When a poll is demanded the chairman appointed by the meeting should give public notice of the days on which the voting-papers will be delivered and collected, and the time and place when he will attend to cast up the votes. See 11 & 12

Vict. c. 63, s. 23, and 21 & 22 Vict. c. 98, s. 13 (4). The number of votes each person is to give, is regulated by the 11 & 12 Vict. c. 63, s. 20, *post*, p. 40, and the question must be decided by an actual majority of the votes.

Restriction as to the adoption of the Act by certain places.
26 Vict. c. 17, s. 2.

The adoption of the Local Government Act, 1858, by any place where that Act was not in force on the first of March, 1863, and where the population, according to the then last census, is less than three thousand, shall not be of any validity unless it is approved by one of Her Majesty's principal Secretaries of State, on proof being given to his satisfaction that, by reason of special circumstances, it is expedient that such place should be allowed to adopt the Act. Before signifying his approval or disapproval, the Secretary of State may cause an inquiry to be made in the place as to the circumstances alleged in support of the expediency of the adoption of the Act, of the time and place of which inquiry fourteen days' public notice shall be given, and on the determination of such inquiry shall give or withhold, as he thinks just, his approval of the adoption of the Act. The approval or disapproval of the Secretary of State shall be published in the *Gazette*, and such publication shall be evidence of the fact of that approval or disapproval having been given.

Restriction as to adoption of Local Government Act.

The reason for the above limitation on the adoption of the Local Government Act was thus explained by Sir George Grey, on the second reading of the Bill, on the twenty-fifth of March, 1863. He said that although the Local Government Act was intended only for populous towns, a great many very small places had availed themselves of it. It had been adopted, for instance, in 22 districts which had less than 100 inhabitants, and in 130 with between 100 and 500. Indeed, places with only 17, 18, 23, 25, and 37 inhabitants respectively had passed resolutions for adopting it. The reason of this excessive fondness for the Act was, that those places where it was in force were exempted from the operation of the Highway Act. It was, therefore, adopted in many cases simply to evade the latter statute, and without any intention of carrying out its provisions. The object of the Bill was to put a check on such proceedings, and it had been framed in accordance with suggestions and requests from all parts of the country.

Adoption of Act by parish in a highway district.
25 & 26 Vict. c. 61, s. 41.

Any parish or part of a parish included in a Highway District, under 25 & 26 Vict. c. 61, may adopt the Local Government Act in the same manner, and under the same circumstances, in and under which it might have adopted the same if it had not been included in such District; and upon such adoption being made, such parish or part of a parish shall cease to form part of such District, subject nevertheless to the payment of any contribution that may at the time of such adoption be due from such parish or part of a parish to the Highway Board.

Voting at meeting.

At a meeting convened under sect. 13 of the Local Government Act, 1858, for the purpose of deciding as to the adoption

of the Act, a resolution was moved and seconded in favour of the adoption of the Act, and the chairman, on a show of hands, declared that it was carried. A demand was then made that the meeting be divided on the question, but the chairman refused to do so. The Secretary of State having been appealed to under sect. 18, he made an order that the chairman was not bound to divide the meeting, and that the vote was valid. Upon application for a mandamus to summon a meeting of ratepayers to ascertain by means of a poll whether they would adopt the Act, on the ground that the chairman was bound to divide the meeting, it was held that the decision of the Secretary of State was final, under sect. 81, by which all orders made by the Secretary of State, in pursuance of the Act, shall be binding and conclusive in respect of the matters to which they refer. But *quære*, whether, under sect. 13, the chairman was bound to divide the meeting or whether a poll should have been demanded. (1) -

Voting at meeting convened under 21 & 22 Vict. c. 98, s. 13.

Poll.

More recently it was held that if, at a meeting called to adopt the Local Government Act, a poll be demanded and the chairman refuse to grant it, and no resolution for or against the adoption be come to, but the consideration of the question adjourned to another and distant day, a mandamus will not lie against the chairman to take a poll, for after the meeting is dissolved the chairman's functions are at an end. In such a case the proceedings must commence *de novo*. (2)

Persons fabricating, or otherwise improperly altering or interfering with voting-papers, or personating persons entitled to vote, or falsely assuming to act in the name or on the behalf of any person entitled to vote, or interrupting the distribution of voting-papers, or distributing them under a false pretence of being lawfully authorized, for every such offence are liable to be imprisoned for any period not exceeding three months, with or without hard labour.

Penalty for forging, &c. of voting papers. *Ib.* s. 13.

§ 3. ADOPTION OF LOCAL GOVERNMENT ACT BY PLACES NOT HAVING DEFINED BOUNDARIES.

The Local Government Act, 1858, may also be adopted by places not having known or defined boundaries by petition to one of Her Majesty's principal Secretaries of State, stating the proposed boundaries of the place, and signed by one-tenth of the ratepayers resident within such boundaries. The petition must also be supported by such evidence as the Secretary of State may require.

Adoption by places not having defined boundaries. *Ib.* s. 16.

Before acting upon the petition, the Secretary of State may direct inquiry to be made as to its genuineness, and as to the

(1) *Ex parte Bird*, 5 Jur. (N. S.) 1009; 28 L. J. (N. S.) Q. B. 223; 33 L. T. 162; 1 E. & E. 931.

(2) *Reg. v. Bird*, 39 L. T. 286.

Settling
boundaries by
Secretary of
State.
21 & 22 Vict.
c. 98, s. 16.

propriety of the proposed boundaries; of which inquiry fourteen days' notice of the time, place, and subject of it must be given.

He may, either before or after inquiry, upon consideration of the matter, dismiss the petition altogether, or make an order as to the boundaries of the place: he may also make an order as to the costs of the proceedings under this section, and the parties by whom the costs are to be borne.

Matlock Bath, a district not having any ascertained or defined boundary, and a portion of the parish of Matlock, obtained from the Secretary of State an order, under s. 16 of the 21 & 22 Vict. c. 98, settling its boundaries for the purposes of that Act, and subsequently adopted the Act within the district. Afterwards the parish of Matlock adopted the Act. Under these circumstances the Court refused a mandamus to the Secretary of State to publish the notice of the adoption of the Act by the district of Matlock Bath under sect. 19; holding that sect. 14 applied to places the boundaries of which were settled by an order of the Secretary of State, and therefore that the district of Matlock Bath could not adopt the Act unless the parish of Matlock had refused to do so. (1)

A district carved out of a larger district for ecclesiastical purposes, under the 6 & 7 Vict. c. 37, s. 9, is a place having a defined boundary which can adopt the Act, without having recourse to s. 16 of the 21 & 22 Vict. c. 98. (2)

After the Home Secretary has included other property within the boundary of the district, and the ratepayers have met and adopted the Act, and the time has expired after which the Act is to become law, it will be too late to bring up the Home Secretary's order by certiorari to be quashed. The ratepayers of a place not having a known or defined boundary petitioned the Secretary of State, under sect. 16 of the 21 & 22 Vict. c. 98, to settle its boundaries for the purposes of the Act; the petition setting forth the proposed boundaries. The Secretary of State thereupon appointed an inspector to inquire, and the inspector reported in favour of the proposed boundaries, subject to certain alterations by which certain properties beyond the proposed boundaries were included in the district. On the fifteenth of January, 1861, the Secretary of State made an order adopting the proposed boundaries with the alterations, and directed that from and after that date the boundaries therein set forth should form the boundaries of the district. In pursuance of the order, a meeting of the ratepayers to decide as to the adoption of the Act within the district was held on the sixteenth of February, at which a resolution for its adoption was carried. On the seventh of March a ratepayer who occupied property in the district appealed against this resolution to the Secretary of

(1) *In re Matlock Bath District*, 2 B. & S. 543; 31 L. J. (N. S.) Q. B. 177; 6 L. T. (N. S.) 243.

(2) *Reg. v. Northowram*, ante, p. 11.

State, upon the ground that his property was not comprised within the boundary from within which the petition proceeded. The Secretary of State again directed the inspector to inquire, and upon his report thereon made an order, dated the twenty-first of April, dismissing the appeal, and directing that after one month from the date thereof the Local Government Act, 1858, should have the force of law within the district. Upon motion for a certiorari at the instance of the petitioning ratepayer to remove the order of the fifteenth of January, on the ground that it was *ultra vires* of the Secretary of State to make it, it was held by Wightman and Blackburn, JJ., Cockburn, C.J., *dubitante*, that if the Secretary of State had exceeded the powers conferred upon him by the Act, still the application for a certiorari was too late, the resolution for the adoption of the Act having, by sect. 20, acquired the force of law within the district. Cockburn, C.J., expressed very serious doubts whether it is competent for the Secretary of State to extend the area of a proposed district under the Local Government Act beyond the boundaries mentioned in the petition; and though the Court did not decide that question, he said he was desirous that it should be kept quite open for the consideration of the Court if the question should arise again and the matter be brought before the Court in time. (1)

Settling
boundaries by
Secretary of
State.
21 & 22 Vict.
c. 98, s. 16.

The portion of land on the sea-shore between high-water mark and ordinary low-water mark may form part of the parish coming down to the shore; but there is no *primâ facie* presumption that it does so, and in the absence of evidence that it does form part of the parish, it must be taken not to be part of it. (2) See, however, *Reg. v. Bennett*, *post*.

Land on sea-
shore.

Now from the twenty-fifth of December, 1868, every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for 1851 or not, for which an overseer has not been then appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish, shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value; and every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the twenty-fifth of December, 1868, shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part, or

Provision for
incorporation
of certain
extra-paro-
chial places.
31 & 32 Vict.
c. 122, s. 27.

(1) In *re Todmorden*, 30 L. J. 1 B. & S. 412.
(n.s.) Q. B. 305; 4 L. T. (n.s.) 509; (2) *Reg. v. Musson*, 8 E. & B. 900.

Boundaries. bank adjoins in proportion to the extent of the common boundary.

District comprising a sea-port. With reference to what may be included within the limits of a district comprising a sea "port," it has been held that the following description of the limits within which the powers of an Act of Parliament passed for the supply of water to a town are to operate, namely "to extend to and comprise the whole of the town and *port* of Cardiff and the parishes or places within and adjoining to such town in the county of Glamorgan," did not include anything "beyond the parishes or places within and adjoining the town of Cardiff," and that the word "*port*" was limited by the general context of the Act. (1)

District bounded by a river. With regard to a district any portion of which is bounded by a river, *McCannan v. Sinclair* (2) may be referred to. In that case in beating the boundary of the plaintiff's parish it had been customary to walk along the shore of the river, but in beating the boundary of the adjoining parish they went along the middle of the river in boats. The parish officers of plaintiff's parish were not aware that any parochial rights had been claimed beyond the margin of the river, and on a special case being stated for the opinion of the Court, it was held that the plaintiff's parish extended to the middle of the river, and that a steamboat-pier built on the bed of the river between high and low water-mark was therefore held rateable to the relief of the poor.

Adoption of Act afterwards. 21 & 22 Vict. c. 98, s. 16. After the boundaries have been settled, the place for the purposes of the Act is to be deemed to be a place with a known or defined boundary, and may adopt the Act accordingly; and for the purpose of enabling it so to do, a summoning officer shall be appointed by the order settling the boundaries, whose duty it shall be forthwith (*i.e.* with all convenient speed) to take all such steps as may be necessary for convening a meeting of the ratepayers to decide as to the adoption of the Act; and if he dies, becomes incapable, neglects, or refuses to perform his duties, the Secretary of State may, on the application of any four ratepayers, appoint another officer in his room.

§ 4. PARTIAL ADOPTION OF LOCAL GOVERNMENT ACT.

Partial adoption of Act by local authorities invested with powers of Town Government. *Ib.* s. 15. Any corporation (*i.e.* municipal corporation) or body of commissioners exercising powers for sanitary regulations under a local Act may adopt any part or parts of the Local Government Act by resolution of the council or commissioners. Such resolution shall in every case be passed and forwarded to one of Her Majesty's principal Secretaries of State as provided in the Act 21 & 22 Vict. c. 98, s. 19, *post*, p. 21, for the adoption thereof, and thereupon the part or parts of the Act named in the resolution

(1) *Cardiff (Mayor, &c.) v. Cardiff Waterworks Company*, 33 L. T. 104; 5 Jur. (N. S.) 953.
(2) 33 L. T. 221.

are to be in force within the district comprised in the Local Act as fully and effectually as if such part or parts of the 21 & 22 Vict. c. 98, had been enacted in the Local Act. When the parts of the 21 & 22 Vict. c. 98, thus adopted confer any power of borrowing money, such power shall be exercised subject to the provisions of the Local Government Act with respect to borrowing.

Partial adoption of Act by local authorities.

21 & 22 Vict. c. 98, s. 15.

The power of adopting any part of the Local Government Act, 1858, given as above mentioned, to any corporation or body of commissioners exercising powers for sanitary regulations under the provisions of any local Act, extend to every local authority invested with powers of town government and rating by any local Act, by whatever name such local authority is called, and the words "Local Board" or "Board of Commissioners," as used in the Local Government Act, 1858, shall apply to such local authority: Provided always, that whenever the members of such local authority are elected for life, they shall adopt, in lieu of the provisions for elections contained in the Local Act, the provisions for and in relation to elections prescribed by the Public Health Act, 1848, and the Local Government Act, 1858; and within one month of such adoption one-third of the members of such local authority shall retire, the order of retirement to be fixed by the local authority; and the election of members in lieu of such retiring members shall be governed in all respects by the Public Health Act, 1848, and Local Government Act, 1858, and be conducted by the chairman of the local authority: Provided also, that such adoption shall not affect the qualification fixed for members of such local authority by the Local Act under which it is constituted, or the qualification and tenure of office of *ex-officio* members of such local authority.

Provision for election of such local authorities when elected for life at the time of adopting Local Government Act.

24 & 25 Vict. c. 61, s. 2.

§ 5. ABANDONMENT OF LOCAL GOVERNMENT ACT.

When a resolution adopting the Act has been passed in a place in which the population, according to the then last census, is less than 3000, that resolution may at any time be rescinded by a subsequent resolution, passed in the same manner in which resolutions for the adoption of the Act are required to be passed (*ante*, p. 12); but the rescinding resolution shall not be of any effect unless it is approved by a principal Secretary of State, and notice is published in the *London Gazette* of the passing of the resolution and of his approval thereof.

Abandonment of Local Government Act in certain places.

26 Vict. c. 17, s. 4.

An appeal may be had from any such rescinding resolution in the same manner and subject to the same conditions, as nearly as may be, in and subject to which an appeal may be had against a resolution adopting the Act; and the provisions of the Local Government Act relating to an appeal against the adoption of the Act shall, with the requisite variations, apply to such an appeal (as to which see 21 & 22 Vict. c. 98, s. 17, *post*, page 23).

Abandonment
of Local
Government
Act in certain
places.
26 Vict.
c. 17, s. 4.

The notice of the rescinding resolution shall not be published until the expiration of the time limited for an appeal (twenty-one days from the date of the resolution, 21 & 22 Vict. c. 98, s. 17), or until the determination of the appeal; but upon the publication thereof, the adoption of the Local Government Act shall be deemed to be avoided as from the date of that publication, and from the same date the Local Government Act shall cease to be in force within the district, and the district shall revert to the position in which it was before the adoption of the Local Government Act; so nevertheless that any contracts that may have been entered into by or on behalf of the Local Board of any such district may be enforced in the same manner in all respects as if the Local Government Act had continued in force in the district; and so far as may be necessary for the enforcement of such contracts, the Local Board and all their powers of levying money, shall be deemed to be continued.

Re-exercise
of powers of
adoption.
Ib. s. 7.

The power of adopting any part or parts of the Local Government Act, 1858, given by that Act and the Acts amending the same, shall not be exhausted by one adoption, but may be exercised from time to time.

See also 29 & 30 Vict. c. 106, s. 4, in Appendix: *post*.

§ 6. TRANSFER OF POWERS OF TRUSTEES UNDER LOCAL ACTS.

Transfer of
powers of
Commissioners
under Local
Acts to Town
Council of
Borough.
20 & 21 Vict.
c. 50, s. 2.

The trustees appointed or acting by or under any Act of Parliament for paving, lighting, supplying with water or gas, or cleansing, watching, regulating, or improving, or for providing or maintaining a cemetery or market in or for any borough named in one of the Schedules to the 5 & 6 Wm. IV. c. 76, or to which a charter of incorporation has been since the passing of such Act, or shall be hereafter, granted under the provisions of such Act or otherwise, or any part of such borough, and whether the powers of such trustees under any such Act do or do not extend beyond the limits of such borough, may, if it seem to them expedient, at a meeting to be called for that purpose, transfer to the body corporate of such borough all the rights, powers, estates, property, and liabilities of such trustees under any such Act as aforesaid, and such transfer shall be made in writing under the common seal of the said trustees if they be a corporation, or if not a corporation then by deed executed by the trustees, or any two of them acting by the authority of and on behalf of all such trustees; and upon any such transfer being so made, the body corporate to whom such transfer is made, shall become and be trustee for executing by the council of the borough the several powers and provisions of any such Act, and all the rights, powers, estates, and property vested in the trustees making such transfer shall vest in such body corporate, and all the liabilities and obligations of the said trustees shall stand transferred to and be borne by such body corporate,

and the said trustees shall be freed and discharged from all such liabilities and obligations. No such transfer can, however, be made in the case of the town of Cambridge without the consent required by the 5 & 6 Wm. IV. c. 76. Local Acts, transfer of powers under.

No such transfer shall, however, be made, or take effect, unless and until the council of the borough have resolved, at a meeting of the council holden and convened in manner required by the 5 & 6 Wm. IV. c. 76, s. 69, to accept the same. 20 & 21 Vict. c. 50, s. 3.

Where, under the 5 & 6 Wm. IV. c. 76, s. 75, the trustees under any such Act of Parliament as therein mentioned have transferred to the body corporate of any borough the powers vested in such trustees under such Act, and the transfer so made purports to extend to the estates and property vested in such trustees, and their liabilities and obligations on any of such matters, the transfer so made shall be deemed to have been authorized by the 5 & 6 Wm. IV. c. 76, s. 75. Ib. s. 4.

By a provisional order, confirmed by 14 & 15 Vict. c. 98, *post*, a Local Board of Health was constituted for the parish of St. John, Margate, comprising the town of Margate and a rural district, but their rating powers were confined to the town, with power from time to time to extend the rating area, and the Local Board were to be selected by the ratepayers within the rating area for the time being. The town of Margate was afterwards incorporated, the then rating area being co-extensive with the new borough, there being still a rural district. The Local Board, by indenture, professed to transfer their powers to the corporation of the borough, and the corporation sought to extend their powers to part of the rural district. The Court of Queen's Bench were, however, of opinion that the corporation had no jurisdiction, for that the transfer to them of the powers of the Local Board was invalid, inasmuch as a Local Board for a district comprising a borough are not trustees for executing an Act for paving, lighting, &c., within the meaning of the 20 & 21 Vict. c. 50, s. 2. (1) Transfer of powers of Local Board invalid.

§ 7. GENERAL PROVISIONS AS TO ADOPTION OF THE LOCAL GOVERNMENT ACT.

Whenever a resolution adopting the Act has been passed in any place, notice of it is to be given to a Secretary of State by the following persons:— Notice as to adoption of Act.

In corporate boroughs,—by the mayor;

In other places under the jurisdiction of Improvement Commissioners,—by the chairman of the Board of Commissioners;

In other places,—by the summoning officer:

The notice must be in writing, under the hand of the officer

21 & 22 Vict. c. 98, s. 19.

(1) *Swinford v. Keble*, L.R. 1 Q.B. Q.B. 185; 12 Jur. (N.S.) 783; 7 B. 549; 14 L. T. (N.S.) 770; 35 L. J. & S. 573.

Notice of
adoption of
Act.
21 & 22 Vict.
c. 98, s. 19.

required to give it, who is to publish a copy of it by advertisement for three successive weeks in one or more of the newspapers circulated in the place; and by causing a copy of it to be affixed to the principal doors of every church and chapel in the place, to which notices are usually affixed.

Publication of
notice in
Gazette.
Ib.

When the notice has been given, and the time for appeal has expired, or when the appeal has been dismissed, a notice is to be published in the *London Gazette*, by one of Her Majesty's principal Secretaries of State, that the Act has been adopted within the place.

Time when
the Act is to
take effect.
Ib. s. 20.

At the expiration of two months from the date of the passing of the resolution, or in the event of an appeal, or of a division of the district into wards, at such time as may be mentioned in the order made on appeal, or in the order setting out wards, the Act is to have the force of law within the place adopting it, and the expiration of the period or time is to be called the date of the constitution of the district; but the provisions of the Act relating to purposes already included in any local Act in force within the district with relation to any of the purposes of the Public Health Act, 1848, or the Local Government Act, 1858, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit, notwithstanding the adoption of the Act, are not to come into operation until an order has been made and confirmed, for the future execution, repeal, or alteration of the Local Act.

Objections to
adoption of
Act.
Ib. s. 21.

No objection can be made at any trial or in any legal proceeding to the validity of the adoption of the Act, or to any order made in pursuance of it, or to any proceedings upon which the order was founded, unless the objector has given fourteen days' previous notice of his intention to make the objection, specifying fully the nature of the objection; and no objection in respect of such matters will be admissible at any trial or in any legal proceedings after the expiration of six calendar months from the date of the constitution of the district.

Proof of
adoption.
Ib. s. 22.

Publication of a notice by a Secretary of State once in the *London Gazette*, and by the mayor, chairman of the Board of Improvement Commissioners, or summoning officer, respectively, for three successive weeks in any newspaper published and circulated in the town or district that the Act has been adopted in any place, is conclusive evidence of such adoption. This provision, coupled with that in the preceding section of the Act, is, however, difficult to understand, as the two enactments are somewhat inconsistent.

Payment of
costs, &c.
Ib. s. 23.

All costs, charges, and expenses incurred by the Secretary of State, in relation to the adoption of the Act in any place, or to any proceedings connected therewith, or which he is required to take under the Act, and not otherwise provided for, to such amount as the Treasury, by order, think proper to direct, are

to become a charge upon the general district rates levied in the district, and to be repaid to the Treasury by annual instalments not exceeding five, together with interest at the rate of five per cent. to be computed from the date of the order, upon so much of the principal sum as may from time to time remain unpaid.

Adjoining districts may unite together upon such terms and subject to such conditions as the respective Local Boards may, with the sanction of a Secretary of State, determine. With regard to this provision, see *ante*, p. 10.

If the district contains a population of less than 3000, the constitution of it will be avoided in the case to be afterwards mentioned, *post*, p. 39.

Union of adjoining districts.
21 & 22 Vict. c. 98, s. 27.
Avoidance of constitution of district.

§ 8. APPEAL AGAINST ADOPTION OF THE LOCAL GOVERNMENT ACT.

After a resolution adopting the Act has been passed in any place, if any number, being not less than one-twentieth of the owners and ratepayers of the place, that is, of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place, are desirous that the whole or any part of the place should be excluded from the operation of the Act, they may petition one of Her Majesty's principal Secretaries of State, appealing against the resolution, and praying that the exclusion may be made.

Appeal against resolution.
21 & 22 Vict. c. 98, s. 17.

The petition appealing against the resolution of adoption, and praying for exclusion from the operation of the Local Government Act, may be presented and had at any time before the expiration of six weeks from the date of any resolution adopting the Act. And it would seem that an owner or ratepayer who may have concurred in the resolution for the adoption of the Act in the particular district cannot afterwards be a party to an appeal against the resolution for its adoption; for in a local Act which gave a right of appeal to any person thinking himself aggrieved by any order of the Commissioners appointed under it, it was held that a person who had been present at a meeting and concurred in a resolution upon which the order appealed against was founded, could not appeal. (1)

To be presented to Secretary of State.
21 & 22 Vict. c. 98, s. 17.
26 Vict. c. 17, s. 3.

Where the exclusion of part of a place only is prayed for, the petition must state—

1. The part of the place proposed to be excluded, accompanied with an explanatory plan; and,
2. The reasons for the exclusion, and the petition must be subscribed by the owners and ratepayers presenting it.

Upon the receipt of the petition, the Secretary of State may,

What the petition must state.
21 & 22 Vict. c. 98, s. 17.

(1) *Harrop v. Bayley*, 6 E. & B. 218; 25 L. J. (N. S.) M. C. 107.

Power to
Secretary of
State.

Notice of
inquiry.

21 & 22 Vict.
c. 98, s. 17.

His order.

Ib.

after fourteen days' notice of the time, place, and subject of such inquiry, direct inquiry in the proposed district,

As to the genuineness of the petition, and

As to the matters alleged in it.

And he may make order with respect to the matter appealed against, which order is to be binding on the place in respect of which it is made; and there shall be stated in it the time at which the Act is to come into force.

With regard to an appeal against the Secretary of State's order, see the case *In re Todmorden*, ante, page 17.

Appeal in
case of alleged
invalidity of
vote for adop-
tion of Act.

21 & 22 Vict.
c. 98, s. 18.

26 Vict.

c. 17, s. 3.

Any owner or ratepayer who disputes the validity of the vote for the adoption of the Act may, by petition to the Secretary of State presented and had at any time before the expiration of six weeks from the date of any resolution adopting the Act, appeal from the declaration of the vote. The petition must set forth the grounds on which he disputes the validity of the vote, and the Secretary of State may direct inquiry into the circumstances of the case, and issue such order thereon as he may deem requisite to determine the questions arising on the appeal, and as to the validity or invalidity of the vote.

By 21 & 22 Vict. c. 98, s. 81, the decision of the Secretary of State is to be final, and therefore the Court would not interfere, but would refuse a mandamus to hold another meeting for the adoption of the Act when his decision was in favour of a motion already carried and appealed against for its adoption. (1)

(1) *Ex parte Bird*, ante, p. 4.

CHAPTER II.

CONSTITUTION OF LOCAL BOARDS.

§ 1. LOCAL BOARDS OF HEALTH.

LOCAL BOARDS OF HEALTH are appointed for "corporate" and "non-corporate" districts. A district within the meaning of the Act is the entire area, places, or parts of places comprised within the limits of any district to which the Public Health Act, or any part of it, has been applied by order in Council, or provisional order of the General Board of Health sanctioned by Parliament. A corporate district is a district in which the powers, authorities, and duties of the Local Board of Health are exercised and executed exclusively by the council of a corporate borough (*i.e.* any city, borough, port, cinque port, or town corporate named in the schedule to the 5 & 6 Wm. IV. c. 76, or subsequently incorporated by royal charter); a non-corporate district is one in which the powers, authorities, and duties of the Local Board of Health are not exercised and executed exclusively by the council of a corporate borough.

Now, by 29 & 30 Vict. c. 90, s. 46, all Local Boards are incorporated.

The Local Boards of Health, in their respective districts, consist of the following authorities or persons appointed respectively for "corporate" and "non-corporate" districts:—

1. In districts exclusively consisting of the whole or part of one corporate borough,—the mayor, aldermen, and burgesses; or, in the case of a city,—citizens, by the council. Corporate boroughs. 11 & 12 Vict. c. 63, s. 12.
2. In districts exclusively consisting of two or more corporate boroughs, or of one or more of such boroughs, and also of part of any other corporate borough or boroughs, or exclusively consisting of part of two or more of such borough or boroughs,—the mayor, for the time being, and a certain number of persons selected by the town council of each borough out of their own number, or from persons qualified to be members of the town council making the selection. Corporate boroughs. 11 & 12 Vict. c. 63, s. 12.
3. In districts comprising the whole or part of any such borough or boroughs, and also parts not within the boundaries thereof,—the mayor or mayors for the time being of such borough or boroughs, and a certain number of persons selected by the town council or councils respectively out of their own number, or from persons qualified to be members of the town Corporate boroughs and non-corporate districts. *Ib.*

council making the selection, together with a certain number of persons to be selected by the owners and ratepayers in the non-corporate parts of the district.

Corporate
boroughs and
non-corporate
districts.
11 & 12 Vict.
c. 63, s. 13.

4. In every district comprising the whole or part of any corporate borough or boroughs, and also any part or parts not within the boundaries of any corporate borough or boroughs,—such number of qualified persons as shall be fixed to be elected for such part or parts, or for each of such parts respectively, are from time to time to be elected in such manner and by the owners of property and ratepayers, and are to be, together with the persons selected in respect of the corporate parts of such district, the Local Board of Health.

Districts
under Order
in Council.
Ib. s. 13.

5. In districts not comprising the whole or part of any corporate borough, but to which the Public Health Act, 1848, may be applied by an Order in Council,—a certain number of persons to be elected by the owners of property and ratepayers within the district.

6. In districts not comprising the whole or part of any corporate borough, and to which the Public Health Act, 1848, cannot be applied without the authority of Parliament,—a certain number of persons to be elected by the owners of property and ratepayers within the district.

Oxford.
Ib. s. 31.

7. In the city of Oxford,—the Oxford Commissioners acting under the 52 Geo. III. c. 72; and the district shall be called the Oxford district. But see *post*, p. 27.

Cambridge.
Ib.

8. In the borough of Cambridge,—the Commissioners acting under the 34 Geo. III. c. 4; and the district shall be called the Cambridge district. But see *post*, p. 27.

Improvement
Commis-
sioners.
Ib. s. 32.

9. In districts where there are Commissioners or Trustees under an Improvement Act,—the Improvement Commissioners or Trustees acting under any local Act of Parliament when constituted the Local Board of Health for the district.

11 & 12 Vict.
c. 63, s. 15.

10. In a corporate borough which, or any part whereof, is included for the purposes of sewerage in a district comprising part not within the boundary of the borough, and the non-corporate part be constituted a district for any other purposes of the Public Health Act, 1848,—the persons elected for the sewerage district within which they shall have been elected are to constitute the Local Board of Health.

Local Board
of Health
defined.
11 & 12 Vict.
c. 63, s. 2.

The expression "Local Board of Health" means the persons authorized to execute in each district all or any of the powers, authorities, and duties vested in or imposed upon the Local Board by the Act.

§ 2. LOCAL GOVERNMENT BOARDS.

Local Boards
how con-
stituted.
21 & 22 Vict.
c. 98, s. 24.

The duty of carrying into execution the Local Government Act, 1858, is vested in a Local Board, consisting of—

1. In corporate boroughs,—the mayor, aldermen, and burgesses, acting by the council.

2. In other places under the jurisdiction of a Board of Corporate Improvement Commissioners,—the Board of Commissioners. boroughs.

3. In other places,—such number of elective members as may be determined by a resolution of the owners and rate-payers, passed in the manner in which resolutions for the adoption of the Act are directed to be passed (*ante*, page 12), at any meeting held for the purpose of adopting the Act, or at a meeting to be summoned by the summoning officer for the purpose. *Ib.* Improvement Commissioners. *Ib.* Other places. *Ib.*

4. In the city of Oxford,—the Vice-Chancellor of the University of Oxford, and the Mayor of Oxford for the time being, and of forty-five other Commissioners, fifteen to be elected by the University of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situate within the jurisdiction of the Oxford Commissioners. Oxford. *Ib.* s. 82.

5. In the borough of Cambridge,—the Cambridge Commissioners, acting under the 34 Geo. III. c. 4. Cambridge. *Ib.*

Local Government Boards, subject to the Act under which they are constituted (21 & 22 Vict. c. 98), have all the powers, rights, duties, and liabilities of Local Boards of Health under the Public Health Act, 1848, and the Acts incorporated therewith. When legally constituted they may therefore exercise all the powers of the Public Health Act, 1848, in the same manner and as fully and effectually as a Local Board of Health can under that Act. Their powers. *Ib.* s. 6.

§ 3. TRANSFER OF POWERS OF LOCAL BOARDS TO MUNICIPAL CORPORATIONS.

If, after the application of the Public Health Act, 1848, to any district, the parts constituting the district afterwards become or be entirely comprised within the limits of a corporate borough,—the mayor, aldermen, and burgesses of the borough, by the council of the borough, are to be the Local Board for the district, and the powers, authorities, duties, property, and liabilities of any other persons as such Local Board shall absolutely cease and determine, and be vested in the mayor, aldermen, and burgesses, as fully to all intents and purposes as if they had always been the Local Board of Health from the time when the district was originally constituted. Local Board in case of a district afterwards becoming a corporate borough. 11 & 12 Vict. c. 63, s. 33; 21 & 22 Vict. c. 98, s. 26.

CHAPTER III.

QUALIFICATION OF MEMBERS OF LOCAL BOARDS.

§ 1. LOCAL BOARDS OF HEALTH.

Town
councils and
selected
members.

11 & 12 Vict.
c. 63, s. 12.

Qualification
of burgesses.
5 & 6 Wm. IV.
c. 76, s. 9.

THE following persons are qualified to be enrolled as burgesses ; and, if they possess the further qualification mentioned, therefore to be elected town councillors, and selected by the town council members of Local Boards of Health for districts within corporate boroughs.

1. Every person of full age, who on the thirty-first of August in any year shall have occupied any house, warehouse, counting-house, or shop within the borough during that year and the whole of each of the two preceding years, and during the whole of such time shall have been an inhabitant householder within the borough, or within seven miles of it, to be computed by the nearest public road or way, by land or water : Provided (1) that he shall have been rated to the relief of the poor during the whole of such time, and paid on or before the thirty-first of August all such rates and borough rates, if any, as shall have become payable by him, except such as shall become payable within six calendar months previous thereto : (2) That he shall not be an alien : (3) That he shall not have received parochial relief or other alms, or any pension or charitable allowance from any fund intrusted to the charitable trustees of the borough, within twelve calendar months next before the thirty-first of August.

Qualification
of town
councillors.
Ib. s. 28.

2. To be entitled to be elected a town councillor, the person must further not be in holy orders, or the regular minister of any dissenting congregation, and be seized or possessed of real or personal estate, or both, in boroughs divided into four or more wards, of £1000 ; or be rated to the relief of the poor of such borough upon an annual value of not less than £30. In boroughs divided into less than four wards, the qualification shall be £500, or the being rated to the relief of the poor above an annual value of not less than £15 ; and in both cases the rating refers to the sum inserted in the rate-book as "rateable value," and not as "gross estimated rental." (1) And provided, further, the person do not hold any office of profit, other than that of mayor, in the gift of the council ; or be concerned

(1) *Baker v. Marsh*, 24 L. J. (N. S.) Q. B. 1.

directly or indirectly, by himself or his partner, in any contract or employment with or on behalf of the council; but from this is excepted the being a proprietor or shareholder of any company contracting with the council for lighting or supplying with water, or insuring against fire any part of the borough. Further, with respect to the disqualification for the office of town councillor, see *Le Feuvre v. Lankester*, *post*, page 35. As regards the election of councillors for wards in boroughs, see 22 Vict. c. 35, which contains provisions on the subject. Reference may also be made to the 22 & 23 Vict. c. 32, sec. 3, which disqualifies constables from voting or interfering to influence votes in any municipal election.

Qualification
of town
councillors.
5 & 6 Wm. IV.
c. 76, s. 28.

The qualifications for *elected* members of Local Boards of Health (*i.e.* members elected by the owners and ratepayers), and which they must possess so long as they shall continue in office, are—

Qualifications
of elected
members.

1. Residence within the district or part of the district for which they are elected, or within seven miles thereof, and be seized or possessed of real or personal estate, or both, to such value or amount as shall be fixed by order in council or provisional order, as the case may require, but not exceeding £1000, either within or without the district. The distance of seven miles will be measured by a straight line from point to point on the horizontal plane, "as the crow flies," *Lake v. Butler*; (1) *Stokes v. Grissell*, (2) which related to county courts; *Jewell v. Stead*, (3) which had reference to the erection of a toll-gate or the taking of toll under a local Act, within three miles of Bargate in the town of Southampton; and *Reg. v. Saffron Walden*, (4) which was a decision under the 4 & 5 Wm. IV. c. 76, to the effect that the words "within ten miles thereof," in sect. 68, mean within ten miles measured in a straight line from the house which the person inhabits to the boundary of the parish in which the estate conferring the settlement is situate. See also *Duignan v. Walker*, (5) which had reference to the place of practising as an attorney.

11 & 12 Vict.
c. 63, s. 16.

2. Residence as aforesaid, and the being rated to the relief of Ib. the poor of some parish, township, or place within the district, of a certain annual value, not to exceed £30. Provided that if two or more persons be jointly seized or possessed of the same property, or be jointly rated in respect of any property, which, if equally divided between them, would qualify each to be elected, each of such persons is qualified to be elected. It will, doubtless, frequently happen that the interest in the property may not be in equal shares, but nevertheless the Act renders each partner or person jointly interested in the property, or jointly rated, qualified to be elected if the property

(1) 5 E. & B. 92; 24 L. J. (N. S.) Q. B. 294.
Q. B. 273; 1 Jur. (N. S.) 499. (4) 9 Q. B. 76; 15 L. J. (N. S.)
(2) 23 L. J. (N. S.) C. P. 141. M. C. 115.
(3) 6 E. & B. 350; 25 L. J. (N. S.) (5) 33 L. T. 256.

11 & 12 Vict.
c. 63, s. 16.

when equally divided will confer a sufficient qualification upon each. Further, the Act expressly says that the same property shall not at the same time qualify both the owner and occupier of it.

Declaration of
members.
Ib. s. 17.

Before elected or selected members of the Board of Health can act in the execution of their office, they must make and sign before two or more other members of the Board, a declaration in writing, to the following effect; that is to say:—

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

This declaration, when made and signed, is to be filed and kept by the clerk of the Local Board of Health; and persons falsely and corruptly making and subscribing it, knowing it to be untrue in any material particular, are to be deemed guilty of a misdemeanour.

It is not necessary that persons who are members of the Local Board of Health by virtue of being town councillors of the borough should make and sign this declaration, as, before they can act as members of the town council, they must have made and subscribed, pursuant to the 5 & 6 Wm. IV. c. 76, s. 50, a declaration of their possessing the required qualification for the office of town councillor.

§ 2. LOCAL GOVERNMENT BOARDS.

Town
councils.

Qualification
of elective
members.
21 & 22 Vict.
c. 98, s. 24.

The observations as to the qualifications of members of Local Boards of Health for corporate districts, *ante*, page 28, are equally applicable to such members when they constitute the local authority under the Local Government Act. As to elective members:—No person is qualified to be an elective member unless he is at the time of his election, and so long as he shall continue in office, by virtue of his election, resident within the district for which, or for part of which, he is elected, or within seven miles thereof (as to the measurement of which see *ante*, page 29), and is seized or possessed of real or personal estate, or both, to the value of not less than £500 in districts containing less than 20,000 inhabitants, or to the value of not less than £1000 in districts containing 20,000 or more inhabitants, or rated to the relief of the poor of the district, or of some parish within it, upon an annual value of not less than £15 in districts containing less than 20,000 inhabitants, or on an annual value of not less than £30 in districts containing 20,000 or more inhabitants. (This "annual value" will be the "rateable" value, see *Baker v. Marsh*, *ante*, page 28.) If two or more persons be jointly seized or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property

which, if equally divided between them, would qualify each to be elected, each of the persons so jointly seized, possessed, or rated, may be elected; but the property shall not at the same time qualify both the owner and the occupier thereof. Qualification of elective members.

If a district have a known and defined boundary, as that of a parish or borough, the population will readily be ascertained from the last census taken by the authority of Parliament, but not otherwise, as the population returns invariably show the population of entire parishes or townships, &c., and not of parts of parishes or townships, however they may be defined in respect of their boundaries.

The qualification of the Tunbridge Wells Commissioners shall be the ownership or occupation of property actually rated to the rates levied under the Local Government Act, 1858, within their district, at an annual value of not less than £30, and in lieu of the declaration prescribed by sec. 17 of the Tunbridge Wells Improvement Act, 1846, to be made by the said Commissioners, the following declaration shall be used; that is to say:— Qualification, &c., of members of Tunbridge Wells Local Board of Commissioners. 27 & 28 Vict. c. 83, s. 5.

“ I, A. B., do solemnly declare, that I am the [owner or occupier, as the case may be] of property actually rated to the rates authorized to be levied by the said Commissioners, at an annual value of not less than Thirty Pounds.”

It shall not be obligatory on any of the fifteen members of the Local Board from time to time elected by the University of Oxford, to make any declaration of qualification for the office of member of the Local Board. Members of the University of Oxford not required to make declaration. 28 & 29 Vict. c. 108, s. 6.

Where a Local Act prescribed qualifications for Commissioners to be elected to execute the Act, and among others, that the candidate should at the time of the election be rated in the poor rate for the township, and possess property to the amount of £1500 in the township, it was held that this qualification was not possessed by a candidate who possessed such property, but was not rated in any rate made, allowed, and published before the election; although before the election and after the allowance and publication of the last rate he had become tenant of land within the township, had been entered as rateable in respect thereof in a list added to the rate allowed, and had paid a proportional part of such rate under 17 Geo. II. c. 38, s. 12. (1)

(1) *Reg. v. Eddowes*, 1 E. & E. 330; 28 L. J. Q. B. 84.

CHAPTER IV.

DISQUALIFICATION OF MEMBERS OF LOCAL BOARDS.

Bankrupts
and insol-
vents.
11 & 12 Vict.
c. 63, s. 19.

Holding office
of profit.
Ib.

Contractors.
Ib.

No bankrupt, insolvent, or other person not qualified in the manner before mentioned, is capable of being elected a member of a Local Board. If after election, or being selected by the town council otherwise than out of their own number, the person elected or selected shall lose or discontinue to hold his qualification, or shall be declared a bankrupt, become an insolvent debtor, or compound with his creditors; or if any member of the Local Board accept or hold any office or place of profit under the Board, or shall in any manner be concerned in any bargain or contract entered into by the Board, or participate in the profit of any such contract, or of any work done under the authority of the Public Health Act, 1848, in or for the district for which he is a member, he shall cease to be such member, and a vacancy will thereupon arise. The following illustrates what is being concerned in a contract with a body of Commissioners. In an action for penalties against a Town Commissioner under a local Act which incorporated the Commissioners Clauses Act, 1847, 10 & 11 Vict. c. 16, for acting as a Commissioner after having become disqualified, a bill was produced made out by the defendant, and addressed to the Commissioners, for lime purporting to have been supplied at four different times, and receipted by the defendant; it was held that there was evidence to go to a jury, that the defendant was "concerned in or participated in a contract" within the 9th section of the 10 & 11 Vict. c. 16, and that he thereby became "disqualified" within section 15 of the same Act. (1)

In *Woolley v. Kay*, (2) however, the Court seemed to be of opinion that a mere casual dealing, such as going to a shop for an article and paying for it over the counter, would not be contracting for the supply of articles so as to make a person liable to a penalty if he afterwards continued to act as a Commissioner under a local Act.

With regard to the insolvency of members of Local Boards, see the Bankruptcy Act, 1861, 24 & 25 Vict. c. 134.

Exceptions.
21 & 22 Vict.
c. 98, s. 25.

No member of the Local Board shall, however, vacate his office by reason of his being interested in any sale or lease of any lands, or any loan of money to the Local Board; or by

(1) *Nicholson v. Fields*, 31 L. J. (N. S.) Exch. 233; 7 H. & N. 810.

(2) 25 L. J. (N. S.) Exch. 351.

reason of his being interested in any contract with the Local Board as a shareholder in any company established under the provisions of the Joint Stock Companies Act, with or without a limited liability. No person who is a proprietor, shareholder, or member of any water company, or company or concern for carrying on of any other works of a like public nature, shall, however, be disabled from being or continuing to act as a member of the Local Board by reason of any contract entered into between the company and the Board; but such person shall not vote at the Board upon any question in which the company is interested: the Secretary of State may, however, in any case, dispense with this prohibition.

Again, any elected or selected member who—

1. Neglects to make and subscribe the declaration (*ante*, p. 30), for the space of three months next after his election; or—
2. Who shall be absent from the district for more than six months at one and the same time, unless in the case of illness,

What shall be deemed a vacancy.

11 & 12 Vict. c. 63, s. 18.

21 & 22 Vict. c. 98, s. 25.

shall be deemed to have refused to act, and shall cease to be a member of the Board, and a vacancy shall thereupon arise.

As to the disqualification of members of town councils, or members selected by town councils, see *ante*, p. 28. They cannot, as above mentioned, continue members of the council if they be declared bankrupt or compound with their creditors.

Persons not qualified to act as members of the Local Board, or who have not made and subscribed the declaration before mentioned, or who after becoming disqualified or disabled from acting, shall so act, are liable to a penalty of £50, recoverable by any person, with full costs of suit, by action of debt. In an action so brought, it is sufficient for the plaintiff to prove that the defendant, at the time of the alleged offence, acted as a member of the Local Board; and the burden of proving qualification, and of having made the declaration, and negating disqualification, shall be upon the defendant.

Penalty on disqualified persons acting.
11 & 12 Vict. c. 63, s. 19.

As regards proof of the offence alleged in proceedings for the penalty, it is to be observed that acting in an office is proof of being an officer, and therefore when persons who have exercised a public duty are shown to have done an act within the scope of that duty at a particular time, the Court will assume that they were exercising the public duty when they did the act, without proof that they were or had been discharging such duty at the very time; if it be within a reasonable time of the act done, it is sufficient. (1)

No proceedings for the recovery of this or any other penalty incurred under the Public Health Act, 1848, can be had or taken by any person other than by a party grieved, or the

Proof of offence.

Proceedings for recovery of penalty.

(1) *Doe d. Peter Hopley v. Young*, 8 Ad. & El. 63; 15 L. J. (N. S.) Q. B. 9.

Proceedings
for recovery of
penalty.
11 & 12 Vict.
c. 63, s. 19,
s. 133.

Local Board of Health in whose district the offence is committed, without the consent in writing of the Attorney-General first had and obtained; but it is open to doubt, and it has not yet been decided, whether the prohibition renders a proprietor in a water company, or in a company for carrying on works of a public nature, voting as a member of the Local Board upon any question in which the company is interested, liable to the penalty of £50 imposed on a disqualified or disabled person acting as such member. (1) That question will however be avoided, if a dispensation be obtained from the Secretary of State under 21 & 22 Vict. c. 98, s. 25, sub-section 3.

Again, a person who is not aggrieved, otherwise than as one of the public, by a person committing an offence under sect. 19, is not entitled to sue under sect. 133 without the consent of the Attorney-General. A plaintiff suing for the penalty of £50 without the consent of the Attorney-General, alleging that he was the party grieved as a ratepayer of the borough, and also as a candidate, the fact being that he was an unsuccessful candidate at the election in which the defendant, though disqualified, had been elected, was held not to be a party grieved within the meaning of the Act, and that the consent of the Attorney-General should therefore have been obtained to his bringing the action. It was also held in the same case that the declaration in the action was not authorized by sect. 15 of the Commissioners' Clauses Act; and under sect. 133 of the 11 & 12 Vict. c. 63, it was bad in arrest of judgment, inasmuch as the plaintiff not being a party grieved, it ought to have alleged the consent of the Attorney-General; and further, that although the want of the consent of the Attorney-General was an objection which might be taken by plea or demurrer, it was also a ground for staying the proceedings after the trial. (2)

Where a declaration alleged that the defendant became a Commissioner, and that whilst such Commissioner, being directly concerned and interested in a certain then existing contract theretofore made by the defendant with the then Commissioners for the sale by the defendant of a plot of land to the Commissioners to be used for the purposes of the Act, acted as a Commissioner in the execution of the Act, it was held that the declaration disclosed no cause of action for a penalty under the Act. (3)

With regard to Commissioners acting under a Local Improvement Act without being qualified, it has been held that they were liable to the penalty provided by a former Act, the elective provisions of which had been repealed by an amending Act, and the election having taken place under such amending Act. In the particular case the amending Act provided that it

(1) *Boyce v. Higgins*, 14 C. B. 1; (N. s.) Exch. 236; 2 H. & N. 23 L. J. (N. s.) C. P. 5; 18 Jur. 755.

(3) *Woolley v. Kay*, 25 L. J. (N. s.) Exch. 351.

(2) *Hollis v. Marshall*, 27 L. J.

and the former Act should be read as one Act, which the Court said, is the same as if the clause imposing the penalty had been re-enacted in words in the second Act. The penalty was imposed on all persons acting without being duly qualified as aforesaid; that is, as provided for by the amending Act. (1)

A contract with a town council acting as a Local Board of Health in a corporate district, operates as a disqualification under the Municipal Corporation Act; but a person who has contracted with the council of a borough, so acting for the performance of public works in the borough, may purchase of a member of the corporation articles required in the course of those works without such member thereby becoming disqualified for holding a corporate office in the borough under the 5 & 6 Wm. IV. c. 76, s. 28. (2)

Until the recovery of the penalty of £50, all acts and proceedings of any person disqualified, disabled, or not duly qualified as a member of the Local Board, or who has not made or subscribed the declaration, are valid to all intents and purposes whatsoever.

All proceedings of the Local Board of Health and of any person acting as a member or under the authority thereof, shall, notwithstanding any defect in the selection or election of such Board, or any member thereof, be as valid and effectual as if no such defect had ever existed. With reference to this provision, see the case of *Bowling v. Bailey* in the Queen's Bench, *post*.

(1) *Gough v. Hardman*, 1 L. T. B. 530: 23 L. J., (N. S.) Q. B. (N. S.) 375. 254; 18 Jur. 894.

(2) *Le Feuvre v. Lankester*, 3 E. &

Saving clause.
11 & 12 Vict.
c. 63, s. 19.
Defects in
election not to
invalidate
proceedings.
Ib. s. 29.

CHAPTER V.

DIVISION OF DISTRICTS INTO WARDS.

- Local Boards of Health. 21 & 22 Vict. c. 98, s. 24. LOCAL BOARDS OF HEALTH in districts where the Public Health Act, 1848, is applied, may, with the sanction of a Secretary of State, divide their districts into separate wards, and declare what proportion of the members of the Local Board is to be elected by each ward. In districts where the Local Government Act is adopted, the owners and ratepayers may, by resolution, direct a petition to a Secretary of State to divide the district into wards, for the purpose of election of the Local Board, and to declare what proportion of the members of the Board shall be elected by each ward; and the Secretary of State may by an order make such division and declaration after such inquiry as he may deem necessary, of which fourteen days' notice is to be given.
- Local Government Boards. Ib. If any member be elected in more than one ward, he must, within three days after notice, choose, or in default of his choosing, the Board at their next meeting is to decide, for which one of the wards he is to serve; and he is thereupon to be held to be elected in that ward only, and a vacancy will then exist on account of the other ward.
- Persons elected for more than one ward. Ib. No person entitled to vote can give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.
- Voting in wards. Ib. Subject to these limitations, any ratepayer or owner may, by notice in writing delivered to the clerk of the Local Board, or in case of the first election to the person appointed to conduct that election, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give; and if he do not give notice he is not to be entitled to vote for any ward in which he does not reside.
- Ib. The Act does not specify when the notice is to be given; but it must obviously be given to the clerk or person conducting the election before the voting-papers are distributed, for if it be not, the voting-paper of the voter giving the notice cannot be properly directed.
- With reference to the correlative section of the Municipal Corporation Act (5 & 6 Wm. IV. c. 76, s. 44), it has been held that a burgess who has property for which he is rated in two or more distinct wards, is not entitled to be enrolled or to vote

in more than one ward. If at the time of revising the lists, he Voting in
refuses to make his selection of the ward for which he wishes wards.
to vote, the mayor may strike out his name from all the lists
except one. (1)

So, again, under the 22 Vict. c. 35, the nominator of a candidate for election as town councillor must himself be a burgess of the ward for which the candidate is nominated (2); the same rule would seem to apply to the nomination of a candidate for election for a ward in a Local Board of Health district.

(1) *Reg. v. Cambridge*, 28 L. J.
(N. S.) Q. B. 10.

(2) *Reg. v. Parkinson*, 17 L. T.
(N. S.) 169; 37 L. J. Q. B. 52.

CHAPTER VI.

ELECTION OF LOCAL BOARDS.

§ 1. GENERALLY.

By whom.
11 & 12 Vict.
c. 63, s. 20.
Ratepayers.
Ib.

MEMBERS of Local Boards of Health of non-corporate districts when elected otherwise than by being selected by town councils are to be elected by the ratepayers, *i.e.*, persons rated to the relief of the poor in the district or part of the district for which they claim to vote for the space of one whole year immediately preceding the day of tendering their votes, and who shall have paid all rates made upon them for the relief of the poor in such district or part of a district for the period of one whole year, and who shall have also paid all such rates and all rates due from them under the Public Health and Local Government Acts before the day of tendering their votes, except such rates which shall have been made or become due within the six months immediately preceding; and by the owners of property, *i.e.*, persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor and not let to them at a rack-rent, or persons receiving, either on their own account or as mortgagees or incumbrancers in possession, the rack-rent of any such property, that is, a rent which is not less than two-thirds of the net annual value of the property out of which the rent arises.

Owners.
Ib.

Year defined.
15 & 16 Vict.
c. 42, s. 14.

By 15 & 16 Vict. c. 42, s. 14, the word "year" shall, for the purpose of the election of Local Boards of Health acting in execution of the Public Health Act, 1848, be taken to mean the interval between any day of election of any such Board and the day of election next ensuing. The provision as to the payment of rates will apply to the year so computed, and a person continues rated to the poor-rate until a fresh rate is made from which his name is omitted.

Receiver not
an owner.

It has been doubted whether a receiver, appointed by the Court of Chancery, is an "owner" within the meaning of 11 & 12 Vict. c. 63, s. 2; (1) which, however, gives a different definition of the word owner.

With reference to the construction of the word "owner," the following case may be referred to, which, however, arose under the Metropolitan Building Act, 1855 (18 & 19 Vict.

(1) *Eddleston, App., Francis, Resp.*, 7 C. B. (N. S.) 568.

c. 122). By sect. 73 of that Act, if the owner or occupier of a dangerous structure fails to comply with the order of Justices for taking down, repairing, or otherwise securing the same, the Commissioners may do what is necessary, and all expenses incurred by them shall be repaid by the owner. By sect. 3, the term "owner" shall apply to every person in possession or receipt of either the whole or of any part of the rents or profits of the land or tenement, or in occupation of such land or tenement, or in the occupation of such land or tenement other than as a tenant from year to year, or for any less term, or as a tenant at will. The appellants being seized in fee of a building used as a chapel, leased it for 21 years to *I. N.*, who was then in possession of it. *I. N.* was held to be the "owner" within the meaning of the Act, and therefore an order made upon the appellants for expenses incurred by the Commissioners under sect. 73 was bad. *Semble*, therefore, an order could only be made upon the last statutable owner. (1)

As regards the first election of a Local Board of Health, constituted under the Local Government Act, 1858, for a place containing a population of less than 3000, and in which the Local Board is required to be elected by the ratepayers, it is necessary to bear in mind that if no election of a Local Board takes place within three months from the date of the constitution of the district, or if in any such district the Local Board makes default in appointing fit and proper persons to the following offices, or any of them, that is to say, to the office of Surveyor, Inspector of Nuisances, Clerk, and Treasurer, within two months after the election of the Local Board, then upon the happening of either of the above events the adoption of the Local Government Act in the district shall be void, and the Local Government Act, 1858, shall cease to be in force within the district, and the district shall revert to the same position as it was in before the adoption of the Act; so nevertheless that any contracts that may have been entered into by or on behalf of the Local Board of any such district may be enforced in the same manner in all respects as if the Local Government Act had continued in force in the district, and, so far as may be necessary for the enforcement of such contracts, the Local Board and all their powers of levying money shall be deemed to be continued.

The full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenants' rates and taxes, and tithe-commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain them in a state to command such rent; which is the net annual value for

Avoidance of constitution of district, if no election take place within time limited.
26 Vict. c. 17, s. 5.

Net annual value defined.
11 & 12 Vict. c. 63, s. 2.

(1) *Mourilyan, App., Labalmondier, Resp.*, 7 Jur. (N.S.) 627; 30 L. J. (N.S.) M. C. 95.

the purposes of the poor-rate. See 6 & 7 Wm. IV. c. 96, s. 1, and the column to the schedule of that Act headed "rateable value," and the schedule to the Union Assessment Committee Act, 1862.

Corporations.
11 & 12 Vict.
c. 63, s. 20.

Corporations aggregate, joint stock and other companies, or any body of proprietors or undertakers, are to be deemed one owner for the purpose of voting under the Public Health Act, 1848, and are to vote by proxy, appointed, in the case of a corporation, under their common seal, and in the case of a company, under the hands of three directors. It is expressly provided that no person shall vote individually as owner in respect of corporate property, or property belonging to any such company.

Voting in
respect of
ownership and
occupation.
Ib.

Both ratepayers and owners are entitled to vote at the election; and owners who are *bonâ fide* occupiers of the same property may vote both in respect of ownership and occupation. But where the owner is rated in place of the occupier under the Small Tenements Rating Act, 13 & 14 Vict. c. 99 (if in force in the district), the occupier will not be a ratepayer competent to vote. (1)

Again, a person who is rated in a fiduciary character only would be entitled to vote as a ratepayer. (2)

By the Local Small Tenements Rating Act, 10 Vict. c. xxx., applicable to the townships of Wolverhampton, Bilston, Willenhall, and Wednesfield, it is enacted (s. 10): "that notwithstanding the rating of or payment by any such owner under this Act, the occupier shall have the same right of voting in respect of all parochial matters as he would have had in case he had been rated and paid the rates in respect of the tenement;" and under this Act it has been held that the occupiers were entitled to vote in the election of Guardians of the poor, though they were not rated. (3) See Glen's Small Tenements Rating Act, *Fourth Edition*.

Scale of
voting.
Ib.

The following is the scale of voting:—

If the property in respect of which the person is entitled to vote be rated upon a rateable value of less than £50, he shall have one vote.

If such rateable value amount to £50 and be less than £100, he shall have two votes.

If it amount to £100 and be less than £150, he shall have three votes.

If it amount to £150 and be less than £200, he shall have four votes.

If it amount to £200 and be less than £250, he shall have five votes.

If it amount to or exceed £250, he shall have six votes.

(1) *Richardson v. Gladwin*, 27 L. J. (N. S.) M. C. 193.

(2) *Reg. v. Kirby*, 1 B. & S. 647; 31 L. J. Q. B. 3; 5 L. T. (N. S.) 280.

(3) *Reg. v. Hampton*, 13 L. T. (N. S.) 431.

The number of votes to which an elector is entitled depends, it will be seen, upon the amount of the rateable value of the property. In respect of an election of Guardians, it is considered sufficient if the annual rateable value (see 30 & 31 Vict. c. 106, s. 4) of the property at the time of voting be taken.

An owner who occupies his own property, and is rated for it as occupier, has a double set of votes—one set as ratepayer, and the other as owner, provided he has taken the requisite steps to qualify himself to vote as owner, as to which see *infra*.

Again, a person who votes in the capacity of ratepayer is entitled to such a number of votes as the aggregate amount of the rateable value of all the property for which he is assessed will yield according to the scale provided by 11 & 12 Vict. c. 63, s. 20. A person who votes as a ratepayer, being assessed partly in respect of his own occupation and partly in respect of his ownership of small tenements, will not be entitled in the whole to a greater number of votes than the aggregate value of the same property would yield to any one occupier.

Owners are not entitled to vote as such unless they shall, fourteen days at least previously to tendering their votes, have delivered to the clerk of the Local Board statements in writing of their names and addresses, and containing a description of the nature of their interests or estates in the properties, giving the qualification, and a statement of the amount of all rent services which they receive or pay in respect thereof, and of the persons from whom they receive or to whom they pay the same. In the case of corporations and joint stock companies, such statements must also contain the name and address of the proxies appointed and a true copy of the appointment of the proxy.

In reckoning the fourteen days, both the first and last day must be excluded. (1)

It does not seem that the appointment of a proxy would be such an instrument as requires a stamp, under the 27 Vict. c. 18, Sch. C, as none of the meetings there specified can apply to an election of the members of a Local Board of Health, unless indeed the words "at one meeting of any public body exercising a public trust," can be said so to apply. However, as the stamp duty is only one penny, it might be the safest course to affix a stamp to the proxy paper. By sect. 14 of the Act it may be denoted by an adhesive stamp.

The votes at the election are to be given, taken, collected, and returned according to the directions following; and the majority of the votes actually collected and returned are binding on the district, or part thereof, for which the election is had; and whosoever shall not vote, or shall not comply with the directions, is to be omitted from the calculation of votes, and deemed to have had no vote.

Every election by owners and ratepayers is to be conducted

(1) *Reg. v. Salop, JJ. 8 A. & E. 173.*

Election, how
to be con-
ducted.

11 & 12 Vict.
c. 63, s. 21.

by the chairman of the Local Board. In case the office of chairman be vacant, or in case the chairman, from illness or other sufficient cause, is unable to conduct the election, or shall be absent, or refuse to act, some other person is to be appointed by the Local Board to do so.

With reference, however, to the chairman of the Board acting as returning officer, when he is himself a candidate, see *Reg. v. Owens, post*, p. 49.

The first election of a Local Board will be conducted by the summoning officer. See 21 & 22 Vict. c. 98, s. 24.

If the chairman be absent during the election, and no other person be appointed by the Local Board to conduct it, the election will be absolutely void, though it be conducted by the other officers in the ordinary manner, and even though the result of the election would have been the same if the chairman had conducted it personally. (1) So an election of members of a Local Board under the Public Health Act, 1848, is void if the chairman of the Board, who is appointed by the Act the returning officer, is absent abroad, and no other person is appointed by the Local Board under sect. 21 to be the returning officer *pro hic vice*. (2) The relator in this case was held not entitled to costs under 9 Anne, c. 20, s. 5.

Ib.

The Local Board are also, before or during the election, to appoint a competent number of persons to assist and attend upon the chairman, or other person, in conducting the election.

Right to in-
spect books
and papers.
Ib. s. 22.

In order to enable the person conducting the election to obtain the requisite information as to the persons entitled to vote in the election, the clerk to the Board of Guardians, and the overseers or other officers of every parish wholly or in part within the district for which the election is to be held, and having the custody of any books or papers relating to the election of Guardians or the poor-rate books, are to permit such books or papers to be inspected, and copies or extracts to be taken from them by the person conducting the election; and if the chairman see fit, he may cause to be made an alphabetical list of the persons entitled to vote at the election. As regards the papers connected with the election of Guardians, it must, however, be borne in mind that after a time the clerk to the Guardians has not the legal custody of certain of those papers, for after the election is completed, he is required to deliver all the nomination and voting papers which he shall have received to the Guardians of the Union, at their next meeting, who are to preserve them for a period of not less than two years. (3)

Further on this point, with regard to the parishes of Cowley, Binsey, and North Hincksey, in the Oxford District, see 28 & 29 Vict. c. 108, s. 12, *post*, p. 55.

(1) *Reg. v. Backhouse*, 12 L. T. (N. S.) 579.

(2) *Reg. v. Backhouse*, 15 L. T. (N. S.) 240; 7 B. & S. 911; 36 L. J. Q. B. 7; L. R. 2 Q. B. 16.

(3) Article 24 *Glen's Poor Law Board Orders, Sixth Edition*.

Before every election, the chairman is to prepare, sign, and publish a notice containing the following particulars:—

1. The number and qualification of the persons to be elected.
 2. The persons by whom, and the places where, nomination papers are to be received, and the last day on which they are to be sent.

3. The mode of voting in case of a contest, the days on which the voting-papers will be delivered and collected, and the time and place for the examination and casting up of the votes.

This notice is to be published by causing it to be affixed on such places in the district, for which the election is to be held, as are ordinarily made use of for affixing thereon notices of parochial business,—that is, it is presumed, on or near to the doors of all the churches and chapels within the place or district for which the election is to be held. See Glen's Parish Vestries Acts, fourth edition, p. 84, and the cases there quoted.

Whenever the day appointed for the performance of any act in relation to the election shall fall on a Sunday, Christmas-day, or Good Friday, or any day appointed for a public fast or thanksgiving, such act is to be performed on the day next following.

This is similar to the proviso to Article 6 of the Consolidated Order of the Poor Law Board, in regard to which it has been held that a nomination paper which was delivered on a Sunday was delivered in due time, and might be treated as a delivery on the following Monday. (1) With reference to the Registration of Voters Act, 6 Vict. c. 18, it was held that a notice given under sect. 4 of that Act may legally be given on a Sunday, when the 20th of June falls on that day. (2)

Any person entitled to vote may nominate for the office of member of the Local Board himself, if qualified to be elected, or any other person so qualified, not exceeding the number of persons to be elected. Such nomination must be in writing, signed by the person nominating, and shall state the names, residence, calling, or quality of the persons nominated, and be sent to the chairman. If the number of persons nominated be the same or less than the number to be elected, such persons, if duly qualified, are to be deemed duly elected, and to be certified accordingly by the chairman under his hand. If, on the other hand, there be more persons nominated than there are members to be elected, the chairman is to cause voting-papers to be issued, filled up with the particulars set forth at the foot of the form of voting-paper in Schedule A. of the Act. In that paper the names of all the persons nominated are to be inserted in the order in which the nomination papers were received; but it is not necessary to insert more than once the name of any person nominated, if the same person be nomi-

Notice of election.
 11 & 12 Vict.
 c. 63, s. 23.

Publication of notice.
 Ib.

7 Wm. IV. &
 1 Vict. c. 45,
 s. 2.

Sundays and holidays.
 11 & 12 Vict.
 c. 63, s. 23.

Nomination paper received on Sunday.

Nomination of candidates.
 11 & 12 Vict.
 c. 63, s. 24.

(1) *Reg. v. Westbury-on-Severn*, 4 E. & B. 314; 1 Jur. (N. S.) 257.

(2) *Rawlins v. West Derby*, 15 L. J. (N. S.) C. P. 70.

nated by more than one nominator in separate nomination papers.

With regard to the nomination of a candidate for election for a ward of the district, see *ante*, p. 37.

The following is the Form of Voting-paper:—

Form of
voting-paper.
11 & 12 Vict.
c. 63, Sch.
(A.)

DISTRICT of

No. of Voting-paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.
		(1)	(1)

DIRECTIONS TO THE VOTER.

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote, he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nominators.	Address of the Nominators.
.
.
.
.
.

I vote for the persons in the above list against whose names my initials are placed.

(Signed)

mark of

Witness to the mark.

or

proxy for

Three days before the day of election (that is, the day for

(1) As to filling these blanks, see *Reg. v. Lockhouse and Wilson*, *post*, p. 46.

collecting the voting-papers) the chairman is to cause the voting-papers to be delivered by the persons appointed for that purpose to the address in the parts for which the election is to be held of each owner and proxy, and at the residence of each ratepayer entitled to vote. If, however, any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the Local Board of Health, and if in consequence thereof the number of persons nominated be the same or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand.

Delivery of
voting-papers.
11 & 12 Vict.
c. 63, s. 24.
Tender of
refusal to
serve.
Ib.

The words "address in the parts," &c., refer not only to the place of residence, or place of business, which the voter may have within the parts for which the election is to be held, but also to any place of address which he may specially appoint in the event of his having no place of business or residence therein.

The voting-paper should in each case be addressed to some certain individual who is entitled to vote. If in the case of persons assessed as the executors of a deceased person, it cannot be ascertained who are the executors, voting-papers should not be sent out. In such case it should be left to the executor or executors to claim a voting-paper or voting-papers, as the case may be, under 11 & 12 Vict. c. 63, s. 26, *post*, p. 46.

The refusal to serve may be tendered at any time before the return of the members elected; but it would be ineffectual if afterwards tendered; and in such case the candidate having the highest number of votes immediately following would not be the elected candidate; and it should be borne in mind that a refusal once formally delivered cannot be recalled.

Each voter must write his initials in the voting-paper delivered to him, against the name or names of the person or persons (not exceeding the number to be elected) for whom he intends to vote, and must sign such voting-paper. A proxy voting must do so likewise, and also state in writing the name of the corporation or company for which he is proxy. Marksmen must sign with their marks in the presence of an attesting witness, who is to write the name of the voter against his mark, as well as the initials of the voter against the name of every candidate for whom the voter intends to vote.

Signing
voting-papers.
11 & 12 Vict.
c. 63, s. 25.

If the signature be omitted, the voting-paper will be bad. (1) The signature should be the voter's usual signature, and it would be no valid objection that the Christian name is denoted by an initial letter. (2)

(1) *Reg. v. Tart*, 28 L. J. (N. s.) Q. B. 173; 5 Jur. (N. s.) 679; 32 L. T. 314.

(2) *Reg. v. Avery*, 18 Q. B. 576; 21 L. J. (N. s.) Q. B. 429; 17 Jur. 272.

Filling up
voting-papers.
11 & 12 Vict.
c. 63, s. 24.

The provision in 11 & 12 Vict. c. 63, s. 24, and schedule A., *ante*, p. 44, requiring the voting-papers to be filled up by the returning officer with the number of votes to which each voter is entitled, is directory only, and not compulsory. (1) Therefore, if there should be any mistake in the number of votes assigned in the voting-papers, or if none be assigned, the returning officer, when he reckons up the votes, will have to assign to each voter the proper number of votes to which he is entitled. But, *semble*, per Blackburn and Mellor, JJ., the chairman might be liable to a penalty, under sect. 28, for omitting to fill up the voting-papers in the form provided by the Act.

Filling up
voting-papers
irregularly.

Where certain persons who took an active part on behalf of some of the candidates went to the houses of voters who were marksmen, to assist in filling up the voting-papers, and having obtained the express or implied consent of voters or members of their families, filled up the papers with the proper names and marks of the voters, and put their own names as attesting witnesses, without obtaining the actual signatures or marks of the parties themselves, it was held, that this did not constitute the offence of forgery at common law: *sed quære*, whether the irregularity amounted to an indictable misdemeanor. The defendants having been indicted separately, Crompton, J., on the application of their counsel, and with the consent of the counsel for the prosecution, permitted all the cases to be tried. (2)

Penalty for
forging, &c.,
voting-papers.
21 & 22 Vict.
c. 98, s. 13.

If any person fabricates, in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting-paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or the Local Government Act, 1858, or falsely assumes to act in the name or on behalf of any person so entitled to vote, or interrupts the distribution of any voting-papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable, on conviction before two justices, to be imprisoned in the common gaol or house of correction, for any period not exceeding three months, with or without hard labour.

The distinction between a gaol and house of correction is now abolished by 28 & 29 Vict. c. 126, s. 56. See Glen's Prison Acts, 1865.

Collection of
voting-papers.
11 & 12 Vict.
c. 63, s. 26.

The chairman is to cause the voting-papers to be collected on the day of election by the appointed persons; but no paper is to be received or admitted unless it be delivered at the address or residence of the voter, nor unless it be collected by the appointed persons, except in the case of a person qualified to vote who shall not have received a voting-paper. Such person, on application to the chairman before the day of

(1) *Reg. v. Lockhouse and Wilson*, 14 L. T. (N. S.) 359; 7 B. & S. 447. S. C. *Reg. v. Lofthouse*, 35 L. J. Q. B. 145; L. R. 1 Q. B. 433; 12 Jur. (N. S.) 619.

(2) *Reg. v. Hartshorn*, 6 Cox, Crim. Cas. 395.

election, is entitled to receive a voting-paper from him, and to fill it up in his presence, and then and there to deliver it to him. In case any voting-paper duly delivered shall not have been collected through any default of the chairman or of the persons appointed to collect the voting-papers, the voter in person may deliver it to the chairman before twelve o'clock at noon on the day of election, or the first day appointed for the examination and casting up of the votes.

On the day immediately following the day of election, and on so many days immediately succeeding as may be necessary, the chairman is to attend at the office of the Local Board and ascertain the validity of the votes by an examination of the rate-books and such other books and documents as he may think necessary, and by examining such persons as he may think fit. After having so done, he is to cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate. The candidates to the number to be elected, who, being duly qualified, shall have obtained the greatest number of votes, are to be deemed duly elected, and certified as such by the chairman under his hand.

Examination
and casting
up the votes.
11 & 12 Vict.
c. 63, s. 27.

Who to be
deemed
elected.
Ib.

The provision that the chairman is to attend at the office of the Local Board is, per Lord Campbell, C.J., merely directory. (1)

If from any cause it should be impracticable for the chairman to ascertain the result of the election on the day when the votes are to be cast up, he should nevertheless open the proceedings on that day, and then adjourn them to the next day. He should take care that the proceedings are commenced in due form on the proper day, and are duly adjourned; and it would be well that he should give notice beforehand of the intended adjournment.

After the result of the election has been ascertained, the chairman is to send to each person elected a notice thereof, and to cause a list to be made containing the names of the candidates, together with, in case of a contest, the number of votes given for each, and the names of the persons elected, which list he is to sign and certify and deliver, together with the nomination and voting-papers which he shall have received, to the Local Board at their next meeting, who are to cause the same to be deposited in their office, and during office hours thereat kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward. The chairman is also to cause such list to be printed, and copies of it to be affixed at the usual places for affixing notices of parochial business (see *ante*, p. 43) within the parts for which the election shall have been made.

Notice of
election.
Ib.

Publication of
list of elected
members.
Ib.

The duties of the chairman or returning officer at the election

(1) *Reg. v. Cross*, 16 J. P. 215.

Duties of
returning
officer.

are not merely ministerial, but judicial, and therefore his certificate of the return of the candidates elected is conclusive as far as the validity of the votes is concerned, and no scrutiny of the votes can be held under a *quo warranto*. (1) But in a later case a rule *nisi* was granted calling on a Mr. Frost to show cause why an information in the nature of a *quo warranto* should not be exhibited against him requiring him to show by what authority he assumed to exercise the office of Commissioner under the Public Health Act, 1848, for the city of Ely; it was there contended that the office being a public office, the *quo warranto* was the proper remedy, and *Darley v. The Queen*, (2) and *Reg. v. St. Martin in the Fields* (3) were cited. (4) In *Reg. v. Robinson* (5) such an information was granted.

On a rule for a *quo warranto* against a Commissioner, under a Local Improvement Act, it was held: 1. That a person who is owner of rateable property in the town is qualified to be a relator. 2. That it will not be presumed that the votes given for the candidate next highest on the poll were not legal votes, but the contrary must be shown. 3. That if the agent of a candidate agrees to pay the rates of voters, but they are not actually paid before voting, the votes are bad if the Act says voters must have paid their rates before voting. (6)

A relator in a *quo warranto* rule, who has acquiesced in and has adopted the mode of voting, to which he afterwards objects, is disqualified for applying for such a rule. (7)

Where a person who is elected to a municipal corporation office is disqualified, and another claims the office as having the only legal votes, the person so elected cannot, by merely resigning his office, deprive the other person of his right to the advantage which a judgment of ouster upon a *quo warranto* would give him. He is therefore entitled to file the information, for without a disclaimer on the part of the person returned as elected, he would not be entitled to a mandamus to be admitted to the office. (8)

The duties of the chairman not being merely ministerial, he should ascertain what candidates are duly qualified, and return the duly qualified candidates who have the majority of votes at the election. (9) A returning officer at an election cannot return himself, for it is a maxim of law that no one is permitted to be a judge in his own cause; per Lord Campbell, C.J., "that maxim has been acted upon from time immemorial, and contains the principle within it, that a returning officer cannot, at the election at which he presides, return himself;" therefore it

(1) *Reg. v. Cross* (on the Norfolk Circuit), 16 J. P. 214.

(2) 12 Cl. & F. 349.

(3) 15 J. P. 371.

(4) *Ex parte Haydock*, 15 J. P. 384.

(5) 19 J. P. 724.

(6) *Reg. v. Briggs*, 29 J. P. 423.

(7) *Reg. v. Lockhouse and Wilson*,

14 L. T. (N. S.) 359; 7 B. & S. 447. S. C. *Reg. v. Lofthouse*, 35 L. J. Q. B. 145.

(8) *Reg. v. Blizard*, 15 L. T. (N. S.) 242; 36 L. J. Q. B. 18; L. R. 2 Q. B. 55; 5 B. & S. 922.

(9) *Reg. v. St. Pancras*, 7 E. & B. 954.

has been held that the mayor of a municipal corporation who presides at an election of town councillors cannot return himself, and his election is void. (1) But the mayor is only disqualified from being returning officer, and not from being a candidate. (2)

If the term of office of the chairman should be about to expire, and if he should be a candidate for re-election, that would appear to be a sufficient cause to render him unable to conduct the election, so as to enable the Local Board to appoint some other person, as, for instance, the clerk, as the returning officer.

If the chairman or other person charged with taking, collecting, or returning the votes at the election, neglect or refuse to comply with any of the provisions of the Act in that behalf, he is liable to a penalty not exceeding £50; and any person employed in the election by the chairman or other person, guilty of any such neglect or refusal, is liable to a penalty not exceeding £5.

Duties of re-
turning officer.

Penalty for
neglect or
misconduct of
returning
officer.
11 & 12 Vict.
c. 63, s. 28.

In *Somerhill v. Coley* (3) the Court were clear that the penal provision in 11 & 12 Vict. c. 63, s. 28, only applied to neglect or disregard of clear and undoubted directions, not mere mistakes upon doubtful points. Proceedings for the recovery of the penalty will be taken before justices under 11 & 12 Vict. c. 63, s. 129. If the chairman should know that a person is qualified to vote, and should maliciously refuse to receive his voting-paper, he will be liable to an action on the case at the suit of the voter; but not if he *bonâ fide* believes the voter not to be qualified, and rejects the vote accordingly. (4)

A chairman of a Local Board of Health was charged, under 11 & 12 Vict. c. 63, s. 28, with neglecting to deliver the voting-papers to the Local Board at their meeting, pursuant to sect. 27 of the Act. The prosecutor, a member of the Board, had not been a candidate at the election, and the persons returned at the election were properly elected; but as the prosecutor had not obtained the consent of the Attorney-General or Local Board, under sect. 133, to prosecute, he was held not to be a party aggrieved, and the justices had therefore no jurisdiction to convict. (5)

Though there may be any defect in the selection by the town council, or in the election of owners and ratepayers of members of Local Boards of Health, all proceedings of the Board and of any person acting as a member or under the authority of the Board, will be as valid and effectual as if no such defect had ever existed.

Proceedings
of Board not
to be invalid
by reason of
defect in
election.
11 & 12 Vict.
c. 63, s. 29.

If any person nominated, or any person on his behalf, give at least one clear day's notice in writing to the returning

(1) *Reg. v. Owens*, 33 L. T. 257.

(4) *Tozer v. Child*, 6 E. & B. 289.

(2) *Reg. v. White*, 2 W. N. 209;
36 L. J. Q. B. 267.

(5) *Reg. v. Blanshard*, 30 J. P.
280.

(3) 32 J. P. 324.

Agent of candidate may accompany deliverer or collector of voting-papers. 21 & 22 Vict. c. 98, s. 24.
Casual vacancies. Ib.

officer, before the delivery or collection of the voting-papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer must make his arrangements so as to enable the person appointed by him to be so accompanied. The agent must not, however, interfere in any respect in the delivery or collection of the voting-papers.

Any casual vacancy occurring by death, resignation, disqualification, or otherwise, in the Local Board, may be filled up within one month by the Local Board out of qualified persons. (1) The term of office of the new member in such case is limited to the same time as the vacating member would have retained the office if no vacancy had occurred.

Whether or not the Board will fill up the vacancy will depend upon themselves; but in any event the owners and ratepayers have no power to elect a member to fill a vacancy until the time for the annual election arrives.

First meeting of Local Board. Ib.

In the case of districts not consisting of boroughs or towns under the jurisdiction of Improvement Commissioners, the first meeting is to be held on a day not being more than ten days after the election of the Local Board, and at such place as the returning officer may by notice sent by post or delivered to each member of the Board appoint.

Expenses of the election. 11 & 12 Vict. c. 63, s. 30.

The necessary expenses attendant upon the election, and such reasonable remuneration to returning officers and other persons for their services in the election as shall be allowed by the Local Board, are to be paid out of the general district rates levied under the Act.

The Court will not, however, order a Local Board of Health to pay a reasonable compensation to the person conducting the first election of the Board upon a suggestion that an inadequate sum has been allowed: as the Local Board have a discretion as to what sum they think reasonable to allow, and the exercise of their discretion in this respect is not subject to review. (2)

Number of persons to be selected or elected. Ib. s. 14.

The number of persons to be selected or elected for the whole or any part of a district is from time to time to be regulated by Order in Council or provisional order (as the case may require), due regard being had to the size and circumstances of each district; but inasmuch as the signatures of five members of the Local Board are required to certain documents, the number of members of a non-corporate district must not be less than five. Any member of the Board, after going out of office, resigning, or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected. If any person be both selected and elected to be a member of the Local Board, he must, within three days after notice thereof from the clerk, choose, or in default the Local Board of which he is selected and elected to be a member are to determine the

Persons both selected and elected, etc. to serve in respect of one title only. Ib.

(1) See *Reg. v. Griffiths*, *post*, p. 56.

(2) *Ex parte Metcalfe*, 6 E. & B. 278; 2 Jur. (N. S.) 1245.

title in respect of which he is to serve, and immediately upon such choice or determination the person selected and elected is to be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title thereupon becomes vacant.

The 11 & 12 Vict. c. 63, s. 14, recognizes a member of the Local Board resigning his office, but no express power of resignation is given by either of the statutes. Apparently it will be sufficient if the member who wishes to retire sends in his resignation in writing, addressed either to the chairman or to the Local Board generally, and it will not be necessary that his resignation should be accepted to render it complete.

Local Government Boards consist of such number of elective members as may have been determined by a resolution of the owners and ratepayers, as is mentioned *ante*, p. 27.

The election of Local Government Boards is to be conducted in the manner directed by the Public Health Act, 1848, for the election of Local Boards of Health (as to which see *ante*, p. 38); and the summoning officer is to conduct the first election; and the members of the Local Board are to take such declaration, continue in office for the same time, and be liable to the same disqualifications and penalties as the members of Local Boards of Health.

Resignation
of members.

Election of
Local Govern-
ment Boards.
21 & 22 Vict.
c. 98, s. 24.

§ 2. IN PARTICULAR DISTRICTS.

The general mode of election is as above stated, but there are in certain cases exceptions to the rule. In the West Ham district three of the members are from time to time to be delegated by the Court of Commissioners of Sewers for the Dagenham and Havering Levels, and the twelve remaining members assigned to the district are to be elected for the whole of the district in the ordinary manner. The constitution of the Local Board of Health for the parish of Aldershott is again peculiar; for it consists partly of persons elected by the ratepayers of the parish, and partly of persons nominated by the military authorities. The Board consists of twelve members, nine of whom are to be elected by the ratepayers in the manner provided for by the Public Health Act, and three are to be nominated from time to time by Her Majesty's principal Secretary of State for War for the time being. One-third of the members elected by the ratepayers go out of office annually; but the three persons nominated by the Secretary for War are to hold office during his pleasure, who is further empowered from time to time to fill up vacancies arising among persons so nominated. Every elected member of the Board when elected, and while he continues a member of the Board, must be resident, as in the Public Health Act, 1848, is required (*ante*, p. 29), and must be possessed of real and personal estate, or both, to the amount of not less than £700, or must be so resident and

West Ham.
19 & 20 Vict.
c. 26, s. 4.

Aldershott.
20 & 21 Vict.
c. 22.

rated to the relief of the poor of the parish, or within the district, upon a net annual value of not less than £20.

Woolwich.
15 & 16 Vict.
c. 69, s. 4.

So also in the case of the Woolwich Local Board of Health, three persons are to be nominated as members by the Superintendent of the Dockyard, the Commanding Royal Engineer, the Storekeeper of the Ordnance, and the officer in command of the Royal Artillery.

Powers of
Metropolitan
Board of
Works in
Woolwich.
18 & 19 Vict.
c. 120, s. 238.

Woolwich is also within the jurisdiction of the Metropolitan Board of Works. The following are the provisions of the 18 & 19 Vict. c. 120 in this respect. Notwithstanding anything contained in the Act to the contrary, its provisions shall extend and apply to the parish of Woolwich, but only to the extent and in manner hereafter mentioned—that is to say—a member of the Metropolitan Board of Works shall be from time to time elected by the Local Board of Health of Woolwich at a meeting of such Board, as by the Act is directed with respect to the vestry of each of the parishes mentioned in Schedule (A.) to the Act. The Metropolitan Board shall have and perform, within and in relation to the parish of Woolwich, all the powers and duties vested in them under the Act in like manner as within and in relation to other parishes mentioned in Schedule (A.), save that the Local Board shall be subject to all orders of the Metropolitan Board in relation to sewerage, and otherwise, and to all precepts requiring payment of money, in all respects as the vestries of other parishes in Schedule (A.) are subject to the same, in lieu of the vestry of the parish of Woolwich; and all sums required to be paid by such precepts shall be defrayed out of any moneys carried to the district fund account, or by means of a general district rate to be levied on the whole of the parish of Woolwich, or such part thereof as may be specified in the precept of the Metropolitan Board.

Tunbridge
Wells.
27 & 28 Vict.
c. 83, s. 4.

The annual election of members of the Tunbridge Wells Local Board of Commissioners is to take place in the month of April, according to the scale of voting in respect of the election of Local Boards and Local Boards of Health, as provided by the Public Health Act, 1848, and the Local Government Act, 1858.

Oxford Com-
missioners.
21 & 22 Vict.
c. 98, s. 82.

The election of the Oxford Commissioners as a Local Government Board, is to be conducted at the same time (but see 28 & 29 Vict. c. 108, s. 4, *post*, p. 53), in the same way, and subject to the same regulations, as the Oxford Commissioners are now chosen by the town council and parishes. The fifteen Commissioners to be elected by the University are to be elected as follows: namely, four Commissioners by the University in convocation, and eleven Commissioners by the heads and senior bursars of the several Colleges, and by the heads of the several Halls. The elections are to be conducted by the University, and by the Colleges and Halls respectively, at the same time and in the same way, and subject to the same regulations in and subject to which guardians of the poor for the Uni-

versity and for the Colleges and Halls are now chosen, save that in the election of Commissioners the heads and bursars of all the Colleges and heads of all the Halls are to be summoned by the Vice-Chancellor for that purpose, and be entitled to vote.

But by 27 & 28 Vict. c. 68, to amend the Local Government Act of 1858 so far as it applies to Oxford, it is enacted that, notwithstanding anything contained in the said Local Government Act, or any other Act of Parliament, the election of the Commissioners to constitute the Local Board for Oxford, under the said Act of 1858, may take place at any time that may be determined by the existing Board of Commissioners between the first day of November and the fifteenth day of November, 1864, in the manner now respectively provided for the election of the said Commissioners to be respectively elected by the said city and University of Oxford; and the said Commissioners when so elected shall continue in office until the first monthly meeting after the fifteenth day of November, 1865.

Day of first election of Commissioners.
27 & 28 Vict. c. 68, s. 1.

Every subsequent annual election of the Commissioners constituting the said Local Board shall take place between the first and fifteenth days of November in every year, on the same day in each year, as shall be appointed under the power hereinbefore given: Provided always, that if such day fall upon a Sunday, then the election shall take place on the Monday next following; and the day of going out of office of every Board, and entry upon office of the new Board, shall be the day of the first monthly meeting after the said fifteenth day of November.

Subsequent annual elections.
Ib. s. 2.

Notwithstanding anything in the Local Government Act contained, the members of the Local Board to be elected by the University of Oxford, and heads and bursars of Colleges, and heads of Halls respectively, shall not be required to possess any qualification to act as members of the said Board, other than that they are of the degree of Master of Arts, Bachelor of Civil Law, Bachelor in Medicine, or any superior degree of the University. Further on this point, see 28 & 29 Vict. c. 108, s. 6, *ante*, p. 31.

Qualifications of members of Oxford Local Board.
Ib. s. 3.

But now by the Local Government Supplemental Act, 1865 (No. 5), the yearly election of the members of the Local Board for the district of Oxford, under sect. 82 of the Local Government Act, 1858, shall take place on such day between the ninth and twenty-fourth days of November in every year, not being Sunday, as the Local Board from time to time at their ordinary meeting in the month of October in the respective year determine; and the members of the Local Board already and from time to time hereafter elected shall continue in office until the commencement of the meeting of the Local Board next after the day of the then next yearly election of members thereof, and thereupon the members then elected shall come into office: Provided that if and whenever the Local Board do not so fix

The Oxford Local Board to be elected between the 9th and 24th of November annually.
28 & 29 Vict. c. 108, s. 4.]

any other day for the yearly election, then it shall take place on the tenth day of November, or if that day be Sunday, on the then next day.

How elected.

For the
University.
17 & 18 Vict.
c. ccxix., s. 4.

For the
Colleges.
Ib. s. 3.

For the Halls.
Ib.

Ratepayers of
each parish in
Oxford district
to elect one
member in
vestry.
28 & 29 Vict.
c. 108, s. 5.
Provisions
in case of the
addition to
the district of
a part of
Cowley
parish.
Ib. s. 9.

The elections of guardians of the poor for the University, and for the Colleges and Halls of Oxford, are conducted under the Oxford Poor-rate Act, 17 & 18 Vict. c. ccxix. Guardians for the University are elected annually in convocation on the 25th of March, or in case that day be a Sunday, on the day following, from amongst members of the University, being graduates, by the chancellor, masters, and scholars of the University. Guardians for the Colleges are to be elected from the same body, and at the same time, by the governor or head and senior bursar of each of the following Colleges, namely, All Souls, Balliol, Brasenose, Exeter, Jesus, Lincoln, New, Oriel, Pembroke, Queen's, St. John Baptist, St. Mary Magdalen, Trinity, University, Wadham, and Worcester Colleges; and by the governor or head of each of the following Halls, namely, New Inn, St. Edmund, St. Mary, and St. Mary Magdalen Halls.

By the Local Government Supplemental Act, 1865 (No. 5), the members of the Oxford Local Board to be elected by the ratepayers of the parishes within the district shall be elected one for every parish by the ratepayers of the respective parish, and, except as is by this Act otherwise provided, shall be so elected by the ratepayers in vestry assembled.

If and when any part of the parish of Cowley is added to the Oxford district, then and thenceforth the number of members of the Local Board for the Oxford district shall be increased by one:

- (a.) The Cowley member shall from time to time be elected by the owners and ratepayers within that part of the parish of Cowley:
- (b.) The first election of the Cowley member shall take place within forty-two days after the passing of this Act, on a day which shall, within fourteen days after the passing of this Act, be appointed by the chairman of the Local Board:
- (c.) The Cowley member so first elected shall continue in office until the commencement of the meeting of the Local Board next after the day of the yearly election of members of the Local Board in the year 1866:
- (d.) The yearly election of the Cowley member shall take place in the year 1866, and in every subsequent year on the day for the yearly election of other members of the Local Board:
- (e.) The chairman of the Local Board shall be the summoning officer for the purposes of every election of the Cowley member:
- (f.) In all other respects the provisions of every Act of Parliament from time to time in force with respect to the members of the Local Board, and their election

and continuance in office and retirement from office, shall, so far as the same are applicable, extend and apply to the Cowley member.

The member of the Oxford Local Board now elected for the parish of St. Thomas shall henceforth be elected for that parish, and for the adjoining parish of Binsey, as if they were one parish, and for the purposes of the election the two parishes shall be deemed to be one parish:

The parish of Binsey how to be represented. 28 & 29 Vict. c. 108, s. 10.

(a.) For the election the ratepayers of the parish of Binsey shall form part of the vestry of the parish of St. Thomas:

(b.) Notices of the vestry meetings of the parish of St. Thomas for the election shall be given by the summoning officers of that parish to the ratepayers of the parish of Binsey, as if they were ratepayers of the parish of St. Thomas.

If and when any part of the parish of North Hincksey is added to the Oxford district, then the member of the Local Board now elected for the adjoining parish of St. Aldate shall thenceforth be elected for that parish and for that part of the parish of North Hincksey as if they were one parish; and for the purposes of the election the parish of St. Aldate and that part of the parish of North Hincksey shall be deemed to be one parish; for the election the ratepayers of that part of the parish of North Hincksey shall form part of the vestry of the parish of St. Aldate.

Provisions in case of the addition to the Oxford district of a part of North Hincksey parish. Ib. s. 11.

For the purposes of this section, and with respect to each of the parishes of Cowley and Binsey and North Hincksey respectively, the overseers of the respective parish shall, when the Oxford Local Board by notice in writing to them so require, produce to such persons as the Local Board specify in the notice, and permit them to inspect and transcribe, the rate books for the then current and then last rates for the relief of the poor of the respective parish, and shall afford to those persons all proper and sufficient facilities in that behalf; and if whenever any overseer of any of those parishes in any way offends against this provision, then every person so offending shall for every such offence forfeit and pay to the Oxford Local Board any sum not exceeding £5.

Overseers of Cowley and Binsey and North Hincksey to produce rate books. Ib. s. 12.

Penalty in default. Ib.

CHAPTER VII.

CONTINUANCE IN OFFICE OF LOCAL BOARDS.

- Selected members. 11 & 12 Vict. c. 63, s. 12. EACH person selected by the council out of their own number to be a member of the Local Board of Health, is to act as such as long as he continues without re-election to be a member of the council from whom he was selected; but persons selected by the council otherwise than out of their own number are to be members of the Local Board with which they are selected to act only for one year from the date of their selection, and in case of a vacancy in the number selected the council is to fill up the vacancy within one month after its occurrence.
- Vacancies. Ib. This provision as regards the time within which the vacancy is to be filled up, it is apprehended, is directory only, and therefore the vacancy may be filled up though the month may have expired. (1)
- What a year. 15 & 16 Vict. c. 42, s. 14. The word "year," for the purpose of the election and of the continuance in office of the members of Local Boards, means the interval between any day of election of any such Board, and the day of election next ensuing.
- First election. 11 & 12 Vict. c. 63, s. 13. The first election of members for any district or part of a district is to take place on a day to be appointed by order of Her Majesty in Council or by Parliament (as the case may require); and one-third of the number elected for the whole or any part of a district are to go out of office on such day in each year subsequently to that of the first election as shall be appointed by such Order in Council or provisional order. The order in which the persons first elected shall go out of office is to be regulated by each Local Board; but if the number of persons to be elected be not divisible by three, the proportion to go out of office in each year is to be regulated by the Order in Council or provisional order, so that as nearly as may be one-third shall go out of office in each year. If the number of persons to be elected for any part of a district be less than three, the persons elected are to go out of office on such day in each year, or at such other period not being less than a year, as the Order in Council or provisional order shall direct; but no person elected can in any case continuously remain in office for more than three years; and on the days appointed for going out of office a number of persons are to be elected equal to the number of those going out, and so many others as may be
- Members going out of office. Ib.
- Duration of office. Ib.

(1) *Reg. v. Griffiths*, 7 E. & B. 953.

necessary to complete the full number of the Local Board in respect of which the election is to be made.

Three members of a Local Board consisting of nine members ceased to be members under sect. 18 of 11 & 12 Vict. c. 63, by reason of absence. On the 4th of January the remaining members met and declared that the three absent members should be the one-third in number of the members of the Board who should go out of office as required by sect. 13. On the 31st of March, the day fixed by an Order in Council applying the Act to the district, and at the annual election held on that day, three other persons were duly elected members of the Board, the other six remaining in office; and it was held, on an action of replevin, that the election on the 31st of March was good, and that a general district rate made by the Board after such election was valid; for the Legislature intended that the ratepayers should have an opportunity of electing three new members, and they had enjoyed that privilege,—which is a more satisfactory and convenient course than if a rule were laid down that might change all the members of the Board at the end of the year. (1)

Duration of office.
11 & 12 Vict.
c. 63, s. 13.

In the event of any vacancy in the number of persons elected, by death, resignation, or otherwise, between the times appointed for election, or if at any time the Local Board be without its full number of members, the remaining members are to continue and to be as competent to act until the time for election, or until the full number is selected or elected, as if no vacancy had occurred.

In case of vacancies, remaining members may act.
Ib. s. 14.

In the case of failure to elect a Local Board, or lapse of a Board from death, resignation, or disqualification, the owners and ratepayers by resolution may proceed to elect a new Local Board, and the result of the election is to be signified to a Secretary of State by the person conducting it. The rights and liabilities of the former Board are thereupon to attach to the new Board, as if there had been no lapse before their election.

Failure to elect a Local Board.
21 & 22 Vict.
c. 98, s. 11.

As regards the continuance in office of members of the Oxford Board, see 28 & 29 Vict. c. 108, s. 4, *ante*, p. 53.

(1) *Howitt v. Manfull*, 6 E. & B. 736; 25 L. J. (N. S.) Q. B. 411; 2 Jur. (N. S.) 883.

CHAPTER VIII.

PROCEEDINGS OF LOCAL BOARDS.

Meetings of Board.

11 & 12 Vict. c. 63, s. 34.

Ib. s. 2.

Byelaws relating to the meetings and business.

Ib. s. 34.

How in corporate districts.

Ib. s. 12.

Quorum in general.

Ib. s. 34.

Oxford and Cambridge districts.

Ib.

Publication of proceedings of Local Board.

Chairman of Local Board.

11 & 12 Vict. c. 63, s. 34.

His casting vote.

11 & 12 Vict.

c. 63, s. 34.

THE Local Board of every non-corporate district is to hold an annual meeting, and other meetings for the transaction of ordinary business, once at least in each (calendar) month, and at such other times as may be necessary; the Board is also to make byelaws with respect to the summoning, notice, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of their business. In corporate districts, however, the Local Board are to exercise and execute their powers, authorities, and duties according to the laws for the time being in force with respect to municipal corporations in England and Wales.

In non-corporate districts, no business can be transacted at any meeting, unless at least one-third of the full number of members be present, and all questions are to be decided by a majority of votes; and the names of the members present, as well as those voting upon each question, are to be recorded on the minutes. In the Oxford and Cambridge districts, however, business may be transacted if only seven members be present, which is the quorum fixed by the Acts under which the Commissioners for those places are appointed.

With regard to the publication of the proceedings of a Local Board, it may be observed that, though the publication of the report of a trial in a Court of Justice, in the course of which a libel is read, would be privileged, a publication of the proceedings of a parish vestry meeting (under 18 & 19 Vict. c. 120) at which a libel is read, is not so privileged. (1)

At the annual meeting the Local Board are to appoint one of their number to be chairman for one year at all meetings at which he is present. The Board are not empowered to appoint a vice-chairman; but if the chairman be absent from any meeting at the time appointed for holding it, the members present are to appoint one of their number to act as chairman "thereat," and it would seem that if the chairman should afterwards arrive, he would not be entitled to take the chair when it is already filled by a presiding chairman. In the event of the chairman dying or becoming incapacitated during his year of office, another member of the Board is to be appointed chairman for the remainder of the year. In the case of there being an equality of votes on any question before the meeting, the chair-

(1) *Popham v. Pickburn*, 31 L. J. (N. S.) Exch. 133; 8 Jur. (N. S.) 179; 5 L. T. (N. S.) 846; 7 H. & N. 891.

man is to have a second or casting vote,—that is, if, including his own vote, the numbers are equal, he shall then give a second or casting vote.

In the Cambridge district the Commissioners will appoint the chairman under the provisions of the Local Acts. Cambridge district.

The Oxford Local Board shall yearly, at their first meeting in November, appoint one of their number to be chairman for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat; and in case the chairman appointed for the year die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to remain in office, and no longer; and the chairman at any meeting shall have a second or casting vote in case of an equality of votes. Ib.
Oxford district.
28 & 29 Vict.
c. 108, s. 7.

The Local Board are to provide and maintain such offices as may be necessary for the transaction of the business of themselves and their officers: and every Board for a non-corporate district must provide a seal for the use of the Board in the execution of the Public Health Acts. Offices of Local Boards.
11 & 12 Vict.
c. 63, s. 35.
Their seal.
Ib.

Documents or copies of documents purporting to proceed from the Local Board, and to be signed by any five or more members, and sealed or stamped with the seal of the Board, or in the case of a corporate district, with the ordinary common seal of the corporation, are to be received in evidence in all Courts and places. See, however, *Barnsley, App., Sedgwick, Resp., post*, p. 159. Documents, how to be executed.
Ib.
Evidence.
Ib.

But any summons, demand, or notice, or other such document under the Public Health Act, 1848, or any supplemental Act, or the Local Government Act, may be in writing or print, or partly in writing and partly in print, and if it should require authentication by the Local Board, the signature thereof by the clerk to the Local Board is to be a sufficient authentication. Authentication of notices by Local Boards.
21 & 22 Vict.
c. 98, s. 61.

With regard to the liability of a Local Board to be rated for premises occupied by them for the purposes of the Acts, it has been held that a Local Board of Health occupying a yard as a place of deposit for stones and other materials for the repair of the highways, such yard being situate in a parish partly within and partly without the limits of the district of the Local Board, were rateable for such yard to the relief of the poor, as they occupied it as trustees not for the public at large, but for the inhabitants of the district, who were charged with the obligation of repairing the highways. (1) Rating premises of Local Board.

(1) *Reg. v. Cooper*, 23 L. J. (N. S.) M. C. 183; S. C. nom. *Reg. v. Hull JJ.*, 4 E. & B. 29.

Committees
of Local
Boards.
11 & 12 Vict.
c. 63, s. 36.

The Local Board, if they should be of opinion that any business would be better regulated and managed by means of a committee, may from time to time appoint out of their own number so many persons as they may think fit for the management of such business: but the acts of every such committee must be submitted to the Local Board for their approval. With reference to the acts of a committee of a Local Board, see *Barnsley v. Sedgwick*, *post*, p. 159. In the case of a Local Board for a corporate district, the committee appointed may be either of a general or special nature; and their acts must in like manner be submitted to the Council for their approval.

5 & 6 Wm. IV.
c. 76, s. 70.

The following bears on the powers of such a committee:—

Where a finance committee had been appointed by Town Improvement Commissioners to make a report as to the Commissioners' debts and liabilities, and they made their report, signed by three only of the finance committee, in which a debt claimed of the Commissioners was alleged to be owing, it was held that the report of the finance committee was not such a note in writing as would bind the body of Commissioners, and take the debt out of the Statute of Limitations. (1)

Annual report
of Local
Board.
21 & 22 Vict.
c. 98, s. 76.

Every Local Board is to make an annual report, in such form and at such time as the Secretary of State may from time to time direct, of all works executed by them during the preceding year, and of all sums received and disbursed, and publish such report in some newspaper circulating in the district, and send a copy to the Secretary of State.

The instructional minute of the Secretary of State prescribes the particulars and the form in which the annual reports shall be made by Local Boards.

As regards the validity of the proceedings of a Local Board when there are defects in the selection or election of any of the members, see *ante*, p. 35.

(1) *Bush v. Martin*, 8 L. T. (N. S.) 509.

CHAPTER IX.

APPOINTMENT OF OFFICERS BY LOCAL BOARDS.

THE Local Board are from time to time to appoint fit persons to be surveyor, inspector of nuisances, clerk, and treasurer for the purposes of the Act, and to appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of the Acts.

Surveyor,
inspector of
nuisances,
clerk, trea-
surer, &c.
11 & 12 Vict.
c. 63, s. 37.
26 Vict.
c. 17, s. 5.

If the District contains a population of less than 3000, the Local Board first elected for the district must within two months after their election appoint fit and proper persons as surveyor, inspector of nuisances, clerk, and treasurer, otherwise the adoption of the Local Government Act in the District will be void.

They are also to make byelaws for regulating the duties and conduct of the officers and servants so appointed or employed; and pay them such reasonable salaries, wages, or allowances as the Local Board may think proper, out of the general district rates. (Suggestions as to framing byelaws under this enactment have been issued by the Local Government Act Office, and are to be procured from Messrs. Knight and Co., the publishers of this work).

11 & 12 Vict.
c. 63, s. 37.

Every officer and servant is removable by the Local Board at their pleasure. The same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer, nor his partner, nor any person in their service or employ, can hold or officiate in the office of clerk; neither can the clerk hold or officiate in the office of treasurer; and any one who offends in this respect shall forfeit and pay the sum of £100, which may be recovered by any person, with full costs of suit, by action of debt.

Same person
may be sur-
veyor and
inspector of
nuisances,
but not clerk
and treasurer.
Ib. s. 37.

The fact of the appointment having been made should be recorded on the minutes; but no written appointment is necessary. (1) The appointment does not create a contract on the part of the Local Board to pay the salary to the officer, and therefore an *indebitatus* action will not lie against them for the salary if payment of it be withheld. A mandamus or an action on the case is the proper remedy. (2) As to the power of a Local Board to award extra remuneration to one of their officers, their surveyor, whom they may have employed professionally

Recovery of
salary.

(1) *Saunders v. Owen*, 2 Salk, 867; *Reg. v. Greene*, 17 Q. B. 793.
467; *Reg. v. Grimshaw*, 10 Q. B. (2) *Bogg v. Pearse*, 10 C. B. 534;
747; *Smart v. West Ham*, 10 Exch. 20 L. J. (N. S.) C. P. 99.

to superintend the construction of works not properly falling within his ordinary duties as surveyor, see *Reg. v. Gloucester*. (1)

Attorney.

With regard to the employment of an attorney by a Local Board, it has been held that it was within the scope of the authority of certain Commissioners invested with rating powers and powers to appoint officers, to employ an attorney; and that the attorney so employed might recover in an action against the clerk of the Commissioners in a succeeding year—the Commissioners by the Act were empowered to sue and be sued by their clerk. (2)

Actions against them for statutory payments.

With regard to the remedy against a Local Board of Health for not making a statutory payment, it may be here stated that in a case where the powers and duties of certain trustees appointed under a Local Act were by a provisional order of the General Board of Health (confirmed by the 13 & 14 Vict. c. 108) vested in the Local Board of Health for the district, one of those duties being to pay the salary of the organist of the parish church out of a certain fund, an action was brought on the case by the organist against the Local Board for a breach of duty in not paying his salary, alleging that they had sufficient funds for the purpose (which was proved at the trial), and it was held that the Board and the organist stood in the relation of trustee and *cestui que trust*; and that in the absence of a specific appropriation of a part of the fund to the plaintiff, no action at law lay; the remedy being in equity. (3) So where a committee who were elected annually from among the Justices of the county, who were authorized by 8 & 9 Vict. c. 126, s. 17, to make certain contracts, and by sect. 16 might be sued in the name of their clerk, it was held that an action was maintainable against the committee for the time being in the name of their clerk upon a contract entered into by a former committee within the scope of their authority; but, *semble*, that the plaintiff's remedy to enforce their judgment would be by bill in equity or mandamus. (4) In *Hall v. Taylor*, (5) Lord Campbell, C.J., said that the power to make contracts within the scope of the statute and the incidents to suits for the breach of such contracts, are fully considered in *Kendall v. King*, and the law upon this subject is there clearly laid down.

Where, however, Commissioners under a Local Paving Act having granted an annuity on the credit of the rates, in pursuance of the powers given to them by their Act, neglected to pay the annuity when they had sufficient rates in their hands, it was held that case was the proper form of action. (6)

A claim to a writ of mandamus under the 68th section of

(1) 33 L. T. 145.

(2) *Hall v. Taylor*, 1 E. B. & E. 107; 22 Jur. 877; 27 L. J. (N. S.) Q. B. 311.

(3) *Edwards v. Lowndes*, 1 E. & B. 81; 22 L. J. (N. S.) Q. B. 104;

17 Jur. 412.

(4) *Kendall v. King*, 25 L. J. C. P. 132.

(5) 27 L. J. Q. B. 314.

(6) *Cane v. Chapman*, 1 N. & P. 104.

the Common Law Procedure Act, 1854, cannot be sustained if there is any other equally effectual remedy. In an action by executors against the clerk to Improvement Commissioners under a local Act, and in which the plaintiffs claimed a writ of mandamus under the 68th section of the Common Law Procedure Act, 1854, the declaration stated that the Commissioners were indebted to the testator for the "agreed salary" payable by them to him for services rendered by him as clerk to the Commissioners; and also for other work by him "as the attorney of and otherwise for" the Commissioners in and about the business of the Commissioners. The declaration then alleged "that the said debts became and were a charge on any moneys which might be in the hands of the Commissioners, and which should have been collected by them under and by virtue of the said Act;" and if the Commissioners should not have in their hands any moneys sufficient to pay such debts, "then such debts became a charge and were chargeable on a rate leviable and to be levied by the Commissioners under the Act." The defendants pleaded to so much of the debts as became due on simple contract, the Statute of Limitations, and as to debts, except the agreed salary, that no signed bill was delivered; also that the Commissioners had no funds whereout they could pay the debts. The Court held that the declaration was bad, inasmuch as, assuming that the services in respect of which the "agreed salary" was claimed were payable out of the rates, the others might be services for which the Commissioners were personally liable, and consequently the remedy was by action, and not claim by mandamus. Secondly, that the first two pleas were good; and, *semble*, that the last plea was also good; (1) but in the Exchequer Chamber it was held that it is not necessary that the clerk to Town Improvement Commissioners appointed at a fixed salary, who is an attorney, should deliver a signed bill as an attorney under the 6 & 7 Vict. c. 73, s. 37, in respect of his salary. (2)

With regard to the liability of a Treasurer of a Local Board for money belonging to the Board in his hands placed to different accounts, the following decision is important:—The Corporation of Preston (who besides their municipal character filled that of managers of the public baths and wash-houses under the Baths and Wash-houses Acts, 1846, and of the Local Board of Health under the Public Health Act, 1848) kept three separate accounts at their bankers, viz., 1. "The Corporation of Preston account." 2. "The Corporation Bath and Wash-houses Revenue account." 3. "The Preston Local Board of Health account." Upon the first account they were indebted to the Bank, and upon the other two the Bank was indebted

(1) *Bush v. Beavan*, 1 H. & C. 500; 8 Jur. (N. S.) 1015; 7 L. T. (N. S.) 106. 2 H. & C. 311; 9 Jur. (N. S.) 851; 10 Jur. (N. S.) 347; 33 L. J. (N. S.) Exch. 17; 8 L. T. (N. S.) 509.

(2) *Bush's Executors v. Martin*,

to them in an equal amount. In an action brought by the Banker to recover the balance due to him on account No. 1, it was held that the Corporation were entitled to set off the debts due to them on the other two accounts, for though the accounts were separate the defendants were creditors in the first account, and debtors in the second and in the same right. (1)

Officer of health.

11 & 12 Vict. c. 63, s. 40.

21 & 22 Vict. c. 90, s. 36.

22 Vict. c. 21.

23 & 24 Vict. c. 7.

23 & 24 Vict. c. 66.

21 & 22 Vict. c. 90, s. 34.

11 & 12 Vict. c. 63, s. 37.

Officers defined.

11 & 12 Vict. c. 63, s. 2.

Penalty upon officers, etc., interested in contracts or taking fees improperly. *Ib.* s. 38.

Local officers, etc., intrusted with money to give security, and to account.

In addition to the before-mentioned officers, the Local Board may from time to time, if they think fit, appoint a fit and proper person, being a legally qualified medical practitioner or member of the medical profession, to be the officer of health.

No person can hold any appointment as a medical officer of health unless he be registered under the Medical Acts; and the words "legally qualified medical practitioner" are to be construed to mean a person registered under that Act. This officer is removable by the Local Board, and is to perform such duties as he may lawfully be directed to perform; the same person may be officer of health for two or more districts, and his salary is to be paid out of the general district rates.

The expressions "the officer of health," "the clerk," "the treasurer," "the surveyor," "the inspector of nuisances," mean the persons respectively appointed to be or authorized to execute the offices of the officer of health, clerk, treasurer, surveyor, and inspector of nuisances in each district for the purposes of the Acts.

No officer or servant appointed or employed by or under the Local Board must in anywise be concerned or interested in any bargain or contract made with the Board for the purposes of the Act; and if any such, under colour of his office or employment, exacts, takes, or accepts any fee or reward other than his proper salary, he is rendered incapable of afterwards holding or continuing in any office or employment under the Act, and liable to forfeit the sum of £50, which may be recovered by any person, with full costs of suit, by action of debt.

As to what is not within this prohibition, see *Wednesbury v. Stevenson*, *post*, p. 163.

Any person may sue for the penalty, but every action brought by a common informer must be brought within one year after the offence. (2)

Before any officer intrusted with the custody or control of money enters upon his office, the Local Board must require and take from him sufficient security for the faithful execution of his office; and every officer employed in the collection of rates under the Act, within seven days after he shall have received any moneys on account of rates, must pay over such money to the Treasurer; and, when the Local Board may direct, deliver a signed list containing the names of all persons who

(1) *Pedder v. Preston*, 12 C. B. (N. S.) 535; 9 Jur. (N. S.) 496; 6 L. T. (N. S.) 540, 544.

(2) *Dyer v. Best*, 12 Jur. (N. S.) 142.

have neglected or refused to pay any rate, and the sums respectively due from them. Every officer appointed or employed by or acting under the Local Board must, when required by the Board, make out and deliver an account of all moneys received, stating how and to whom and for what purpose such moneys have been disposed of, and deliver the vouchers or receipts for all payments, and pay over to the treasurer all moneys owing upon the balance of the account.

Officers to account for moneys received. 11 & 12 Vict. c. 63, s. 39.

If any officer fail to render such account, or to produce and deliver up his vouchers and receipts, or to pay over any moneys, or if for the space of five days after being required he fail to deliver up to the Local Board all papers and writings, property and effects in his possession or power, relating to the execution of the Act, or belonging to the Board, he may be summoned before two justices, and committed to gaol until he shall have rendered such accounts, and produced and delivered up all vouchers, receipts, books, papers, writings, and property in respect of which the charge was made. If it appear that the officer has failed to pay over any moneys, and that he still fails or refuses, the justices may by warrant cause such money to be levied by distress, and in default of distress commit him to gaol for a period of three months, unless the moneys be sooner paid. If, however, the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the officer charged intends to abscond, he may, without previous summons, cause him to be apprehended; and within twenty-four hours afterwards he is to be brought before the same or some other justice, who may order that he be discharged from custody if he think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices, unless satisfactory bail be given: no such proceeding is, however, to be construed to relieve or discharge any surety of the offender from any liability.

Failure to account, etc. Ib.

The commitment by two justices under 11 & 12 Vict. c. 63, s. 39, of a member of the Town Council and Local Board of a Borough for non-delivery of a rate-book in his possession by virtue of his office as overseer and collector of the borough rates, is a civil and not a criminal proceeding, being in the nature of a distraint. The offence of non-delivery consists in continuing to retain the subject of distraint, and therefore the limitation of six months under the 11 & 12 Vict. c. 43, s. 11, does not apply. *Semble*, per Lush, J., such limitation will only apply where the object of the proceeding is punishment, and not merely coercion. (1)

Wherever the word "justice" is used in the Act, it is to mean any justice of the peace acting for the place in which the matter or any part of the matter requiring the cognizance of

Justices defined. Ib. s. 2.

(1) *Meyer v. Harding*, 17 L. T. (N. S.) 140. 32 J. P. 421.

Justices
defined.
11 & 12 Vict.
c. 63, s. 2.

Stipendiary
magistrates.
21 & 22 Vict.
c. 73, s. 1.

Ib. s. 2.

the justice arises; and the words "two justices" mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police magistrate acting in any police court for the place in which the matter or any part of the matter requiring the cognizance of two justices arises. With regard to the jurisdiction of justices and their protection, see the third edition of Jervis's Acts, 11 & 12 Vict. cc. 43, 44, by the author of this work; also the 20 & 21 Vict. c. 43, and the 21 & 22 Vict. c. 73. By the latter Act (sect. 1) every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf, has power to do alone any act, and to exercise alone any jurisdiction which under any law now in force, or any law not containing an express enactment to the contrary, thereafter to be made, may be done or exercised by two justices of the peace; and all the provisions of any Act of Parliament auxiliary to the jurisdiction of such justices are applicable to the jurisdiction of such stipendiary magistrate. The authority so given to a stipendiary magistrate shall extend and apply as well to the cases where the act or jurisdiction is or may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases; and any enactment authorizing or requiring persons to be summoned or to appear at such petty sessions, shall, in the like cases, authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting.

With regard to the appointment of stipendiary magistrates in certain districts under Local Boards, see the chapter on the subject, *post*.

CHAPTER X.

PROVISIONAL ORDERS OF SECRETARY OF STATE.

WHENEVER it appears desirable to the Local Board of any district, or to the majority of the owners and ratepayers in any parish, township, hamlet, or place, maintaining its own roads or its own poor, adjoining any district, or the majority of owners and ratepayers in any part of a district, ascertained in the way provided for voting with respect to the adoption of the Act, 21 & 22 Vict. c. 98 (*ante*, p. 12).

Petition for
incorporation.
21 & 22 Vict.
c. 98, s. 77.

That any portion of such parish, etc., should be incorporated with the district, or that part of the district should be separated therefrom :

Or whenever it appears to the Local Board desirable,

That provision should be made for the future execution of any Local Acts in force within the district, having relation to the purposes of the Local Government Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit ;

Or that any Acts, or any exemptions from rating derived therefrom, or any provisional Order or Orders in Council applying the Public Health Act, 1848, or Act confirming such provisional orders, should be wholly or partially repealed or altered,

(1.) They may present a petition to a Secretary of State, praying for such incorporation, separation, provision, repeal, and alteration, or for any of such things, which petition shall be supported by such evidence as the Secretary of State requires.

(2.) Upon the receipt of the petition, inquiry may be directed in the district in respect of the several matters mentioned in the petition, after giving fourteen days' notice of the time, place, and subject of the inquiry.

(3.) The Secretary of State may afterwards issue a provisional order in relation to the several things mentioned in the petition, either in accordance with the prayer of it, or with such modifications as may be requisite. When the order provides for the incorporation of a portion of any parish, etc., with the district, or the separation of any part from the district, an inspector is to proceed to the district for the purpose of obtaining the consent to such order of the place of which it is proposed that a portion should be incorporated, or of the part to be separated, and also, if the order provide for any such

Provisional
order of
Secretary of
State.
Ib.

incorporation, the consent of the petitioning district to the order.

Consent to
provisional
order, how
testified.
21 & 22 Vict.
c. 98, s. 77.

(4.) The consent of the petitioning district to the order shall be testified by a resolution of the Local Board of the district, and the consent of any place or part by a resolution passed by a majority of the ratepayers resident in any place or part assembled at a meeting convened for the purpose. For the purpose of obtaining such consents the inspector, upon fourteen days' notice, has power to convene meetings of the Local Board of any district, or meetings of the ratepayers of any place or part, and to do such things as may be expedient for that purpose.

Meetings to
consent.
Ib.

(5.) In the case of a meeting of the ratepayers of any place or part, the ratepayers present are to elect a chairman; and a declaration by the chairman that the opinion of the meeting is in favour of or against any resolution, in the absence of proof to the contrary, is sufficient evidence that the resolution is passed: the inspector has power to attend any such meeting.

Confirmation
of Order by
Act of Par-
liament.
Ib.

(6.) Whenever any consents as before mentioned have been given, the Secretary of State, as soon as may be, is to take all necessary steps for the confirmation of the provisional order by Act of Parliament. Previously to confirmation, the order is not of any validity, and every Act of Parliament confirming the order is to be deemed a Public General Act. In case a petition shall be presented to either House of Parliament against any provisional order framed in pursuance of the Act, in the progress through Parliament of the Bill confirming the order, the Bill, so far as it relates to the order petitioned against, may be referred to a Select Committee, and the petitioner is to be allowed to appear and oppose it as in the case of private Bills.

Costs of Pro-
visional
Orders.
24 & 25 Vict.
c. 61, s. 27.

The provision for the repayment of costs, charges, and expenses, incurred by the Secretary of State in relation to any provisional order under sect. 75 of the 21 & 22 Vict. c. 98, extends to all provisional orders under that Act. The following is the provision referred to:

21 & 22 Vict.
c. 98, s. 75.

(7.) All costs, charges, and expenses incurred by the Secretary of State in relation to any such provisional order, to such amount as the Commissioners of the Treasury think proper to direct, are to become a charge upon the general district rates levied in the district to which the order relates, and be repaid to the Treasury by annual instalments not exceeding five, together with five per cent. interest, to be computed from the date of the order, upon so much of the principal sum as may from time to time remain unpaid.

A provisional order of the Secretary of State, under s. 77 of 21 & 22 Vict. c. 98, is not one that can be removed by certiorari for the purpose of being quashed—per Cockburn, C.J., the object of the inquiry by the Secretary of State, wherein he makes his order, is to supersede certain inquiries by the Parlia-

ment itself, which would considerably enhance the expense; in fact, to substitute an inquiry by the Secretary of State, and so assist the legislature in deciding whether or not the measure is a proper one to pass into a law, and until the Act of Parliament is obtained the order itself has no validity; and were we to question this order, we should be usurping functions which do not belong to us, and be stepping in to stop the action of Parliament. This is beyond the sphere of an action. (1)

The provisional order which was in question was afterwards confirmed by Parliament, see 28 & 29 Vict. c. 110, *post*.

As regards provisional orders for the purchase of Lands, see *post*.

(1) *Frewen v. Hastings*, 12 L. T. 711. S. C. *Reg. v. Hastings*, 6 B. (N. S.) 346; 34 L. J. (N. S.) Q. B. & S. 401.
159; 11 Jur. (N. S.) 670; 29 J. P.

PART II.

CHAPTER I.

ON DRAINAGE AND THE STORAGE AND DISTRIBUTION OF WATER. (1)

§ 1. ON THE SOURCE OF FRESH WATER AND NATURAL DRAINAGE.

WATER emits vapour at all temperatures with which we are acquainted. The density of the vapour at emission is the maximum consistent with the gaseous condition at the temperature. As the vapour ascends and diffuses in the air, the density diminishes. A stratum of air at the temperature for which the density of the suspended vapour is the maximum is said to be saturated, and any lowering of the temperature below this point causes condensation till saturation is restored. The condensed vapour collects in globules, which either fall directly as rain, or descend into a denser stratum of air, assume the nebulous condition, and float, forming clouds and mist, and are re-evaporated or precipitated according to the subsequent changes in the state of the atmosphere.

Source of
fresh water.

All supplies of fresh water are derived from the condensation of aqueous vapour, and the discharge of springs and rivers from the land into the sea is the excess within the coast lines of the water of condensation above the water evaporated and permanently absorbed in animals, vegetables, and minerals.

Natural
drainage.

The rain which falls on surfaces above the sea-level, and escapes evaporation and permanent absorption, gravitates to the sea; and flows thither through and beneath the soil, directly on the surface, and through the pores and fissures of rocks. The water flowing on the surface collects according to the configuration of the ground, and forms streams, lakes, and rivers. The water flowing underground either oozes to the surface at imperceptible points, or drains into and flows in the fissures and escapes in springs.

Catchment
basins.

Lines drawn on the map of a country through the sources of the tributaries of each of the rivers that flow directly into the

(1) This chapter has been contributed to this work by my relative,

Mr. P. B. Cunningham, Civil Engineer.—W. C. G.

sea, enclose a number of areas of the shape of the letter U, more or less distorted. These areas are approximately what are called the *catchment basins* of the great rivers,—that is, the areas upon which the rainfall is gathered that supplies their waters. To find the true boundaries of the catchment basins, it is necessary to ascertain exactly the position of the *ridge lines* or *watersheds* of the country. In compact formations, where the quantity of water flowing underground is inappreciable, the ridge lines pass through the highest points on the surface. In the more porous rocks—chalk and sandstone, for example—the boundary of the catchment basin depends upon the configuration of the retentive substratum. The great catchment basins are divisible into a number of smaller basins drained by the tributaries; these again into the still smaller basins which supply the feeders; and so on.

In this country surfaces below the sea-level are kept dry only by artificial means; those above low-water mark and below high-water mark by the opening and shutting of flood-gates, and those below low-water mark by pumping.

§ 2. ON THE FLOW OF WATER.

In a mass of water at rest the pressure is of the same intensity at all points (1) at the same level. The difference of the intensities of the pressures at two points at different levels—the density of water being supposed constant—is the weight of a vertical column of water whose height is the difference of elevation of the two points, and whose base is a unit of area. The intensities of the pressures at points at different depths below a given level or horizontal surface, less the intensity at that surface, are proportional to the depths.

The difference of the pressures per square foot at a given point in a mass of water, and on a surface open to the atmosphere at the same level, divided by the weight of a cubic foot of water, is called feet of *head of pressure* at the given point when the pressure of the atmosphere is the less, and feet of *vacuum* when the pressure of the atmosphere is the greater.

The *total head* at a given point in a mass of water is the sum of the head of pressure and the height of the point above a fixed or “datum” level. To express this in symbols, let p denote the head of pressure, x the height above the datum (or the *head of elevation*), and H the total head at the given point: then—

$$H = x + p. \quad (1)$$

In a mass of water at rest, the total head is the same at all points.

In order to acquire velocity from a state of rest, or an in-

(1) When “pressure at a point” is spoken of, a “point” must be held to mean a *very small surface*.

A pressure at a point in the true sense is an impossibility.

crease of velocity, a fluid particle must pass from a point of *greater* to a point of *less* total head; in other words, the particle must *lose head*.

Volume of flow.

The *volume of flow* of a stream is the quantity of water it discharges in a given time. The volume of flow is usually expressed in cubic feet per second.

Mean velocity.

The *mean velocity* of a stream at a given cross section is found by dividing the volume of flow by the area of the cross section. Let Q denote the volume of flow in cubic feet per second, A the area of the cross section in square feet, and v the mean velocity in feet per second: then—

$$v = \frac{Q}{A}. \quad (2)$$

In a stream of water the velocity is different at different points in the same cross section, the greatest velocity being in the middle, and the least at the borders.

Relation between loss of head and velocity in a perfect fluid.

If a fluid particle could pass from a point of greater to a point of less total head *without resistance*, the loss of head required to produce in it any given velocity from a state of rest would be equal to the height of fall required to produce the same velocity from a state of rest in a body falling freely. Let v denote the given velocity, and g the acceleration of gravity in feet per second: then in a body falling freely—

$$\text{Height in feet} = \frac{v^2}{2g}. \quad (3)$$

Let $x_0 + p_0$ denote the total head at a point at which the particles of a fluid are at rest, $x + p$ the total head at a point at which the particles acquire the given velocity, and h the loss of head: then in a perfect fluid—

$$h = (x_0 + p_0) - (x + p) = \frac{v^2}{2g}. \quad (4)$$

Work.

Motion against resistance is called *work*. Work is measured by the product of the resisting force into the distance through which that force is overcome. The ordinary unit of work is the foot-pound—the amount of work required to raise one pound avoirdupois one foot high.

Energy.

Energy means capacity for doing work. When a force acts upon and moves a body, energy is said to be *exerted*. By the *actual energy* of a moving body is meant the amount of work which the body must do before it returns to rest. The energy that has been exerted on a falling body at any point in its descent is measured by the product of the weight of the body into the height fallen through. In a stream, the energy that has been exerted per unit of volume of flow at any cross section is measured by the product of the weight of that unit into the loss of head.

Energy and work.

When a body does no work while falling, its actual energy at any point in the descent is *equal* to the energy that has been

exerted; that is, after falling through a given height, and before returning to rest, the body must do an amount of work equivalent to raising itself (*i.e.*, overcoming the force which urges it downwards) through the height through which it has fallen. Take a pendulum, for example. When a body does work while falling, its actual energy is *less* than the energy that has been exerted, and the height through which it must raise itself before returning to rest is less than the height through which it has fallen by the height which, multiplied into its weight, represents the work done. Take the weights of a clock, for example. In this case the actual energy is nothing (nearly), and the whole (nearly) of the energy exerted is expended while falling. In a falling body the height fallen through, and in a stream the loss of head, is called the height due to the energy exerted; the height through which a moving body must raise itself before returning to rest is called the height due to the actual energy, or the height due to the velocity; and the difference of the heights due to the energy exerted and the actual energy, the height due to the work done.

A stream of water has to overcome a force which acts between the surface of its conduit and the particles in contact, and, in consequence of the retardation of these particles, a force which acts between the particles of water themselves and opposes their motion at different velocities. Hence every particle in a stream of water does work. The height due to the work done is most conveniently expressed in terms of the height due to the velocity, and the relation between the loss of head and the velocity produced from a state of rest by the following equation:

$$h = \frac{v^2}{2g} + F \frac{v^2}{2g} = (1 + F) \frac{v^2}{2g}; \quad (5)$$

in which h represents the height due to the energy that has been exerted, $\frac{v^2}{2g}$ the height due to the actual energy, and $F \frac{v^2}{2g}$ the height due to the work done; or, briefly, the *friction*. The value of the factor F has to be determined by experiment.

When the water does *not* start from a state of rest, the loss of head, between two cross sections of the stream at which the velocities are respectively v_0 and v , is—

$$h = (1 + F) \frac{v^2}{2g} - \frac{v_0^2}{2g} \quad (6)$$

When the velocities at the two cross sections are equal, that is, when $v_0 = v$ —

$$h = F \frac{v^2}{2g}; \quad (7)$$

and the whole of the energy due to the loss of head between the two cross sections is expended while passing.

Effect of loss of head in an open channel and in a close pipe.

In an open channel the head of pressure is *nothing* on the upper surface of the stream, and the *same* at all points at the same depth below the upper surface. The loss of head, $h = (x_0 + p_0) - (x + p)$, in an open channel, therefore, takes place wholly in diminution of the head of elevation. In a close pipe the loss of head may take place wholly in diminution of the head of pressure, in which case the head of pressure at the source, or the vacuum at the outlet, must be produced by pumping; or it may take place partly in diminution of the head of pressure, and partly in diminution of the head of elevation, in which case the stream may flow by its own weight. The head of pressure p at any point in a stream flowing in a close pipe is called the depth of that point below the line of *virtual declivity*.

Feet of vacuum and velocity in a suction-pipe.

When, as in the suction-pipe of a pump, water acquires velocity, and flows from a place of no head of pressure to a place where the pressure is less than that of the atmosphere, let q denote the feet of vacuum, x_0 the height above the datum of the surface of the water in the source, and x the height above the datum of the bucket at top stroke: then—

$$x_0 - (x - q) = (1 + F) \frac{v^2}{2g}. \quad (8)$$

At the sea-level the maximum value of q varies from 32 to 35. In pumps, $x - x_0$ is seldom made more than 20 feet.

Syphon.

Water may flow in a pipe from a place of no head of pressure, through a space in which the pressure is less than that of the atmosphere, to another place of no head of pressure, provided that, when x_0 is the height of the higher of the two places of no head, and x the highest point between them—

$$(x - x_0) \text{ is not greater than } \left(q - F \frac{v^2}{2g} \right). \quad (9)$$

Water flowing above the line of no head of pressure is said to flow in a *syphon*. No permanent flow can be maintained in a syphon, because the air in the water (and all water contains air) disengages, collects in the summit, and in time destroys the vacuum upon which the flow depends.

Work done in a stream.

The work done by a stream of water may be divided into the following parts: (1.) The work done in traversing the conduit, supposing the course to be a right line. (2.) The work done in changing the direction of the motion at knees and bends. (3.) The work done in changing the velocity at sudden enlargements.

Factor of friction in a straight uniform channel.

(1.) Let s denote the length of the part of the girth of the conduit in contact with the stream, and l the length of the conduit: then ls is the area of the *frictional surface*. Let A , as before, denote the sectional area of the stream: then, for a straight uniform conduit—

$$F = f \frac{ls}{A}. \quad (10)$$

For iron pipes, it is found that—

$$f = 0.0036 + \frac{0.0043}{\sqrt{v}}. \quad (11)$$

For open conduits—

$$f = 0.00741 + \frac{0.000227}{v}. \quad (12)$$

The quantity $A \div s$ is called the *hydraulic mean depth*. In Hydraulic a pipe of square or circular section running full, this is evidently mean depth. one-fourth of the diameter. It is also one-fourth of the diameter in a semi-cylindrical open conduit running full, and in one whose sides are tangents to a semicircle, and greatest depth of water one-half of the diameter of that semicircle. The square and circle in close pipes, and the semicircle and figures whose sides are tangents to a semicircle in open conduits, are the figures of cross section of least resistance.

(2.) Let θ denote the angle through which a pipe is bent; then at a knee, the factor of the work done in changing the direction of the motion is—

Factor of friction at knees and bends.

$$F = 0.946 \sin^2 \frac{\theta}{2} + 2.05 \sin^4 \frac{\theta}{2}. \quad (13)$$

When the pipe makes a circular sweep instead of a sharp turn, let π denote two right angles, d the diameter of the pipe, and ρ the radius of the sweep: then—

$$F = \frac{\theta}{\pi} \left\{ 0.131 + 1.847 \left(\frac{d}{2\rho} \right)^{\frac{1}{2}} \right\}. \quad (14)$$

At a sharp turn of 90° in a pipe $F = 0.985$. To divert the stream through the same angle with a bend of a radius five times the diameter of the pipe, according to equation (14), $F = 0.066$. In an open channel the velocity of the stream is diminished and its depth increased at and near a knee or bend. In a close pipe the effect of a bend or knee is to diminish the velocity throughout.

(3.) When the velocity of a stream is diminished by a sudden enlargement of the sectional area of the conduit, it is found that all the energy due to the difference of the velocities in the smaller and larger parts is expended in forming eddies in the water. Let v_0 be the greater velocity, v the less velocity, and let $v_0 \div v = r$: then at a sudden enlargement—

Factor of friction at sudden enlargements.

$$F = (r - 1)^2. \quad (15)$$

When the sluice of a stop-cock in a close pipe is partially closed, the *effective* area below the sluice is considerably less than the *real* area. For instance, if the real area below the sluice is one-half of the area of the pipe, the effective area is only about one-third of the area of the pipe. The velocity below the sluice in this case, therefore, is three times the velocity on either side, and $F = (3 - 1)^2$.

Straight
uniform
conduits.

In uniform conduits free from bends sharp enough to cause appreciable resistance, all the relations between the loss of head, the volume of flow, and the dimensions of the conduit, can be deduced from the following equations:

$$Q = Av, \quad (16)$$

and—

$$v = \sqrt{2g \cdot \frac{h}{l} \cdot \frac{A}{fs}}. \quad (17)$$

Equation (17) is derived from equations (7) and (10). The quantity $h \div l$ is called the *declivity* of the stream.

Approximate
formulae.

The following approximate formulæ, applicable to iron pipes, are derived from equations (16) and (17) by substituting 0.00645 for f , 64.4 for $2g$, 3.1416 d for s , and 0.7854 d^2 for A :

$$v = 50 \sqrt{\frac{hd}{l}}, \quad (18)$$

and—

$$Q = 39.27 \sqrt{\frac{h}{l}} \cdot d^{\frac{5}{2}}. \quad (19)$$

The following, applicable to open conduits, are derived by substituting 0.00756 for f :

$$v = 92.26 \sqrt{\frac{h}{l} \cdot \frac{A}{s}}, \quad (20)$$

and—

$$Q = 92.26 \sqrt{\frac{h}{l} \cdot \frac{A^3}{s}}. \quad (21)$$

These formulæ are exact enough for practical purposes.

Measurement
of flow in
streams.

The discharge of a stream may be found in three ways:

(1.) By measuring the sectional area, finding the mean velocity directly by means of an instrument called a current meter, and by substituting in equation (16).

(2.) By measuring the sectional area, the wetted girth, and the declivity in a part of the stream where the channel is nearly uniform, and by substituting in equation (21).

(3.) By damming the stream so as to make the velocity behind the obstruction imperceptible, measuring the head of pressure under which the water escapes through an orifice of known figure and area, and by substituting in the equations given in the sequel.

Weir gauges.

A dam or obstruction in the bed of a stream, when made for the purpose of measuring the flow, is called a *weir gauge*. The orifice through which the stream escapes is usually a rectangular *notch*, in a vertical board forming the top of the weir. Sometimes the orifice is a *hole*, circular or rectangular, in a vertical plate some depth below the water-level.

In a jet escaping at a sharp-edged orifice, the frictional surface is practically nothing. When the water issues from a still pond, therefore, the loss of head—

$$h = (1 + F) \frac{v^2}{2g} \quad (5)$$

becomes—

$$h = \frac{v^2}{2g}; \quad (3)$$

and substituting 64.4 for $2g$ —

$$v = 8.025 \sqrt{h}. \quad (22)$$

Let b denote the width of a sharp-edged rectangular orifice whose sides are vertical. Conceive the water issuing from it to be made up of a number of horizontal layers, each of the small thickness dh : then, if b be the width, the sectional area of each of these layers is

$$b \cdot dh,$$

and the volume of flow of each

$$8.025 b \sqrt{h} \cdot dh.$$

Let h_1 denote the depth of the lower horizontal edge of the orifice below still water, that is, the head of pressure at that edge, and h_0 the depth of the upper horizontal edge (if any): then the flow at the orifice, supposing the effective area to be equal to the real area, is—

$$8.025 b \int_{h_0}^{h_1} \sqrt{h} \cdot dh = 8.025 b \cdot \frac{2}{3} (h_1^{\frac{3}{2}} - h_0^{\frac{3}{2}}) = Q'. \quad (23)$$

But the discharges at sharp-edged orifices, when intercepted and measured in a vessel, are found to be less than Q' . The ratio of the actual to the theoretical discharge is called the coefficient of contraction. Let c denote this coefficient, and Q and Q' the actual and theoretical discharges: then—

$$c = \frac{Q}{Q'}. \quad (24)$$

At a notch, $h_0 = 0$, and when the notch is sharp-edged and rectangular, and has its sides vertical—

$$Q = 8.025 c \times \frac{2}{3} b h_1^{\frac{3}{2}}. \quad (25)$$

When the width of the notch is one-fourth of the width of the weir, c is found to be 0.595; therefore substituting—

$$Q = 3.18 b h_1^{\frac{3}{2}}. \quad (26)$$

At a notch the whole width of the weir $c = 0.667$, and

$$Q = 3.58 b h_1^{\frac{3}{2}}. \quad (27)$$

Discharge at flat or round-crested weir.

At a weir with a flat or round crest $c = 0.5$ nearly, and

$$Q = 2.67 b h_1^{\frac{3}{2}}. \quad (28)$$

Discharge at sharp-edged circular hole.

At a sharp-edged circular *hole*, when $3(h_1 - h_0)$ is not greater than h_0 , let h denote the depth below still water of the centre of the hole, and A the area of the hole: then the following is exact enough:—

$$Q = 5 A \sqrt{h}. \quad (29)$$

Mill race.

A portion of the energy expended by a stream may be saved by diminishing the resistance of the channel, and converted by means of engines, such as water-wheels, into work done under control. The resistance of the channel is diminished by erecting a weir across it so as to increase the depth and diminish the velocity of the stream for a certain distance. Sometimes the whole or a portion of the water is diverted from the natural channel for a certain distance in an artificial channel. A given length of a stream in which the water-level may be altered, or from which the whole or a portion of the water may be diverted, constitutes a *mill race*.

Gross energy of mill race.

Let x_0 be the height of the upper surface of the stream at the beginning, and x_1 the height of the upper surface of the stream at the end of the mill race; also let D be the weight of a cubic foot of water (62.4 lbs. nearly): then—

$$DQ (x_0 - x_1).$$

Effective energy of mill race.

is the *gross energy* of the race in foot pounds per second. Of this gross energy a portion is wasted in the altered channel before the water reaches the engine, a portion in the engine itself, and a portion in returning the water to the stream after leaving the engine. In extreme cases the energy transmitted by the engine varies from *one-third* to *three-fourths* of the gross energy. The energy in foot pounds per second, divided by 550, is called the *horse power* of the race or of the engine, as the case may be.

Horse power.

§ 3. ON WATER-WORKS AND DRAINAGE-WORKS.

Total rainfall.

The total annual supply of rain to a catchment basin is found by multiplying the area of the basin into the annual mean depth of rainfall. The annual depth of rainfall varies in different districts. It also varies in the same district in different years. At Greenwich the average annual depth is about 25 inches; on the Cumberland hills it is about 140 inches.

The annual yield of a catchment basin, or the water annually carried away by its streams above and below ground, is the difference between the total annual rain supply and the annual evaporation and permanent absorption. Available rainfall or yield.

The absorption of the energy of flowing water by the surfaces with which it comes in contact causes a storage in soils, rocks, and channels in times of flood, and so maintains a flow in streams in times of drought. Natural storage.

Works for the purpose of controlling the flow of water are called *water-works*. A water-works may have for its object the supply of a constant daily demand for water for domestic and town purposes, for power or for manufactures, the supply of water for irrigation or for canal navigation, the prevention of periodical inundations of flat districts, or a combination of two or more of these objects. Water-works defined.

The object of a *drainage-works* is to facilitate the escape of water. Drainage-works defined.

A water-works consists essentially of a system of channels conveying water from a gathering-ground; a reservoir in which the water is stored; a sluice, and a system of channels leading to the places where the supply is wanted. It may be either partly or wholly artificial. When a town or district is supplied from a river by pumping or by diversion cuts, the river serves as a natural reservoir. A great mass of porous rock may also act as a natural reservoir when the supply is derived from wells or springs. When the house-top is the gathering-ground, the water-works may be said to be wholly artificial. Essential parts of a water-works.

The demand of a town for water depends upon the habits and the number of the inhabitants. In general a plentiful supply of water tends to increase the quantity of water used. A safe average to assume in designing town water-works is a daily demand per head of 15 gallons for domestic purposes, and 10 gallons per head for trade and public purposes in what may be called non-manufacturing towns. In manufacturing towns the total demand per head may be taken at 10 gallons more. Allowance must also be made for loss by leakage. The water wasted in this way through neglect not unfrequently amounts to three times the quantity used. Estimation of the demand for water in towns.

The channels on the gathering-ground may be simply the natural watercourses of the district, or those with additions or improvements. The more rapid the conveyance of the water to the deeper channels, the less the loss by evaporation and the greater the yield. As the purity of the water is of importance in the case of a town supply, it may be necessary to divert certain streams. Drainage of gathering-ground.

To intercept and raise water flowing underground, wells must be sunk to such a depth that the pumps worked in them may reach below the line of actual or virtual declivity of the currents. As the position of this line of declivity varies with the rainfall, the pumps must reach below its lowest position to give a Interception and raising of underground water.

supply at all seasons. The streams flowing at a virtual declivity may be brought to the well by sinking in it what is called a *bore-hole*, so as to pierce the impervious bed. The diameter of the bore-hole varies from one to two feet usually. It is sometimes lined with iron tube. In order to increase the area of the outlet from the porous strata to the well, horizontal workings are sometimes driven at right angles to the direction of the flow in the fissures. The portion of the rainfall absorbed on the porous gathering-ground which can be intercepted and raised by wells and pumping rarely exceeds one-third.

Artesian wells.

When a water-bearing stratum is covered by an impervious one, and has its gathering-ground and outlets at such elevations that the line of virtual declivity lies above the surface in some parts, a well or bore-hole sunk into it at these places allows the water to escape upwards in a jet. Such wells are called *Artesian Wells*.

Capacity and site of store reservoir.

The simplest and most common form of artificial reservoir is a natural cavity bounded on one side by an embankment. It is situated on the valley line of the catchment basin, that is, on the natural channel. The storage-room, which in this climate has been found necessary to maintain a constant flow throughout the year, varies from four to six months' demand. A reservoir for the supply of water for domestic purposes ought to have a space for deposit in addition to the storage capacity. The elevation of the site ought to be such as to allow of a sufficient gathering-ground above the highest water-level, and at the same time to allow of a fall from the lowest water-level sufficient to enable the aqueduct to supply by gravity the whole, or as much as possible, of the place proposed. Within these limits the most eligible site is usually that on which the required storage-room can be obtained with the least embankment and least area laid under water. Owing to the nature of the bed, however, and the expense required to make it watertight, some other site may be preferable.

Auxiliary reservoir.

When part of the supply is obtained from wells, and the fluctuation of the yield makes storage necessary, it is, in most cases, cheaper to provide a separate reservoir for this water, situated, if possible, between the pumping station and the place of delivery.

Land a-wash.

Land about, and up stream from, an artificial reservoir at a height not exceeding three feet above the highest water-level, is called *land a-wash*. Its drainage is injured, and the owners have a right to compensation.

Reservoir embankment.

The cross section of a reservoir embankment is a trapezium with the side next the water at a slope of about 3 to 1, and the outer side at a slope of $1\frac{1}{2}$ to 1 or 2 to 1, according to the nature of the materials. The height of the top varies from 3 to 10 feet above the highest water-level, according to the situation and the extent of the reservoir. The inner slope is usually pro-

tected from the action of the water by a pitching of dressed stone, and the outer slope from the weather by a covering of grass sods. The top ought to have a consolidated covering of broken stone, with a slight convexity like a roadway. The watertightness of the embankment depends upon a core made of clay puddle. The content of this core is usually about one-tenth of that of the whole mound. As not only the water-works, but the security of life and property on the banks down stream, depend upon the stability of the embankment, its design, construction, and maintenance, are of the first importance. No trees or shrubs ought to be allowed to grow on a reservoir embankment.

A store reservoir must have an overflow-weir of a width sufficient to allow of the discharge of the greatest flood supply of the gathering-ground without raising the water-level to a dangerous height. The weir ought to have what is called an *apron* of stone steps to break the fall of the water. The channel from the weir leads to the natural watercourse, either directly or by the *bye-wash*. Overflow-weir.

The *bye-wash* is a channel by the side of the reservoir. In town water-works it is advisable that the *bye-wash* should be capable of conveying the whole flood discharge of the streams supplying the reservoir, in order that when these are discoloured or impure they may be turned aside so as not to foul the store water. The *bye-wash*, if made first, may serve as the temporary water channel while the embankment is being constructed. Bye-wash.

The outlet from a reservoir ought to be a train of cast-iron pipes carried through the embankment in a culvert. The culvert ought to be built before the embankment over it is erected, and must be founded on the solid rock. Its materials may be either brick or dressed stone built in cement. The outside ought to have a coating of clay puddle all over, and must make a watertight joint with the core of the embankment. For the sake of examining and repairing the pipe, the culvert ought to be large enough to admit a man, and allow him to work freely. The end next the reservoir must be very carefully built up. The down-stream end may have a grated door, and wing walls supporting the embankment. In the case of a town supply there ought to be two outlet pipes carried through the culvert—one for the aqueduct, and the other for cleansing. The aqueduct pipe should bend upwards, and have a series of inlets, the lowest at the lowest working level. The cleansing pipe ought to join the lowest point in the reservoir and some point in the natural channel down stream. The sluices ought to be in the reservoir. The most convenient place from which to work them is a tower rising from the inner end of the culvert, and joined to the top of the embankment by a bridge. There ought to be strong gratings in front of the outlets to prevent the access of stones or other matter that might injure the Culvert.
Outlet pipes.
Sluices and sluice tower.

sluices or clog the pipes. In the event of an excessive supply the cleansing sluice may be opened to assist the discharge at the waste weir.

Salmon stair. A *salmon stair* is a series of dams in the natural channel, or in the bye-wash of a reservoir, arranged in steps low enough and with a sufficient depth of water behind to allow the fish to pass. Sometimes the stair is a zigzag channel.

Compensation water. In order to maintain the supply of water to a stream for power and other purposes after the diversion of some of its feeders, it is necessary to store in the remaining feeders the flood waters which previously ran to waste. When this compensation water is not sufficient to provide a supply equal to that which was *beneficially* available before the diversion, satisfaction for the deficiency must be made to the owners of the water rights in some other manner.

Aqueduct. The part of the conduit between the reservoir and the place where the distributing conduits begin is called the *aqueduct*. It may be either close or open throughout, or partly open and partly close, according to the discharge required and the declivities that can be obtained. The discharge and declivities may be such that the expense of a close conduit of the required sectional area, and strong enough to withstand the pressure in the valley, may be greater than that of a channel at an actual declivity supported on a mound or series of arches.

Open aqueduct. Open aqueducts are usually made with sloping sides to promote the stability of the banks. A common form of cross section is the half-hexagon with the sides produced. The bottom and wetted sides of the channel ought to be lined with stone or brickwork in cement, bedded upon and backed with hydraulic concrete. For watertightness, and to diminish the retardation, the waterway is sometimes plastered with cement. When carried in cutting, or on embankment, there must be a catch-water drain on the uphill side, with cross drains over or below the aqueduct, to maintain the drainage of the district. Open aqueducts are also carried in tunnels and on bridges. Near large towns it is usual to cover the aqueduct. The arch or other covering ought to leave sufficient head room for a man to pass and make repairs. To protect the covering from frost, there ought to be a layer of earth on the top about three feet thick, and, for access and ventilation, man-holes and shafts at proper intervals.

Close aqueduct. A close aqueduct generally consists of a train of cast-iron pipes. For the greater part of its length the most convenient route lies usually beneath a highway. When a close aqueduct cannot be made to lie below the line of virtual declivity at a less cost in any other way, it may be necessary to carry it for some distance in a tunnel. All drains, culverts, road coverings, and other existing works disturbed while laying the aqueduct must be made good afterwards. In crossing a river, canal, or railway cutting, where there is either no bridge, or only a

movable one, a bridge or tunnel must be made on purpose. It is advisable that all parts of the aqueduct should have a covering of earth three feet deep to preserve it effectually from frost. For a short distance, however—at the crown of the arch of a road bridge, for example—no harm from frost is likely in this climate to ensue from leaving it uncovered, provided the channel on either side is well protected, and slopes to or from the exposed part. For convenience in case of repairs, a close aqueduct ought to have sluice stop-cocks at intervals not exceeding half a mile. There ought to be outlets with sluice cocks in the valleys for the purpose of scouring out stones and sediment, and valve cocks at all the principal summits for the escape of air.

An aqueduct wholly or partly open, or one unable to withstand the fluid pressure when the demand ceases, requires a system of weirs over which the difference between the demand and the constant flow may escape, or a secondary reservoir between it and the distributing channels in which the difference can be stored. This secondary or distributing reservoir must have an overflow-weir capable of discharging the whole flow of the aqueduct without danger to the works. When a site at the proper elevation can be obtained, it is sometimes economical to have a reservoir of this kind in the case of a close aqueduct, especially when the water is brought from a store reservoir at a great distance, because as the flow in the aqueduct can be maintained constant night and day by this means, pipes of smaller sectional area are required. In the case of a close aqueduct supplied by pumping, the supply must be adjusted to the demand, or the difference be run to waste, or stored in a distributing reservoir. When the supply is from wells with a natural store reservoir, the distributing reservoir is commonly situated close to the pumping station; when from a river, it is in most cases convenient to have it at the farther end of the main distributing pipe. A distributing reservoir ought to be capable of storing at least two days' demand. It may be open or covered, according to circumstances.

The distributing conduits for a town supply ought to be cast-iron pipes. Sluice stop-cocks ought to be provided at all the junctions and in long branches at intermediate points to enable the supply to be shut off from the down-stream pipes when required. The terminations of the main and branch conduits, called *dead ends*, must have valve cocks, through which stones and sediment may be washed out.

The relation between the declivity and sectional area of the channel and the velocity of the current has already been explained. In practice, it is necessary to limit the velocity to between 4 feet per second and 1 foot per second, to prevent on the one hand undue wear of the channel, and on the other, the silting up of the channel from deposit. In open channels, the velocity must be adjusted by arranging the sectional areas and declivities. In close conduits, the maximum velocity may be

Distributing
reservoir.

Distributing
system for
town supply.

Limits of
velocity.]

adjusted by regulating the openings of the sluice stop-cocks so as to break the line of virtual declivity into a series of steps.

Supply to
town con-
sumers.

The supply of water to town consumers may be either intermittent or constant. With an intermittent supply, each group of consumers must have a cistern or reservoir to store their water in; with a constant supply, water may be drawn at all times direct from the distributing pipes. In crowded districts, a supply without an intermediate cistern is an advantage, because water stored in these places is apt to become noxious. Where a cistern can be kept properly covered, and be cleansed when necessary, it is useful to have one, even when the supply is constant, because it serves as a store, in case of accident to the works. When the water is raised by pumping and there is no distributing reservoir, a constant supply is impracticable.

House pipes
and fittings.

House service pipes ought to be of lead. Some water has a tendency to corrode lead and form with it poisonous salts, but with most kinds of water there is no danger of this. Iron pipes are objectionable on account of the number of joints required, and the difficulty of forming with them the necessary bends and curves. The connection to the distributing pipe ought to be by a stop-cock, the property of the water-works. Each house also ought to have a second stop-cock, by which the consumer may shut off the water in case of accident to the fittings. The inlet to a cistern ought to have a cock with a float to rise and stop the supply when the cistern is filled; and when the supply is constant, the overflow ought to be so arranged that when the ball-cock becomes out of order the discharge water may become a nuisance. For a constant service the drawing taps ought to be valve cocks, to open and shut with a screw. The common plug taps are only fit for intermittent supply.

Disadvantage
of a constant
supply, and
means of pre-
venting waste.

The disadvantage of a constant supply is the great waste incurred when the house fittings are imperfect. One way of preventing waste is to oblige all consumers to have their pipes and taps made and fitted to the satisfaction of the manager of the water-works. It may also be made the interest of the consumer to prevent waste by supplying him through a meter, and charging according to quantity. The best water meters, as now made, are capable of working at, and registering approximately, a leakage in the service pipe of 10 gallons in the 24 hours. All water drawn at a rate exceeding a gallon an hour can be registered by them exactly.

Water meters.

Supply in case
of fire.

Outlets and *hydrants*, or valve cocks to which stand-pipes can be readily attached, ought to be provided on the distributing pipes at proper intervals for the supply of water in case of fire. For the sake of throwing a jet without the intervention of a pumping-engine, the size of each distributing pipe, when the elevation of the reservoir will admit, ought to be such that its line of virtual declivity at the maximum discharge may be 20 feet above the roof of the highest house supplied from it. Fire outlets ought to be readily accessible from the roadway or

pavement, and have signplates fixed to the walls opposite. When a distributing pipe is laid expressly to provide water to extinguish fire, it ought to be placed at a distance from the buildings, in order that there may be safe access to the hydrants when the fire breaks out.

The impurities of water are of two kinds—those held mechanically in suspension, and those in solution. Of the former, the heavier parts are got rid of in the reservoirs as deposit, and the lighter parts afterwards by filtering. Filter beds are small reservoirs partially filled with layers of sand and gravel, with drain pipes at the bottom. The impurities held in solution can only be removed by distillation, or by a chemical process. The only chemical process to which supply water has as yet been subjected on a large scale is that called “Dr. Clarke’s process.” It is employed to remove bicarbonate of lime from water gathered on the chalk districts.

Impurities of water, and the means employed to remove them.

For trade and domestic purposes other than drinking, the water that approaches nearest to perfect purity is the best. Such is the water collected from house-tops in country places, and from gathering-grounds in districts where granite, gneiss, and slate prevail. For drinking purposes, water with a slight admixture of earthy salts is sometimes preferred.

Water is said to be hard or soft according to the quantity of soap required with it to produce a permanent lather.

Hardness.

The matter held in suspension by surface water is for the most part organic. To prevent its hurtful decomposition store reservoirs ought to be stocked with fish. Water from wells and springs, on account of the thorough filtering process undergone, is free from organic matter; but holds in lieu of it a quantity of earthy salts, which sometimes, if not removed, renders the water unfit for all trade and domestic purposes.

Surface water and well water.

In a system of drainage channels, the sectional area and inclination must everywhere be capable of maintaining the discharge arising from the maximum flow into the inlets up stream. The quantity that may have to pass an inlet in a given time depends upon the rapidity of the rainfall on the area commanded, and upon what intervenes between the inlet and the gathering surface. In a system of channels for draining land, for example, where the water to reach the inlet has to find its way through the soil, the soil acts as a reservoir, and the flow at the inlet is less rapid than the rainfall. From the paved and macadamised surfaces of a town, on the other hand, the water flows, or ought to flow, into the drains nearly as fast as it is delivered on the surfaces.

Discharge in a system of drainage channels.

A river which has to be provided with reservoirs to prevent periodical inundations, is an inefficient natural drainage channel. Such rivers are sometimes made safe without reservoirs, by embanking their sides in the districts liable to be flooded. In this state, however, they do not serve as permanent drainage channels to the district shut out by the embankments. The

Inefficient natural drainage.

water from the excluded lands is received in canals at the foot of the embankment slopes, and emptied into the river when the floods abate through flood-gates, or through pipes with flap valves opening to the river.

Discharge in a system for town drainage.

In a town drainage-works the discharge to be provided for is the greatest *hourly* rainfall on the area, and the greatest *hourly* supply from other sources. The depth of the greatest hourly fall is usually taken at one inch.

Sewers.

The main drains or *sewers* are in general covered conduits at an actual declivity, built of stone or brick in cement, on a base of hydraulic concrete. The cross section ought to be oval or egg-shaped, with the small end downwards. All sewers ought to have a width of at least two feet, so that a man may have access. The foul gas ought to be carried away in pipes to existing chimneys, or to chimneys built on purpose. The required draught may be maintained in the latter by means of a small furnace, or the foul air may be propelled into them by a blowing apparatus, like a centrifugal pump, fitted on the conducting tube. Grated openings, with flap valves opening inwards to the sewer, must be provided for the admission of fresh air; also shafts and passages with close doors for access. As in other water channels, the declivities and sectional areas of sewers ought to be arranged so as to keep the velocity of the current as far as possible between the limits of four feet and one foot per second.

Branch drains.

The smaller branch drains may be close channels made of earthenware pipes. Being inaccessible, they ought to be laid at such declivities as will ensure the maximum velocity of four feet per second in order to prevent the formation of deposit.

Connection to surface and house drains.

Surface drains or gutters communicate with the underground drains by what are called *gully holes*, covered with gratings, and with *syphon traps* at the bottom to prevent the escape of foul air. House drains ought to lead directly to the sewer or branch drain without the intervention of a cesspool, which is a convenient means of attaching drains, but highly objectionable in other respects.

Syphon trap.

The *syphon* trap is simply a pipe with a double bend in it, laid so that water may rest in the U-shaped part. To ensure the efficiency of these as a means of preventing the escape of foul air, it is essential that the pressure in the sewer should not within certain limits be allowed to exceed or fall short of the pressure of the atmosphere.

Outfall of the drainage system of a town.

The water draining from towns has its final outfall in the sea, like all other water, and its natural course thither when the town is inland is by the river of the catchment basin in which the town is situated. The proportion borne by the sewage water of a populous district to the uncontaminated river water, however, may be so great that the conveyance in the natural channel of the sewage as it leaves the drains is an injury to the inhabitants down stream. In this case it is neces-

sary to remove a portion of the contaminating matter so as to render the mixture of the remainder with the river water innocuous, or, if this cannot be done, to convey the drainage water seaward by extending the main sewer.

The insoluble ingredients and the soluble ingredients in excess of saturation are got rid of by allowing the sewage water to settle, and by filtering it in reservoirs to which the sewer acts as bye-wash. A more complete purification is effected by making the sewer diverge into an irrigation system, where the soil and configuration are suitable. This involves chemical decomposition of the salts in solution. Purification of sewage water.

In an extended sewer it may be necessary, either for economy of first cost or to prevent silting up, to bring the down-stream end of the conduit below high or low water mark. In this case the sewage is received in a reservoir and delivered through flood-gates or by pumping. Extended sewer.

When the discharge of untreated sewage into the natural channel is interdicted, whether it is more economical to intercept the contaminating matter or to conduct the sewage to the sea, depends upon the position of the drainage ground, the cost of extraction, and the market value of the product. Purification and extension.

CHAPTER II.

SEWERAGE OF DISTRICT.

§ 1. PUBLIC SEWERS.

THIS CHAPTER has reference to sewers which are under the jurisdiction of the Local Board of Health. The local authority under the Sewage Utilization Act, 1865, as it applies to England, and as amended by subsequent Acts. Their powers and duties are treated of in the Fifth Part of this work.

Map exhibiting system of sewerage.
11 & 12 Vict.
c. 63, ss. 41,
42

With regard to sewerage, the first duty of a Local Board of Health is to cause to be prepared, at the cost of the general district rates, a map exhibiting a system of sewerage for effectually draining their district for the purposes of the Act, upon a scale such as may be prescribed by them, which map is to be kept at the office of the Board, and be open to the inspection of the ratepayers of the district to which it applies at all reasonable times.

In their Third Report, the Commissioners appointed to inquire into the best means of preventing the pollution of rivers state that "the sewerage of towns is a complex question, and requires to be specially studied so as to effect the greatest amount of good at the least risk of polluting watercourses; natural streams, as small brooks, should not be arched over and formed into sewers, neither should rivers be made the receptacles of sewage. The largest proportion of rain-water may in all cases be turned over the surface into the natural streams; it will not be necessary to form duplicate systems of sewers and drains, but it will require intelligent and careful attention to preserve surface gradients and natural outlets for storm waters, and, where these have been tampered with, to restore and improve them. The sewers and drains of a town should provide for the removal of subsoil water, the slop and waste water from houses, and the contents of water-closets; these sewers and drains may have storm overflows in connection with the natural streams of the district, so arranged as to prevent flooding of houses or bursting of the sewers during thunderstorms. All dry weather sewage and such portion of the surface water due to moderate falls of rain as finds its way to the sewers, will flow down with the sewage to the outlet, and be a manageable volume either to apply by gravity, or to be pumped to land for agricultural uses. The remark may be made that, when the sewers overflow, the streams will be polluted; this is true, but the pollution will be

a minimum; the sewage will be in extreme dilution, and the natural streams of the district will be in flood, and most probably muddy by grit and silt washed in from road surfaces, and by fine particles of soil from the banks and surfaces of the land. Floods caused by heavy rains ever have been turbid, and ever will be turbid."

It should be borne in mind that, by the Sanitary Act, 1866, it is enacted that where complaint is made to one of Her Majesty's principal Secretaries of State that a Local Board of Health has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or that a Local Board has made default in enforcing the provisions of the Local Government Act, the Secretary of State, if satisfied after due inquiry made by him that the Local Board has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of the complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Local Board. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

Mode of proceeding where Local Board has made default in providing sufficient sewers.
29 & 30 Vict. c. 90, s. 49.

By the Sanitary Act, 1868, it is further provided with regard to the order of the Secretary of State, "That the sum specified in the order of the Secretary of State, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate; and in the event of any authority refusing to pay any such sum with costs as aforesaid for a period of fourteen days after demand, the Secretary of State may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may, in the opinion of the said Secretary of State, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money

Provision for recovery of expenses by Secretary of State.
31 & 32 Vict. c. 115, s. 8.

so due in respect of the precept, shall pay the overplus, if any (the amount to be ascertained by the Secretary of State), to or to the order of the defaulting authority."

Local Boards in constructing sewers should avoid creating a nuisance to other parties.

In constructing works of sewerage or otherwise, Local Boards should remember that the Acts under which they are constituted give them no power to create a nuisance to other parties. The remarks of Wood, V.C., in the case of the *Attorney-General v. Metropolitan Board of Works* (1) are applicable to this point: he said, "But there is also this observation—and I have had occasion to make it more than once since I have been sitting here,—that there is frequently a disposition in Public Boards to exercise their jurisdiction in a manner which is not conciliatory, which does not evince a due regard for the interests of those who may be affected by their acts; in fact, to assume a sort of judgment and an exercise of power which they would think an impertinence on the part of others, and therefore they do not adopt that reasonable course of conciliation, and free and frank communication which it appears to me gentlemen who are intrusted to exercise these public duties ought, beyond all others, to adopt."

Entry upon lands to ascertain course of sewers.
11 & 12 Vict.
c. 63, s. 143.

If it be necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier thereof refuse to permit them to be entered upon, examined, or laid open for such purposes or any of them, the Local Board may, upon notice to the owner or occupier, apply to two justices for an order authorizing the members of the Local Board and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the lands and premises. If no sufficient cause shall be shown against the application, the justices may make an order, and thereupon any superintending inspector, the Local Board, or any member thereof, the surveyor, and inspector of nuisances, and any person authorized by any of them, may, at all reasonable times between the hours of ten in the forenoon and four in the afternoon, enter, examine, or lay open the lands or premises mentioned in the order for such of the purposes as shall be specified in the order, without being subject to any action or molestation: but, except in case of emergency, no entry can be made or works commenced unless twenty-four hours' at the least previous notice of the intended entry, and of the object of it, be given to the occupier of the premises intended to be entered.

Exception.
Ib.

Sewers, etc., vested in Local Board.
Ib. s. 43.

All sewers existing at the time when the Act is applied, or made at any time thereafter (except sewers made by persons for their own profit, and except sewers for the purpose of draining land under any local or private Act of Parliament, or

for the purpose of irrigating land, and sewers under the authority of Commissioners of Sewers appointed by the Crown), together with all buildings, etc., belonging to them, are to vest in and be entirely under the management and control of the Local Board; who are also empowered to purchase the rights, privileges, powers, and authorities vested in any person for making sewers, or to contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, etc., appertaining to them. Any person to whom the same shall belong may sell and dispose of them to, or otherwise contract with the Local Board; and in case of sale, the purchase-money is to be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of the sale. The property when purchased is to vest in the Local Board; but any person who previously may have acquired perpetual right to use any sewer so purchased, is to be entitled to use the same, or any other substituted sewer.

Power to purchase, etc. certain sewers. 11 & 12 Vict. c. 63, s. 44.

The sewers which are to vest in the Local Board, and which they are empowered to purchase, are drains of every description, except those used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool, or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed.

Description of sewers. Ib. s. 2.

In Wharton's Law Lexicon, a "curtilage" is described as a "court-yard, backside, or piece of ground lying near to a dwelling-house."

Curtilage.

The Court refused an application for a *mandamus* to a Local Board of Health, to make a sewer to carry off sewage from certain works, remarking that if the duty to make such a sewer existed on the part of the Board, the proper mode was to make a simple demand that it be discharged. (1)

Mandamus.

A natural stream, supplied by natural and artificial drainage of cultivated land belonging to private individuals, was cleared out and partially widened and deepened by commissioners acting under a private inclosure Act, powers being given them to do so at the expense of the proprietors. In the passage of the stream to the river into which it ultimately flowed, it passed through a town and received the drainage of two or three inhabited houses. This stream the Court seemed to be of opinion was not a sewer within the meaning of the Public Health Act, 1848; but if it were so, the Court held that it came within the exceptions in sect. 43, and that it was not vested in the Local Board, and that they were not liable to cleanse and repair it. (2)

(1) *Ex parte Parsons*, 22 J. P. 68.

Bench, 14 L. T. (N. S.) 104; L. R.

(2) *Reg. v. Godmanchester*, 34 L. J.

1 Q. B. 328; 5 B. & S. 936; 35 L. J.

(N. S.) Q. B. 13; 11 Jur. (N. S.) 63.

Q. B. 125. *

Affirmed in error from the Queen's

Held also by the Court in error that this was not a nuisance for which a mandamus would lie under sect. 58 of the Public Health Act, 1848, to compel the Local Board to remove it in the first instance, as the clause only empowers a Local Board to cleanse a drain, and after notice and default in the owner or occupier of the land to abate the nuisance.

Indictment. Statutory powers, although granted for the public benefit, are only co-extensive with the power to exercise them without an infringement of the general law; and that where the exercise of such powers is not compulsory upon those to whom they are granted, and new and unforeseen circumstances subsequently arise which render the exercise of them a nuisance, an indictment will lie in respect thereof. (1)

Injunction. Subsequently an information was filed by the Attorney-General, at the relation of certain inhabitants, to restrain the Company and their lessees from diverting into their canal any filth, sewage, or polluted matter or water, so as to be a nuisance to the inhabitants of Bradford; and it was held that they were not prevented from obtaining relief by the fact that the pollution of the canal had been gradually increasing for some twenty or thirty years, and that the relators had waited some ten years before filing their bill; and also that the mere fact that there is an appeal from the decision of a court of law establishing a nuisance, which it is what is sought to restrain by the interference of the Court (V. C. Wood's Court), will not of itself be sufficient to prevent the Court from at once granting an injunction. (2) Further, with regard to sewers, see Part V., Chapter II. § 5, *post*, and *Attorney-General v. Richmond* there cited.

With reference to the foregoing the following may be cited, under the Metropolis Local Management Act. A District Board of Works, constituted under that Act, were held not empowered to pollute water flowing through the land of another person, and are therefore liable to an action at the suit of the owner of the land through which it flows, who is consequently not bound to proceed for redress by seeking compensation under that statute. It makes no difference in this respect that the works executed by the District Board were necessary for the abatement of a nuisance, even on the land of the person injured; nor that the water thus polluted lay outside the district over which the authority of the District Board extended. So held overruling the decision of the Queen's Bench. (3)

Where under a misconception of the powers of a local

(1) *Reg. v. Bradford Navigation*, 11 Jur. (N. S.) 766; 29 J. P. 613; 34 L. J. (N. S.) Q. B. 191. See also *Rex v. Pease*, 4 B. & Ad. 30, which is distinguished from *Reg. v. Bradford Navigation*.

(2) *Attorney-General v. Bradford*

Navigation Company, L. R. 2 Eq. 71 (V.-C. W.); 14 L. T. (N. S.) 248; 35 L. J. Ch. 619; 15 L. T. (N. S.) 9.

(3) *Cator v. Lewisham*, 5 B. & S. 115, in error, 127; 11 Jur. (N. S.) 340; 34 L. J. (N. S.) Q. B. 74; 13 L. T. (N. S.) 212.

authority to arch over a tidal ditch, a person who would suffer Injunction. injury thereby demanded compensation, such demand was held not to disentitle him to the substitute for a mandatory injunction, namely, a reference to chambers as to what damage he is entitled to by reason of the permanent filling up of the channel, with a direction that when such damage has been ascertained the amount shall be paid to him by the local authority, who were ordered to pay the costs of the suit and motion. (1)

The Local Board are to repair the sewers vested in them, Making alteration, and cause to be made such sewers as may be necessary for effectually draining their district; for the purposes of the Act they may carry any such sewers through, across, or under any turnpike road, or any street, or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after reasonable notice in writing (if upon the report of the surveyor it should appear to be necessary), into, through, or under any lands whatsoever; they may also from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary. The discontinuance, closing up, or destruction of any sewer must, however, be so done as not to create a nuisance; and if by reason thereof any person is deprived of the lawful use of any sewer, the Local Board must provide some other sewer as effectual for his use as the one of which he is deprived. discontinu-
11 & 12 Vict.
c. 63, s. 45.

For the purposes of the Act, streets (not being turnpike roads), roads, public bridges (not being county bridges), lanes, footways, squares, courts, alleys, passages, whether thoroughfares or not, and such parts of any of them as may lie within the district, are deemed to be highways. Highways defined.
Ib. s. 2.

The term "public highway" imports a road for carriages as well as for other purposes; but it has been held that it might mean a public bridleway only. (2) A further definition of the term highway, with reference, however, to the 11 & 12 Vict. c. 63 only, is given by the 15 & 16 Vict. c. 42, s. 13.

If under 11 & 12 Vict. c. 63, s. 45, a public sewer be made through private lands, it is not necessary for the Local Board to acquire the land under the Lands Clauses Act, 1845, and 21 & 22 Vict. c. 98, s. 75, if nothing more is wanted than merely to make a sewer through the land, which is an easement only. (3) Sewers through private lands.

With regard to a person acquiring a right to sewage water flowing in a natural stream which would otherwise be pure, it would seem from *Gaved v. Martyn* (4) that such right would not necessarily be acquired by prescription, especially if the persons Right to sewage water and to the abstraction of water from

(1) *Pentney v. Lynn Paving Commissioners*, 12 L. T. (N. S.) 818.

(2) *Reg. v. Aldborough*, 17 J. P. 648.

(3) *Thornton v. Nutter*, 31 J. P. 419.

(4) 13 L. T. (N. S.) 74; 34 L. J. C. P. 353.

a natural stream.

who had a right to divert the sewage from the stream chose to do so. On the other hand, the abstraction of water from a natural stream, openly and under a claim of right for a period of twenty years, to a tenement not abutting on the stream, will create no easement to have pure water flow down the stream to the point of abstraction. (1)

Construction of sewer through misapprehension of liability.

If a proprietor through misapprehension of his legal obligation constructs a sewer upon his land for the opening of a new street, he is not bound to continue it, but may require the local authority to provide a new sewer. This was so held with reference to a district under the Metropolis Local Government Act. (2)

Construction of sewer by Local Board out of their district.

It was held that under the 11 & 12 Vict. c. 63, sects. 43, 45, & 46, a Local Board have no power to make a sewer out of their own district against the will of the owner of the land through which they proposed to construct it; and that though under 21 & 22 Vict. c. 98, s. 30, they could go out of their district, this only gives a power to make reservoirs, etc., out of the district, where, and so far as they may be really necessary for the purposes of outfall and distribution of sewage, and does not authorize them to do so where they can keep within their own district by purchasing property. (3) By the Act to amend the Local Government Act, 1858, extended powers are now, however, given to the Local Board in this respect. Under that Act,—

Local Board may exercise powers for purposes of outfall or distribution of sewage without their district, if necessary. 24 & 25 Vict. c. 61, s. 4.

Local Boards may exercise the powers given by the 45th section of the Public Health Act, 1848, also without their district, for the purpose of outfall or distribution of sewage, upon making due compensation, to be settled in the manner provided in the 144th section of the Public Health Act, 1848. Provided always, that nothing herein contained shall give or be construed to give power to any Local Board to construct or use any outfall drain or sewer for the purpose of conveying sewage or filthy water into any natural watercourse or stream until such sewage or filthy or refuse water be freed from all excrementitious or other foul or noxious matter, such as would affect or deteriorate the purity and quality of the water in such stream or watercourse.

Previous notices of the intended works. Ib. s. 5.

Provided also, That no sewer or other work shall be constructed or extended, under the 24 & 25 Vict. c. 61, s. 4, unless three months, at the least, before the commencement of such work, notice of the intended work, describing the nature thereof, and stating the intended termini thereof, and the names of the parishes, townships, and places, and the turnpike roads and streets, or places laid out or intended for streets, and other lands, if any, through, across, or under which the work is to be made, and nam-

(1) *Stockport Waterworks Company v. Potter*, 3 H. & C. 300.

(2) *Clarke v. Paddington*, 5 Jur. (N. S.) 138.

(3) *Haywood v. Lowndes*, 28 L. J. (N. S.) Ch. 400; 5 Jur. (N. S.) 185; 32 L. T. 366.

ing a place where a plan of the intended work is open for inspection at all reasonable hours, shall be given by advertisement in one or more of the newspapers usually circulated in the place where the work is to be made, and a written or printed copy of such notice shall be served in manner directed by 11 & 12 Vict. c. 63, s. 150, on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, townships, or places, and the trustees, surveyors of highways, or others, having the care of such roads or streets.

Notice of intended works.
24 & 25 Vict.
c. 61, s. 5.

In case any of such owners, lessees, or occupiers, or such overseers, trustees, surveyors, or others as aforesaid, or any other owner, lessee, or occupier, who would be affected by the proposed work, object to such work, and serve notice in writing of such objection on the Local Board at any time within the three months, the proposed work shall not be made or commenced without the sanction of one of Her Majesty's principal Secretaries of State, after such inquiry and report as hereinafter mentioned (unless such objection be withdrawn). Service of such notice of objection may be made upon the Local Board by being left at or sent through the Post Office, directed to the Local Board at their office, or by being delivered there to their clerk personally.

If objection be made, the work not to be proceeded with without sanction of Secretary of State.
24 & 25 Vict.
c. 61, s. 6.
11 & 12 Vict.
c. 63, s. 150.

It shall be lawful for the Secretary of State, upon application of any Local Board, to appoint an inspector to make inquiry on the spot into the propriety of any such work as aforesaid, and into the objections thereto, and to hold one or more meeting or meetings for the purpose of hearing all persons desirous of being heard before him on the subject of such inquiry, and to report to such Secretary of State upon the matters with respect to which such inquiry was directed.

Inspector in such case to make inquiry on the spot, and report to the Secretary of State.
24 & 25 Vict.
c. 61, s. 7.

If it appear to a Local Board that any premises were sufficiently drained before the construction of any new sewer they may lay down, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as they may under all the circumstances of the case deem to be just.

Premises already sufficiently drained.
21 & 22 Vict.
c. 98, s. 29.

Woolwich dockyard is exempted from the Act, and the local authorities of the district which includes the dockyard are restrained from entering upon or doing any works upon any lands vested in the Lord High Admiral, or in the Master-General, or other principal officer of the Ordnance.

Woolwich Dockyard.
15 & 16 Vict.
c. 69, s. 2.

Where a Local Board of Health filed a bill for an injunction to restrain the Secretary at War from stopping up a drain in the town within their jurisdiction, and thereby interfering with certain sanitary measures which they were carrying out; as there was no injury, or an invasion of the rights of the inhabitants of the town, caused by the proceeding of the Secretary at War, the injunction was refused. (1)

Proceedings against Secretary at War for interfering with drains of Local Board.

(1) *Felkin v. Herbert* (Lord), 4 L. T. (N. S.) 433.

Proceedings
against Secre-
tary at War
for interfering
with drains of
Local Board.

The same Local Board instituted a suit against the Secretary at War, as the owner, for filling up the ditch, thereby obstructing an ancient easement which they possessed in the flow of water through the ditch, and interfering with their right to the free use thereof for sanitary purposes. They claimed the easement with regard to the drainage of the whole district, whereas it appeared from the nature of the locality that the ditch could carry off only the surface water which collected on an undulating space of ground of 114 yards in length. The bill was, however, dismissed with costs, principally on the ground that the proper remedy for a Board of Health to resort to in such a case was under the Public Health Act, 1848. (1)

Existing
liabilities
preserved.
11 & 12 Vict.
c. 63, s. 118.

Notwithstanding the application of the Acts to any district, existing liabilities to defray the expense of making sewers, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving or flagging or putting in order any street or part thereof within the district, are not discharged by the transference of the powers as to sewerage to the Local Board of the district, if such expenses were incurred previous to the application of the Acts to the district.

Compensation
for injury
caused by
works.
Ib. s. 144.

Though the Local Board are empowered to carry sewers through or under any lands, they cannot do so without making full compensation to all persons sustaining any damage thereby; to be settled, in case of dispute, by arbitration; or, if the claim do not exceed £20, by summary proceedings before justices.

Under the 11 & 12 Vict. c. 63, s. 144, only disputes as to the amount of compensation are to be settled by arbitration or by justices; and not disputes as to the liability to make compensation at all. (2) So again where the Thames Embankment Act, 1862, authorized the Metropolitan Board of Works to execute certain works in connection with the embankment, "making compensation to all persons having any interest in any wharves, jetties, quays, or other property taken for, or injuriously affected by, such works, or other the exercise of the powers of the Act," it was held that the payment, ascertaining, or depositing the amount of compensation in such case was not a condition precedent to the commencement of the works which occasion the damage. (3) As to what can be recovered in respect of "damage," see *Southampton and Itchin Floating Bridge Company v. Southampton*, p. 101. As regards damage arising from the obstruction of the flow of water by the construction of sewers, see *post*, p. 217. The right of the Local Board to enter upon the lands is absolute, and it is not a condition precedent that the damage to be sustained shall first be measured and ascertained. With reference to a somewhat similar pro-

(1) *Felkin v. Herbert* (Lord), 11 L. T. (N. S.) 173.

(2) *Reg. v. Burslem*, 1 E. & E. 1077, affirmed in the Exchequer Chamber, *ib.* 1088.

(3) *Macey v. Metropolitan Board of Works*, 33 L. J. (N. S.) Ch. 377; 10 L. T. (N. S.) 66; 10 Jur. (N. S.) 333.

vision in the Highway Act, it was held that the words in that Act do not make payment for the damage a condition precedent, for the duty to pay does not arise until after the Justices have at their Special Sessions settled the amount. (1)

Compensation
for injury
caused by
works.

If in the execution of works authorized by Act of Parliament damage be sustained, and the Act provides a special mode in which compensation for such damage may be recovered, no action will lie for it. But this only relates to works carefully and skilfully executed, and if there be a want of proper care and skill on the part of those executing the works, an action for the negligence, to recover damages for the injury thereby sustained, will lie. Therefore where works were executed by the Metropolitan Board of Works, under the powers conferred by 18 & 19 Vict. c. 120, s. 135, whereby plaintiff's premises were injured, and the jury found that by proper care and skill the injury could have been avoided, it was held that to recover compensation for this injury an action would lie, and that the plaintiff was not precluded from maintaining the action by the provisions of sect. 225 of that Act. (2) So it will be no answer to an action for damages that the works causing it were executed under the powers of an Act of Parliament, if the damage be occasioned by the wrongful construction, negligence, and improper execution of the works, and the want of proper and sufficient drains. (3)

A person who sustains injury from the execution of works authorized by a statute is not, generally speaking, entitled to compensation under the compensation clauses of the statute unless the injury sustained is such as, had the works not been authorized by the statute, would have given the claimant a right of action. Therefore where a company in the execution of works authorized by a Local Act which incorporated the Waterworks Clauses Act, 1847, intercepted water from percolating underground into a well, and also abstracted from the well water which had already so percolated into it, it was held that, inasmuch as, apart from the statute, no action would have lain against the persons who executed the works in respect of either the interception or the abstraction of such water, the statute gave no right to compensation in respect of either. (4)

Works planned by public Boards may it seems be carried out though they tend to the injury of neighbouring landowners; and notice to such landowners need not be given, and their rights purchased by the Board before commencing the works. Where, therefore, the Metropolitan Board of Works, in making

(1) *Peters v. Clarson*, 7 M. & G. 548.

(2) *Clothier v. Webster*, 31 L. J. (N. S.) C. P. 316; 6 L. T. (N. S.) 461; 12 C. B. (N. S.) 790; 9 Jur. (N. S.) 231.

(3) *Brine v. Great Western Rail-*

way Company, 31 L. J. (N. S.) Q. B. 101. See also *Lawrence v. Great Northern Railway Company*, 20 L. J. (N. S.) Q. B. 293.

(4) *New River Company, Apprs., Johnson, Resp.*, 2 E. & E. 435.

Compensation for injury caused by works. a sewer, cut a high road contiguous to certain lands in such a manner that they withdrew the water of an ancient spring, and laid dry a rivulet and a series of ponds extending three-quarters of a mile, upon a bill filed by the landowners claiming an immemorial right to the spring, the Court would not restrain the defendants in the execution of the works, or compel them to make the sewer water-tight, or to do any act to restore the ancient flow of water. In such case the landowners were held to be without any remedy in equity, and their only remedy was an action at law, claiming compensation for the damage done to their property by the works of the Board. (1)

The estate in the above case was situated upon a bed of gravel, which was itself imbedded in a basin of clay extending under the estate and under the lands adjoining, and the water which rose through the gravel bed by means of natural springs was collected in a pond, and thence overflowing the edge of the clay basin, formed a rivulet which supplied other ponds, and was used by the prosecutor for watering his gardens and horses. The defendants in the course of making their sewer, cut through the two beds of gravel and clay at a short distance from the estate, and the effect of the cutting was to drain the springs in the gravel, and to prevent them from finding their way into the pond, and from supplying the rivulet and the other ponds. On application for a mandamus to assess compensation in the manner authorized and directed by the Lands Clauses Consolidation Act, 1845, the Court of Queen's Bench, on the authority of *Chasemore v. Richards*, held that the prosecutor was not at common law entitled to compensation in respect of the abstraction of the water. (2)

Upon a mandamus reciting that the prosecutor had been injured by the exercise by the defendants of the powers of the 11 & 12 Vict. c. 63, that he demanded compensation from the defendants, and that they denied all liability, the return to the writ stated that the defendants had not denied all liability, and that they were ready to make compensation so soon as it had been duly ascertained under the Act; that it had not yet been so ascertained, nor had the prosecutor taken any steps towards having it ascertained, nor given the defendants notice of the amount of his claim, nor informed them whether it was above £20, nor appointed nor given notice of his intention to appoint an arbitrator. This return was traversed generally, and on the trial it was found that the defendants had denied all liability; and a verdict was returned for the prosecutor. On a motion to enter the verdict on the rest of the return for the defendants, and to enter the judgment for them, the Court of Queen's Bench held that under sect. 144 of the 11 & 12 Vict. c. 63, the mandamus was good,

(1) *Stainton v. Woolrych*, and *Stainton v. Metropolitan Board of Works*, 26 L. J. (N. S.) Ch. 300.

(2) *Reg. v. Metropolitan Board of Works*, 32 L. J. (N. S.) Q. B. 105; 9 Jur. (N. S.) 1009; 3 B. & S. 710.

and that the prosecutor was entitled to a verdict on the whole return, and to a peremptory mandamus, for as it did not appear on the return that there was any dispute as to the amount, the rest of the allegations in the return (beyond the traverse of the denial of liability, which had been found for the prosecutor) were immaterial. Upon this judgment the defendant brought error; but the Court affirmed the judgment. (1)

Compensation
for injury
caused by
works.

Where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably enlarged to the prejudice of other people, and the fact that the stream is fouled by others would not be a defence to a suit to restrain the fouling by one. Again, the mere suspension of a prescriptive right to foul a stream is not sufficient to destroy the right without some evidence of an intention to abandon it; but where works had not been used for more than twenty years, and had been allowed to go to ruin, the Court on appeal held that the right of fouling a stream attached to the works was lost. It was also held that the owner of land on the banks of a river can maintain a suit to restrain the fouling of the water of the river without showing that the fouling is actually injurious to him. (2)

Unless an actual injury results to a private individual himself, from the excessive exercise of the powers of a Local Board, it would seem that he cannot restrain the Board by injunction from proceeding with the works; if, however, there be such an exercise of excessive powers, the Attorney-General, on behalf of the public, may proceed against the Board for disregarding the provisions of the Act of Parliament. (3)

A mandamus will lie to compel a Local Board of Health to levy a rate to satisfy damages sustained by the personal representative of a deceased owner by reason of a sewer or drain having been made by the Local Board. (4)

A Local Board may be restrained by injunction from causing or permitting by any act or default of theirs any sewage matter to flow into a stream, to the damage of persons and property lower down the stream, and from otherwise polluting or injuring the stream any further or otherwise than it was polluted or injured previously, notwithstanding a proposal to submit the matter to arbitration. (5)

Injunction
to restrain
pollution of
stream.

By direction of a Local Board of Health the sewage of a town had been by means of drainage conveyed to a river, which sewage, not having been completely deodorised before coming in contact with the river, had so polluted the stream passing the plaintiff's property as to kill the fish therein, and otherwise causing a nuisance. Under these circumstances it was

(1) *Reg. v. Burslem*, 35 L. T. 177.

(2) *Crossley and Sons (Limited) v. Lightowler*, L. R. 2 Ch. App. 478; 16 L. T. (N. S.) 438; 36 L. J. Ch. 584.

(3) *Ware v. Regent's Canal Company*, 5 Jur. (N. S.) 25.

(4) *Rowell v. Hartlepool*, 34 L. T. 232.

(5) *Attorney-General v. Sawyer*, MS.

Injunction
to restrain
pollution of
stream.

held that the plaintiff was entitled to an injunction to restrain the further pollution of the water passing by his property. (1)

In a later case (2) it was held that where one has a right to the use of an ancient stream of water flowing through his land, and sewage matter is so precipitated into it as to pollute it, and to prevent his using it, he may come to the Court for an injunction to restrain the pollution before it becomes an undoubted nuisance; and it is not competent to the persons causing the nuisance to claim as against him a prescriptive right to discharge the sewage into the stream, which right could be acquired only by a continuance for the period of twenty years; and per the Master of the Rolls:—"I do not think that private rights, as such, ought to be interfered with by public interests. It so happens that in this case we may fairly say the right of an individual is not only compatible, but identical, with the interests—the true interests, I think—of the public. The injury done to the public at large by the pollution of a stream of water may be immense. It is almost impossible to calculate the amount of mischief which may accrue to cattle drinking of it, or to persons living in its neighbourhood and using it for their various purposes of life. What do the evidence of science and the opinions of scientific men tell us? They show—that this Court cannot in such a case disregard the fact that such things are—they show us that the diseases which may overtake men and animals from the use of a stream of water which has been polluted by the discharge into, or absorption by it, of even the minutest particles of feculent matter, are almost infinite and incalculable."

But where an information was instituted at the relation of the Conservators of the River Thames to restrain the corporation of Kingston-upon-Thames from altering their drains so as to discharge a greatly increased quantity of sewage into the river, the Court, considering upon the evidence that neither present nuisance nor probability of immediate prospective nuisance had been proved, dismissed the information; without prejudice however to future proceedings in the event of nuisance being subsequently occasioned. In the same case the Court held that the right of drainage into the sea and public rivers, conferred by the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 24, is subject to the condition that no nuisance is created. (3)

In a later case it was laid down as a settled rule of law that where a work of great public importance cannot be effected

(1) *Bidder v. Croydon*, 6 L. T. (N. S.) 778.

(2) *Goldsmid v. Tunbridge Wells Improvement Commissioners*, 35 L.J. Ch. 88; 13 L. T. (N. S.) 352; 12 Jur. (N. S.) 308. Affirmed by Lords Justices, 14 L. T. (N. S.) 154;

35 L. J. Ch. 382; L. R. 1 Ch. App. L. JJ. 349; L. R. 1 Eq. 160.

(3) *Attorney-General v. Kingston-on-Thames*, 34 L. J. (N. S.) Ch. 481; 29 J. P. 515; 12 L. T. (N. S.) 665; 11 Jur. (N. S.) 596.

without interfering with private rights, the private rights must prevail, and that the public work must be carried out as best it may without such interference. But where a great public object is to be attained, as, for example, the drainage of a town, the Court should put no difficulty unnecessarily in the way of carrying such object into effect. In considering questions of nuisance, the Court must have regard to the extent of the nuisance, and to the balance of inconvenience, and if the extent of inconvenience sustained is trifling, and such as may readily be compensated by money, the right of parties creating the nuisance must not be interfered with where the objects which they seek to attain are of considerable importance. The Court should not interfere by injunction to prevent a nuisance in cases in which the injury is temporary and trifling, but it ought to do so in cases in which the injury is permanent and serious. (1)

Injunction to restrain pollution of stream.

Care should be taken to construct the sewers and drains of sufficient capacity or dimensions to provide for the conveyance of the ordinary quantity of sewage of the district; for if new sewers be not so constructed, the Board will be liable for any damage occasioned by the overflow or bursting; but apparently they would not be held liable in case a sewer had stood for six years and then blown up. (2) An action may be maintained against a Local Board for not keeping a sewer properly cleansed, whereby it became choked up, and the overflow of foul water thereby ran into private premises. (3) The Board are not, however, bound to provide sewers sufficient to sustain the pressure caused by extraordinary storms,—and if an accident be caused by such a storm, it would be the act of God, and the Board would not be responsible. (4) Further upon this point *Alston v. Grant* (5) may be consulted.

Construction of sewers.

In constructing a sewer care must be taken that it does not create a nuisance by its discharge. A Local Board of Health as a body are liable to an action for negligently carrying out works within their powers, so as to cause an injury to any person,—and it seems that an injury so caused cannot be compensated under sect. 144 of the Public Health Act as “damages sustained by reason of the exercise of the powers of the Act.” (6)

In laying down a scheme of drainage, care should be taken that the sewage will not be conveyed into any stream or canal, so as to pollute the water which other persons have a right to enjoy, as the Local Board may be restrained from so doing;

(1) *Lillywhite v. Trimmer*, 16 L. T. (N. S.) 318; 36 L. J. Ch. 525.

(2) *Brown v. Sargent*, 1 F. & F. 112.

(3) *Meek v. Whitechapel*, 2 F. & F. 144.

(4) *Blyth v. Birmingham Waterworks Company*, 11 Exch. Rep. 781; 25 L. J. (N. S.) Exch. 212; 2 Jur.

(N. S.) 533; *Whitehouse v. Birmingham Canal Company*, 27 L. J. (N. S.) Exch. 25; *Ruck v. Williams*, 27 L. J. (N. S.) Exch. 357; 3 H. & N. 308.

(5) 23 L. J. (N. S.) Q. B. 163.

(6) *Southampton and Itchin Floating Bridge Company v. Southampton*, 28 L. J. (N. S.) Q. B. 41.

Construction
of sewers.

the Board cannot, under cover of their legislative powers, make a sewer which will have the effect of polluting the water of a canal; and therefore they will be restrained from permitting sewage communications to be made between the adjoining houses and the main sewer, so long as it should discharge itself into the canal.

Right to
surface-water.

Power given to a canal company to supply the canal with water from all brooks, streams, and watercourses within 1000 yards of the canal, does not comprise rain and other surface-water which, being collected on the road, ran along an open gutter into the canal, so as to preclude a Local Board of Health from allowing it to fall through gratings into a sewer which they had made under the road for the drainage of the district. (1)

Injunction to
restrain.

Local Boards may be restrained by injunction from executing works of drainage when they cause injury to private rights, and it is the duty of those who carry out the provisions of a Local Act in which the Public Health Act, 1848, is incorporated by executing sewerage and drainage works, to do so in such a manner as not to be injurious to the owners of the adjoining land, and therefore the Court of Chancery will interfere by injunction to prevent such nuisance, and not leave the persons aggrieved to obtain redress by a series of actions at law. The Court will not in such a case balance the convenience of the inhabitants of a town against the legal rights of an individual complainant. (2) Moreover, the same principle will guide the interference of the Court by injunction in the case of both public and private nuisances; namely, the inadequacy of the legal remedy for injury to property; (3) and per Turner, L.J., in *Goldsmid v. Tunbridge Wells Improvement Commissioners* (4):—"I adhere to the opinion which was expressed by the Lord Chancellor and myself in *Attorney-General v. Sheffield Gas Consumers' Company*, that it is not in every case of nuisance that the Court will interfere. I think it ought not to do so in cases in which the injury is merely temporary and trifling; but I think it ought to do so in cases in which the injury is permanent and serious; and in determining whether the injury is serious or not, I think that regard must be had to all the consequences which may flow from it."

A Local Board of Health was restrained by a decree of the Court, at the suit of an individual, from allowing sewage to flow into a river after a certain date. The Board did not stop the sewage, but, having tried and failed to render it inoffensive, the Court held that they had committed a contempt of Court, and were not excused by the fact that they were acting in the

(1) *Manchester, Sheffield, and Lincolnshire Railway Company v. Work-sop*, 26 L. J. (N. S.) Ch. 345.

(2) *Attorney-General v. Birmingham Town Council*, 22 J. P. 561.

(3) *Attorney-General v. Sheffield Gas Consumers' Company*, 22 L. J. (N. S.) Ch. 811. See also *Attorney-General v. Cambridge*, post, p. 158.

(4) 14 L. T. (N. S.) 156.

matter on behalf of the public, and carrying out duties imposed upon them by Act of Parliament. (1) An order for sequestration for contempt will be granted against a public body having property vested in it for various public purposes, if it appear to the Court that there is property on which the sequestration would operate. (1)

Quære whether the time named for compliance with the injunction could have been extended except by a Court of Appeal, as the injunction was granted by decree, and not by interlocutory order. (1)

A bill was filed by Sir W. H. Fielden, Bart., to restrain the corporation of Blackburn from allowing to flow into a stream, called Blakewater, sewage from a main sewer in their district. The plaintiff, it appeared, was tenant for life of certain premises through which the river Darwen flows, into which the Blakewater, a stream flowing through Blackburn, empties itself at a distance of about 3400 yards above the residence of the plaintiff. In 1859 land adjoining the outfall of the sewer had been purchased with a view of constructing works for intercepting the sewage matter, but the works had not been completed. The cause was heard on the 25th of June, 1866, and Vice-Chancellor Wood, in granting an injunction to restrain the corporation from permitting, after the 2nd of November, 1866, any sewage or other offensive matter to pass through their main drain in the bill mentioned, or through any other drain under their control, into the river Blakewater in such a state as to pollute the water thereof, and thereby occasion any nuisance to the injury or damage of the plaintiff, and ordering them to pay the costs of the suit, observed—having regard to the many decisions that had been come to at law and in equity upon this subject, the notion of collecting all the sewage of a large town and pouring it into a river without the slightest attempt to clear it of any of its grossest materials, was simply monstrous. Of what use, he said, was it now for the corporation to tell the Court that they were anxious to abate the nuisance as soon as possible? They had no right to commit a nuisance and then say, “Give us a little time and we will put an end to it.” (2)

In an order for an injunction to restrain the pollution of a stream, it is proper to insert the words, “to the injury of the plaintiff,” in order to establish a ground for the interference of the Court, and to prevent its authority being invoked for trivial purposes. (3)

The following was the order made in the case:—“Perpetual injunction to restrain the defendants, &c., from discharging

(1) *Spokes v. Banbury*, 35 L. J. Ch. 105; 11 Jur. (N. S.) 1010; L. R. 1 Eq. 42; 13 L. T. (N. S.) 428.

(2) *Fielden v. Blackburn*, 1 W. N. 256; see also L. T. 25 Aug. 1866, p. 746.

(3) *Lingwood v. Stowmarket Company*, L. R. 1 Eq. 77; 13 L. T. (N. S.) 540; 11 Jur. (N. S.) 993.

Injunction
to restrain.

from their works, in the bill mentioned, into the river or stream, in the bill also mentioned, so as to cause it to flow on the plaintiff's lands, &c., in a state less pure than that in which it flowed there previously to the establishment of the said works, and to his injury, any such refuse or other matter as was discharged by the defendants from their said works into the said river or stream previously to the filing of the said bill, or any noxious fluid or other foul matters whatsoever."

Generally with regard to the abatement of a nuisance to property caused by sewage or otherwise, it has been held that in abating a nuisance to his property a man may be justified in interfering (so far as is necessary) with the property of the wrong-doer, but not in interfering with the property of innocent third persons; and consequently where there are alternative modes of abating the nuisance, he is bound to choose that mode which may inflict damage, however great, on the wrong-doer, rather than that which would be productive of mischief, however small, to innocent third persons, or to the public. (1)

The case in which it was so decided had reference, however, to a watercourse made on land to carry off the water pumped from a colliery.

Penalty for
making un-
authorized
sewers, and
building over
sewers and
under streets.
11 & 12 Vict.
c. 63, s. 47.

No sewer or drain is to communicate with or to be emptied into any sewer of the Local Board, nor can any building be erected over any such sewer, nor any vault, arch, or cellar built or constructed under the carriageway of any street, without the written consent of the Local Board; and any one offending in this respect is to forfeit to the Local Board the sum of £5, and a further penalty of forty shillings for every day during which the offence is continued after notice in writing from the Board; and if any such sewer, building, vault, arch, or cellar be made, erected, or constructed without such consent, the Local Board may cause it to be altered, pulled down, or otherwise dealt with as they may think fit, and the expenses incurred in so doing are to be repaid to them by the offender, and be recoverable from him in a summary manner before two justices, as will be mentioned in the chapter on legal proceedings, *post*.

Definition of
"building."

A house built on the surface of the ground with foundations without any digging out of the soil, would be a building within the 11 & 12 Vict. c. 63, s. 47. On this point see the remarks of Lord Campbell, C.J., in *Poplar District Board of Works v. Knight*; (2) all houses, his lordship said, stand on a foundation within the meaning of the Metropolis Local Management Act.

On substi-
tution of
sewer, Local

Where the District Board of a parish or vestry, under the powers conferred upon them by the Metropolis Local Management Act, 18 & 19 Vict. c. 120, substituted a new sewer in a

(1) *Roberts v. Rose*, 33 L. J. Exch. 241. Confirmed on appeal, *ibid.* 35 L. J. Exch. Ch. 62. (2) 28 L. J. (N. S.) M. C. 37; 1 E. B. & E. 408.

course different from that of an old one, and diverted house drainage (not in itself defective or insufficient) from the latter to the former, they were held bound, under sect. 69 of that Act, to provide new drains for the old ones so diverted, and could not call upon the owners of the premises, under sect. 73, to pay the expenses of the new drains. (1)

With regard to the carrying of sewers through private premises with the leave and license of the owner of those premises, it is to be observed that if such an easement be granted, it carries with it the right to the exclusive use of it by the grantee. Therefore in a conveyance of land from a defendant to plaintiff which contained the following clause:—"Save and except, and always reserved unto plaintiff, his heirs and assigns, the power to enter upon the said land, and to dig and make a covered sewer or watercourse through the said land, in order to convey the waste water from the premises of plaintiff into the river W., on making reasonable compensation to defendant for any damage or injury which might be occasioned thereby, either to the surface of the ground, or the bridges under which the same might be made," it was held that the reservation gave the plaintiff a right to the exclusive use of the sewer. (2)

In order that property beyond but near to the boundaries of a district under a Local Board of Health may be benefited by local improvements as to drainage, it is provided that any owner or occupier of premises adjoining or near to but beyond the limits of the district, may cause any sewer or drain of or from such premises to communicate with any sewer of the Local Board, upon such terms and conditions as may be agreed upon between the owner and occupier and the Local Board, or, in case of dispute, as shall be settled by arbitration under the Act.

It has however since been enacted by the 24 & 25 Vict. c. 61, that where already or hereafter any premises not being within the limits of the district of the Local Board have a drain communicating, directly or indirectly, with a sewer within the district, and maintained by the Local Board, and any sewage from the premises flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the Local Board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or failing agreement between them, as on the application of the Local Board is determined by two justices; and the yearly sum so agreed on or determined shall be private improvement expenses, and shall be charged on the premises, and be paid and recoverable accordingly, as if the premises were within the district: Provided, that the yearly

Board must connect old drains.

Easement.

Use of sewers by persons beyond district. 11 & 12 Vict. c. 63, s. 48.

Yearly sum to be paid for drainage of premises without district into sewer within district. 24 & 25 Vict. c. 61, s. 8.

(1) *St. Marylebone v. Viret*, 19 C. B. (N. S.) 424; 12 L. T. (N. S.) 673; 11 Jur. (N. S.) 907. (2) *Lee v. Stevenson*, 1 E. B. & E. 512; 4 Jur. (N. S.) 950.

sum so charged shall cease to be payable if and when the connection between the drain from the premises and the sewer is discontinued, so that a proportionate part thereof up to the time of the discontinuance shall alone be payable; but if after the discontinuance the connection be re-established, the yearly sum shall again become payable, and so from time to time.

Application
of surplus
borough fund
to improve
drainage.

23 Vict. c. 16,
s. 12.

Owner
defined.

11 & 12 Vict.
c. 63, s. 2.

The Municipal Corporation Mortgages Act, 1860 (*post*, p. 140), contains a provision for the application of surplus borough funds in the improvement of the borough by drainage or otherwise.

An owner for all the purposes of the Act (except as regards the right of voting at elections, as to which see § 20, *ante*, p. 38) is the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee, or who would receive the rent if the lands or premises were let at a rack-rent. A person *de facto* receiving the rent is an owner within the meaning of 11 & 12 Vict. c. 63, s. 2. (1)

Section 145 of
11 & 12 Vict.
c. 63, repealed.
21 & 22 Vict.
c. 98, s. 68.

The following saving clauses contained in the Local Government Act, 1858, may be conveniently introduced in this place. The 68th section, after repealing section 145 of the Public Health Act, 1848, enacts in lieu thereof, that nothing in the Local Government Act, 1858, shall be construed to authorize any Local Board of Health,

Sea defences
and land
drained under
local or
private Act of
Parliament.
Ib.

(1.) To use, injure, or interfere with any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land, or in any manner to disturb or interfere with any lands, hereditaments, estates, or property vested in Her Majesty's principal Secretary of State for the War Department for the time being, without consent in writing first obtained from such commissioners or Secretary of State, or persons acquiring rights under such local or private Acts respectively; and nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under such local or private Acts;

Saving clauses
for proprietors
of canals, etc.

(2.) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path, so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals, are by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation

on or use of such river, canal, dock, harbour, lock, reservoir, or basin, any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals, are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues ;

Saving clauses
for proprietors
of canals,
docks, etc.
21 & 22 Vict.
c. 98, s. 68.

(3.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals (being authorized by virtue of any Act of Parliament to navigate on or use such river, canal, dock, harbour, reservoir, or basin, or to demand any tolls or dues in respect of the navigation on or use of such river, canal, dock, harbour, reservoir, or basin), would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference ;

Saving clauses
as to water-
courses.
Ib.

(4.) To interfere with any bridges crossing any river, canal, dock, harbour, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are authorized by virtue of any Act of Parliament to navigate or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation or use of such river, canal, dock, harbour, or basin ;

Saving clauses
as to bridges.
Ib.

(5.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues, without the consent in every case of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of a corporation under their common seal, and in the case of a company, undertakers, commissioners, conservators, trustees, or individuals, under the hand of their clerk or other duly authorized officer or agent: provided always, that nothing in this Act contained shall be construed to alter or affect the maintenance of any rights of Local Boards existing at the time of the passing of this Act.

Saving clauses
for proprietors
of wharves,
quays, docks,
etc.
Ib.

In cases where any matters or things proposed to be done by any Local Board, and which are not within the prohibition aforesaid, interfere with the improvement of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal, dock, harbour, or basin, or with any land necessary for the enjoyment or

Reference to
arbitration of
works inter-
fering with
rivers, canals,
etc.
Ib. s. 69.

Reference to arbitration of works interfering with rivers, canals, etc.

21 & 22 Vict. c. 98, s. 69.

Questions for arbitration.

Effect of arbitration.
21 & 22 Vict. c. 98, s. 70.

Provision as to transfer of powers, etc.
Ib. s. 71.

Power for corporation, etc., to alter sewers.
Ib. s. 72.

improvement thereof, the Local Board shall give to such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as last aforesaid, a notice specifying the particulars of the matters and things so intended to be done; and if the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration (that is to say):—

(1.) Whether the matters or things so proposed to be done by the Local Board will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land as are hereinbefore mentioned in this section, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin as aforesaid:

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or not of a nature to admit of being fully compensated by money.

The result of any such arbitration shall be final, and the Local Board shall do as follows (that is to say):—

If the arbitrators are of opinion that no injury will be caused, the Local Board may forthwith proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and upon payment of the amount so assessed, but not before, the Local Board may proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the Local Board shall not proceed to do any matter or thing in respect of which such opinion may be given.

No transfer of powers and privileges under this Act shall deprive any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the surveyor to the Local Board, take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed by any Local Board, and passing under or

interfering with such rivers, canals, docks, harbours, or basins, or the towing-paths of such rivers, canals, docks, harbours, or basins, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Nothing in this Act or any Act incorporated therewith shall be construed to authorize any Local Board to injuriously affect any reservoir, river, or stream, or the feeders of any reservoir, river, or stream, or the supply, quality, or fall of water contained in any reservoir, river, stream, or feeders of any reservoir, river, or stream, in cases where any company or individuals would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, river, stream, feeders, supply, quality, or fall of water, unless such Board shall have first obtained the consent in writing of such company or individuals so entitled as aforesaid.

Preserving
water-rights
of companies
or individuals.
21 & 22 Vict.
c. 98, s. 73.

Therefore where a Local Board of Health in the construction of a sewer diverted and diminished the supply of water to a mill belonging to the riparian proprietor of the river on which it was situated, on a mandamus to compel compensation for injuries done in the exercise of the powers of the Board under 11 & 12 Vict. c. 63, s. 45, it was held, that the acts complained of constituted an injuriously affecting of the river which the prosecutor would have been entitled by law to prevent or to be relieved against—that the injuries might still have been the ground of an action at law, and that, therefore, the injury did not form the subject of compensation under 11 & 12 Vict. c. 63, s. 144, and the mandamus was wrong. (1)

Any difference of opinion that may arise between a Local Board and any such corporation, company, commissioners, conservators, trustees, or individuals as aforesaid, whether any sewers, drains, culverts, or pipes substituted under the powers of this Act for sewers, drains, culverts, or pipes constructed or laid down by any Local Board, are equally effectual with those for which they are substituted, or whether the supply, quality, or fall of water in any such reservoir, river, or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in the manner hereinbefore provided; and in the latter case the arbitrators shall decide the same questions as to the alleged injury; and the Local Board shall proceed in the same way as is hereinbefore provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours, and basins.

Arbitration of
questions
under preced-
ing sections.
Ib. s. 74.

By the Defence of the Realm Act, 1860, it shall be lawful for the Secretary of State for War, without any writ being issued or other legal proceeding being adopted, to stop up or divert,

Power of
Secretary of
State for War
to divert high-

(1) *Reg. v. Darlington*, 10 L. T. 1196; 6 B. & S. 562. Affirmed in error, 29 J. P. 419; 35 L. J. (N. S.) Exch. Ch. 45.
(N. S.) 603; 5 B. & S. 515; 33 L. J. (N. S.) Q. B. 305; 10 Jur. (N. S.)

ways, sewers,
etc.
23 & 24 Vict.
c. 112, s. 40.

or alter the level of any highway, way, sewer, drain, or pipe, over, through, under, or adjoining any lands comprised in any declaration issued by him under the Act, he, if necessary, previously making, opening, or laying down another good and sufficient way, sewer, drain, or pipe in lieu of that stopped up or diverted.

Secretary of
State for War
may alter
course or level
of streams, etc.
Ib. s. 41.

It shall also be lawful for the Secretary of State for War to alter the course and level of any river not navigable, brook, stream, or watercourse, and any branch of any navigable river (such branch not itself being navigable) within or adjoining any lands taken by him for the defence of the realm, making compensation for any damage sustained by reason of the exercise of his powers, such compensation to be determined and paid in like manner as other compensations under the Act, or as near thereto as circumstances admit.

Drainage of
land for
agricultural
purposes.
24 & 25 Vict.
c. 133.

In concluding this portion of the work it may be useful to direct attention to the Act to amend the law relating to the drainage of land for agricultural purposes. That Act does not bear directly on the subject of this work, but it is nevertheless collateral to it; and it is not unlikely that the works of drainage which it contemplates may be so conducted in particular districts as to make them subservient to other purposes in the drainage of land used for purposes of agriculture.

The scope of the Act will be best explained by the 4th section, relating to the assignment of limits to commissioners of sewers. It enacts that it shall be lawful for Her Majesty, upon the recommendation of the Inclosure Commissioners, to be obtained on such application and subject to such conditions as are hereinafter mentioned, to direct commissions of sewers into all parts of England, inland as well as maritime, and to assign as the limits for the jurisdiction of such commissions any areas that may be thought most expedient, having regard to the levels and other facilities for drainage within such areas, with power for Her Majesty to include within the limits of any commission of sewers any area to which a commission of sewers may not hitherto have been assigned, or any area either wholly or partially within the limits of an existing commission of sewers; subject to this proviso, that no alteration shall be made affecting the jurisdiction of any commissioners of sewers without the consent of a special meeting of such commissioners.

Powers of
Commis-
sioners.
24 & 25 Vict.
c. 133, s. 16.

General powers of the commissioners acting within their jurisdiction shall extend to the following acts:—

(1.) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water, hereinafter referred to under the expression "maintenance of existing works:"

(2.) To deepening, widening, straightening, or otherwise improving any existing watercourse or outfall for water, or removing mill-dams, weirs, or other obstructions to water-

courses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence against water, hereinafter referred to under the expression "improvement of existing works:"

(3.) To making any new watercourse or new outfall for water, or erecting any new defence against water, to erecting any machinery or doing any other act not hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping or irrigation of the area comprised within the limits of their jurisdiction, hereinafter referred to under the expression "the construction of new works."

Much alarm has been felt in some low-lying districts from apprehended inundations from the sea and rivers, and appeals have been made to Government to take steps to compel the repair of sea-walls and embankments in such districts. The Government appear, however, to have no power to interfere in such cases, except by the appointment of a commission of sewers, under 24 & 25 Vict. c. 113, s. 4, *et seq.*; but the initiative with the view to the appointment of a commission of sewers must be taken by the proprietors of land within the boundaries to which the commission, if issued, would apply.

Reference may also be made to the Improvement of Land Act, 1864, 27 & 28 Vict. c. 114.

Provisional orders under the Land Drainage Act, 1861, to the following drainage schemes have been confirmed by Parliament:—

Drainage Scheme.	County.	Confirming Statute.
Morden Carrs.	Durham.	26 & 27 Vict. c. 63.
Longdon and Elders- field.	Gloucester and Wor- cester.	Ibid.
Maxey.	Northampton.	Ibid.
River Wissey.	Norfolk.	27 Vict. c. 14.
Carrymoor.	Somerset.	Ibid.
Stanmoor.	Ditto.	Ibid.
Dysynny.	Merioneth.	Ibid.
Chedzoy.	Somerset.	28 Vict. c. 23.
Frodsham and Ince.	Chester.	29 Vict. c. 33.
Northmoor and Stanton.	Oxford.	29 & 30 Vict. c. 80.
North Moor.	Somerset.	30 Vict. c. 22.
Aller Moor.	Somerset.	31 & 32 Vict. cap. lxxxiii.
Haddiscoe.	Norfolk.	31 & 32 Vict. cap. clvi.

Powers of
Commis-
sioners for
drainage of
land for
agricultural
purposes.

24 & 25 Vict.
c. 113, s. 16.

§ 2. CONTRACT AND SPECIFICATION OF SEWERAGE WORKS.

1. CONTRACT FOR MAKING SEWERS AND DRAINS.

ARTICLES OF AGREEMENT indented, had, made, concluded, and fully agreed upon this day of 186 , between the Local Board for the district of (hereinafter called "the Local Board") of the one part, and of , in the County of , Contractor, hereinafter called "the Contractor," of the other part :

WHEREAS the Local Board being desirous of having the works, drains, and matters hereinafter particularly described and hereinafter contracted for, let by contract, duly obtained from their Engineer an estimate in writing of the probable expense of executing the said works in a substantial manner, and having given ten days and upwards public notice expressing the nature and purpose thereof, and inviting tenders for the execution of the said works, and requiring sufficient security for the due performance of the same :

AND WHEREAS the time for sending in tenders having expired, a tender sent in by the Contractor was accepted, and it has been agreed that the parties should execute the contract hereinafter contained :

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement, and for the considerations hereinafter appearing, he, the Contractor, doth hereby for himself, his heirs, executors, and administrators, covenant with the Local Board, and the Local Board do hereby for themselves and their successors covenant with the Contractor, his executors and administrators, as follows :—

1. The Contractor shall do all the work, matters, and things, and provide all materials in relation to, or in connection with, the excavation of the trench, and the laying down of the several lines of drainage shown on the plan, and the sections hereunto annexed, numbered 1, 2, 3, 4, 5, 6, 7, and 8 (except the portions of drains therein specified as not to be made), and such others as may from time to time be deemed necessary during the progress of the works, the same to be in strict conformity to the conditions and terms of the specification contained in the first schedule hereto, the necessary iron grids, gullies, and ventilators being provided at the expense of the Local Board.

2. If any person who, in the opinion of the Surveyor, shall be incompetent, shall be employed by the Contractor, the Surveyor shall be at liberty to discharge such person forthwith from employment on the said works, or anything connected therewith, and to remove him from off the works.

3. The Contractor shall not commence the works until written notice under the hand of the Surveyor shall have been given him to do so. The Contractor shall give all necessary notices in writing to persons having authority over roads, pavements, pipes, or other property or works liable to be affected by the execution of his contract, of the time of the commencement of the works.

4. The works shall be carried on in such portions as the Surveyor shall direct, and the Engineer shall have power to vary, extend, or diminish the quantities of the work during its progress without vitiating the contract, but no part of the works shall be altered by the Contractor from that shown on the drawings or described on the specification without the express sanction in writing of the Surveyor.

5. The Contractor shall not underlet or make a sub-contract for the execution of any portion of the work.

6. No line of pipes shall be covered in until they have been examined by the Surveyor, and direction given by him in writing to that effect.

7. The Local Board shall pay to the Contractor, his executors or admin-

istrators, for or on account for the work done and materials supplied as required by and in conformity with the said plans and drawings hereunto annexed, and to the said specifications contained in the first Schedule hereto, the sum of £ , such sum to be paid in the amounts and at the times, and subject to the conditions mentioned in the paragraph following:—

8. Payment shall be made as follows: The Contractor shall be paid by the Local Board in monthly instalments the value of the works executed during the preceding month, as certified by the Surveyor, subject to a deduction of twenty per cent. upon such value; one-half of the balance remaining unpaid shall be paid one month after the Surveyor shall have certified the completion of the contract; the remainder shall be paid at the end of six months after the date of the completion of the contract, provided that the Contractor shall during such six months have kept in repair and good order the whole of the works to the satisfaction of the Surveyor.

9. In this contract, and the Schedule hereto, the word Surveyor shall mean the Surveyor for the time being of the said Local Board or other Clerk of the Works from time to time appointed, with the permission of the Local Board, by the Engineer to the Local Board.

10. The Contractor agrees to enter into a joint and several bond with two sufficient sureties in the sum of £ , conditioned for the due fulfilment of the conditions of this contract. In witness whereof five members of the Local Board have hereunto set their hands and the seal of the Local Board, and the Contractor hath hereunto set his hand and seal, the day and year first before written.

The First Schedule hereinbefore referred to.

1. The drawings and specifications are intended to be explanatory of one another; but should any discrepancy or misunderstanding arise respecting the same, the said Engineer's explanation and direction shall be final and binding on the parties hereto. The written dimensions shall be taken in preference to scale, and the wording of the specification in preference to the written dimensions.

2. The levels marked on the plans and sections and the bench marks given are supposed to be correct, and any others that may be required from time to time in connection with these works shall be given to the Contractor, and every assistance in setting out the work; but as the Contractor will be held responsible for the consequences of any error, he must satisfy himself that such data are correct.

3. All materials provided by the Contractor shall be of the best description, and he shall provide efficient labour implements, planks, shores, and other things necessary for the full and complete performance of the contract; he shall provide and maintain all necessary hoarding, fences, and bridge-ways for public traffic at the parts or places where the works are being carried on, and he shall furnish lights, lanterns, and watchmen when required for the safety of the public, or the protection of properties.

4. The Surveyor shall be at liberty to reject any material that he may deem defective or of an inferior description, and his decision shall be final.

5. The pipes shall be of the full size, as shown on the plans and sections, salt glazed, sound, and true in the internal surface, free from all fire and other cracks and defects.

6. The bricks used in the works shall be the best fire bricks.

7. All pipes must be fitted together dry previous to being put together in the trench, so that the truest line obtainable may be had.

8. The ground shall be excavated in open trenches to the necessary width and depth as shown on the plan, and sections hollowed out at the bottom to fit the pipes, and sufficiently wide to allow the pipes to be properly laid, great care being taken in backing and filling in, which shall be done to the satisfaction of the Surveyor, and his decision shall be final.

9. The Contractor shall, at his own expense, shore up, sling, protect, alter, divert, restore, and make good, as may be necessary, all water pipes,

Contract for
sewers.

gas pipes, sewers, drains, buildings, walls, fences, or other properties which may be disturbed or injured during the progress of the works.

10. In excavating the trenches, the Contractor shall carefully take up and lay aside all paving materials, metalling, gravel, or other surface, road, or flagging material.

11. The materials excavated shall be laid compactly on the side of the trench, so as to interfere as little as possible with public traffic.

12. The sides of the excavations shall be supported with suitable timber where necessary, and the Contractor will be held responsible for any accident or damage which may happen to any person or persons, or to neighbouring properties, or in any other way from neglect of this precaution. Should the Surveyor direct any of the timber to be left and buried in the trench, the cost of such timber will be allowed (according to the schedule of prices contained in the second schedule hereto), unless the necessity for leaving it be caused by the neglect or carelessness of the Contractor, or any of his servants or workmen in the working, in which case the timber is not to be paid for by the Local Board.

13. All irregularities in the trenches shall be filled in to obtain a solid foundation for the pipes, and the Contractor shall excavate to such increased depth as may be necessary, and shall make good to the required level and form with concrete, or adopt such other way for obtaining the same as the Surveyor shall direct, and all increased work arising therefrom will be paid for as extras.

14. The pipes shall be laid truly in line and gradient, according to the plans and sections, or the directions that may be given from time to time by the said Engineer, and all curves, tapering pieces, and junctions required shall be properly excavated for and laid as directed by the said Engineer or Surveyor. All junctions laid for house drains shall have their ends sufficiently closed with discs made for that purpose; the whole of the pipes shall be laid with well-tempered blue clay, the socket of the pipe to be neatly fitted, and a cushion of clay put under at the junction of each pipe, to bed in the same, especial care being taken that the band of clay three inches wide is made perfect and tight all round, and thoroughly connected with the cushion on the underside, each pipe to be thoroughly cleaned out in the inside with a disc made for that purpose after being laid. The pipes to be laid in such portions and in such a manner as the Surveyor shall direct. When directed the pipes are to be laid in six inches of blue clay puddle, and the trench is to be filled in six inches above the pipes with the same material, if considered necessary by the Surveyor, which will be paid for by the Local Board, according to schedule, as extra.

15. The soil on each side and six inches over the pipes shall be carefully laid in so as not to disturb them, and solidly rammed down; the remainder of the trench shall be filled up in layers of not more than twelve inches at a time, and well punned all over each layer.

16. The Contractor shall replace, to the satisfaction of the Surveyor or other the persons having the control of public or private roads or places, all paving, flagging, metalling, or other surface material which may be disturbed in the execution of the works.

17. Any house drainage or private drainage works may, with the consent of the Surveyor, be connected with the works in progress, the Contractor putting in the first pipe from the junction, for which he will be paid for by the Local Board according to schedule as extra.

18. The Contractor shall, if required by the Surveyor, connect with the works any existing drain, either private or public, which he will be paid for by the Local Board according to schedule as extra.

19. Any coins, objects of value or antiquity, that may be met with in excavating, or in the execution of the works, shall be deposited forthwith at the office of the Local Board by the Contractor, his servants or workmen.

20. As the trenches are filled in the Contractor shall cart away all superfluous earth, stones, and other material to such place as the Surveyor may direct, and leave all roads, streets, and other places free and in good order.

21. The Contractor shall execute the works hereby contracted to be done Contract for with the best materials and workmanship of their several kinds, the draw-sewers. ings and specifications are intended to include whatever may be requisite to render the works complete; but should anything be accidentally omitted which may fairly be implied as included in the contract, the same shall be provided and performed by the Contractor.

22. The difference of expense of any addition, diminution, or alteration of the works which may be directed to be done by the Engineer shall be added to or deducted from the amount of the contract, agreeably to the rate specified in the schedule of prices forming the second schedule hereto hereinafter contained. If the items do not appear in the said schedule the charge for the same shall be settled by the Surveyor, but no extra charges whatever will be allowed unless with the written orders of the Surveyor, and a claim sent in weekly by the Contractor for such extra work.

23. The Contractor shall compensate or make good at his own expense whatever damage may occur to any person, or to public or private properties, by reason of the execution of the works.

24. The Contractor shall have the charge of and be responsible for the entire line of works until their completion; and whenever the Surveyor shall require it, openings shall be made for examination; and if the works should in any way be found defective, all expenses of such examination and of making such defective part of the works good, shall be done by the Contractor; but if found in a satisfactory condition, such expenses will be paid by the Local Board as an extra upon the certificate of the Surveyor.

25. Should it be deemed advisable by the Surveyor to stop the work on account of the weather, or other necessary reason, the Contractor shall not be paid for such stoppage, but the period of time during which the works may be so suspended shall not count in the time allowed for the completion of the contract.

26. Should it appear at any time to the Surveyor that the works are not being carried out in an efficient manner, or if he should consider that proper speed is not used in forwarding the work, the Surveyor shall give written notice to the Contractor, and if at the end of three days no satisfactory measures shall have been taken to remedy the matters and things complained of in and by such notice, the Local Board shall have full power through or by their clerk for the time being, or their said Engineer, to take the whole of the works out of the hands of the Contractor, and proceed with the execution thereof, and all extra cost and charges which may arise thereby shall be paid for by the Contractor.

27. The time fixed for the completion of the whole of the works included in this contract is months from the date of the Surveyor's order to commence them, and the Contractor shall pay to the Local Board as liquidated damages, and not by way of a penalty, £5 for every day, or part of a day, that any part of the said work shall by his default remain unfinished after that time, whether the works shall be in completion by the Contractor, or by the Local Board, or others on their behalf.

28. The Contractor shall keep in repair and in good order the whole of the works for six calendar months from the date when the Surveyor shall have certified in writing the completion thereof, and he shall reimburse the Local Board all costs and expenses which they may incur or be put to on account of such works being out of repair, or not being in good order during or at any time during six months immediately following the date of the Surveyor's certificate of the completion of the works.

The Second Schedule, being the Schedule of Prices hereinbefore referred to.

The following prices for providing and laying drainage pipes include excavation, shoring ground and adjoining properties, fencing, lighting, and watching, freeing the trenches from water, providing, laying, and joining the pipes with the curves, junctions, and other parts, filling in, and ramming the earth, restoring and making good the paving, or other surface

Contract for
sewers.

material disturbed, and clearing away all superfluous earth or rubbish, in conformity with the conditions of the specification :—

Diameter of Pipes.	Price per lineal yard, not exceeding in depth.			
	3' 0"	6' 0"	9' 0"	Bends, junctions, &c.
Inch.	s. d.	s. d.	s. d.	s. d.
4	2 0	3 6	5 0	0 7
6	2 6	4 0	5 6	1 0
9	3 0	4 6	6 0	1 8
10	3 4	5 0	6 6	2 0
12	3 9	5 6	7 0	2 6
15	5 0	6 6	8 6	4 0

Gullies as per Plan and Section.

"Newton's" Rotherham (No. 1) each, and fixing complete, A.
47/6, B. 36/, including border stones.
Brickwork Cast Iron Grate (No. 2) each, and
block outlet complete 75/-
Fixing Manhole covers, ventilators, and ven-
tilator covers 5/-
Timber shoring ordered to be left in the
trenches at 1/6 per cubic foot.
Brickwork (fire brick) in ordinary lime mor-
tar, including implements and labour at 25/- per cubic yard.
Fire brick in cement at 30/-
Concrete at 8/-
Blue clay puddle at 3/6
Excavation in rock, extra 1/- on 3 feet, 2/- on 6 feet, 3/- on 9 feet.

2. SPECIFICATION AND CONDITIONS OF SEWERAGE WORKS.

Materials.

The contractor or contractors must, at his or their own expense, find and provide all manual and team labour, as well as all cement, sand, stone, lime, bricks, sewer and drain pipes, bends, junctions, grids, syphons, discs or plugs, and all other earthenware materials, as well as the iron street grates, timber or other materials, tools, tackling, ropes, buckets, barrows, planks, stakes, scoops, troughs, pumps, centres, moulds, templates, gauge-boxes, and every other matter, article, or thing, required for the full completion of the contract. The cement to be mixed in the proportion of two measures of cement to three of clean sharp river sand, except where it is herein specified to be used nett. Where it is necessary to use concrete, it shall be composed of stone (broken so as to pass through a ring two inches in diameter), clean sharp gravel, and fresh burnt lime, in the proportion of four parts of broken stone to one of gravel and one of lime.

Excavations.

The whole of the paving, metalling, or other surface material, to be carefully removed and laid aside to be replaced. The trenches to be excavated to the depths shown on the section, or to such other depths as may be directed; the sides of the excavations to be well supported with sheet piling, or other sufficient timber, struts, shores, planks, and walings. The excavated materials to be laid compactly and trimmed up so as to be as little inconvenience as possible to the public traffic or to adjoining tenants. The bottom of the trench to be excavated, as nearly as can be, to the form of the lower half of the sewer or drain to be laid therein, and, in the case of earthenware pipes, must be neatly dished out at every joint so as to allow a full and even bearing for the pipes, and the cuttings must be excavated with as little slope as may be practicable, the sides being well supported with timber where the nature of the ground requires it.

Before the pipes are lowered into the trench, they must be fitted upon the ground, so as when laid they may present a true line and the joints

may fit accurately. The whole of the sewers and drains must be carefully and accurately made, and the junctions and other connections placed as shall from time to time be directed. All deviations from the straight line must be made in regular curves. The whole of the joints to be made secure and watertight, with well tempered clay, which must be formed into a band extending all round for at least three inches back from the socket so as to form a perfect joint. The open ends of all junctions laid in for any street, court, passage, or for house drainage, or private property, must be perfectly closed up with earthenware discs or plugs, so as to prevent the entrance of any dirt or other material into the sewer. In refilling the trenches, the materials to be laid in layers not exceeding one foot at a time, and the whole surface of each layer must be well punned so as to prevent settlement. No timber to be left in the excavations, unless with the express sanction or order of the surveyor; nor will such timber be allowed to be drawn till the excavations are filled up to the underside of the walings. The gullies to be built of the form and dimensions shown on the drawings, with three-inch flag bottoms, and walled in nine-inch brick-work set in cement. The flag trap and street grate to be carefully fixed as directed; when completed, the whole of the inside of the gullies to be rendered in nett cement, and left perfect and watertight. The whole of the sewers, drains, gullies, and other works to be, as the works proceed, carefully cleared of all superfluous cement, clay, soil, or other obstructions to the free and uninterrupted flow of the water. When the ground has become sufficiently consolidated, the whole of the paving, metalling, flagging, &c., to be carefully replaced and put in a satisfactory condition. The whole of the surplus excavations to be removed and carted away immediately after the trenches have been filled up. All existing drains to be reinstated, or connected in such manner as the surveyor may direct. All gas and water pipes (mains and branches) to be securely protected and supported. The whole of the works to be well and securely fenced off; crossings for foot-passengers formed of planks, with suitable and sufficient hand rails; and, during the night, fires and watchman to be provided and maintained.

Specification.
Pipe sewers
and drains.

On the subject of the ventilation of sewers, the Metropolitan Board of Ventilation Works in their Tenth Report, dated July, 1866, say (p. 20) that the most efficacious and most universally applicable mode of preventing the escape of noxious gases, is so to construct the sewers that a continuous flow shall be kept up in them, and to provide them with a sufficiently copious supply of water, that the decomposing matter within them shall be diluted, and instantaneously removed, and not allowed to settle and ferment.

§ 3. REMOVAL OF SEWAGE MATTER.

The disposal of sewage matter is one of the greatest difficulties to be contended with in laying down a system of sewerage, especially for inland towns. The evils which arise when the outfall for the sewerage is a river flowing through a wide expanse of country, and past other towns situated on its banks, can scarcely be exaggerated, and are acknowledged by all who have given their attention to the subject. This has proved a fruitful source of litigation between proprietors and local authorities who have been active and zealous in their application of drainage measures; and the law as it affects those who have vested interests in such rivers, and the right of local authorities to drain into them, is by no means settled or free from anomalies. In adopting any scheme of drainage, care should therefore be taken to arrange so that the outfall does not infringe upon the rights of others.

Disposal of
sewage
matter.

Sewage
irrigation.

The serious evils which have arisen from the pollution of streams throughout the country, are forcibly stated in a letter, addressed to the First Lord of the Treasury by the President of the Sanitary Association and the Vice-President of the Fisheries Protection Association, and which will be found in the last edition of this work, as well as other recommendations on the subject of the profitable application of sewage of towns.

The Commissioners appointed to inquire into the best means of preventing the pollution of rivers, in their first Report (Session 1866, p. 12), say with regard to sewage irrigation:—

“*Sewage Irrigation.*—The Commissioners appointed to ‘inquire into the best mode of distributing the sewage of towns, and applying it to beneficial and profitable uses,’ in their third and final Report delivered in the month of March last year, expressed as the conclusion to which they had unanimously come, after an investigation extending over eight years, that ‘The right way to dispose of town sewage is to apply it continuously to land, and that it is only by such application that the pollution of rivers can be avoided.’

“Fully concurring with this conclusion, we have not reopened the consideration of the numerous and diverse expedients for the disposal of town sewage (though with respect to none of them have we declined to receive such evidence as has been tendered to us), but we have thought we should best fulfil our instructions by restricting ourselves to the inquiry whether the absolute prohibition of discharge of sewage into rivers, or the absolute compulsion of town authorities to apply it to the land, would result in injury to health or entail other inconvenience.

“All expedients for disposal of town sewage otherwise than by application to land seem to us on one ground or another objectionable. Cesspits in towns corrupt the air and corrupt well-water; they are incompatible with public health, and should be abolished. Sewerage has therefore become a necessity for any large community. The difficulty is to deal with the volume of sewage thus concentrated, so as not to cause a nuisance either in the atmosphere or in rivers. Disinfectants and filtration have been tried in many forms, but without success. As applied to sewage, disinfectants do not disinfect, and filter beds do not filter. Both attempts have been costly failures. The Local Board of Health at Croydon at one time were spending large sums annually on chemical and mechanical experiments to no purpose, but to expose themselves to law-suits; they then commenced the process of sewage irrigation.

“In order fully to ascertain the effects upon health of sewage irrigation, we have visited the principal places at which that process is carried on, viz.:—Croydon, Norwood, Worthing, Carlisle, Edinburgh.

“We also held open public inquiries at Worthing, Croydon, and Norwood.

“At Worthing we found the sewage works, which have now been in operation for more than a year, unobjectionable. Not

a single case of sickness was attributed to the irrigation. With Sewage regard to Croydon, the inhabitants of that town generally can- irrigation. not suffer from their irrigation fields, the sewage farm at Beddington being at a distance of about three miles from the town. At the public inquiry, all the witnesses, medical gentlemen and others, were agreed that the irrigation works were not injurious to health. As to the irrigation works at Norwood, no complaints have been made by the persons representing that district upon the Local Board of Health at Croydon, and the general rate of mortality in Norwood is low. Some dissatisfaction, however, is felt by one or two proprietors and occupants of house property in the immediate neighbourhood of the works; and Dr. Cresswell, one of the local practitioners, stated that the question had occurred to him as one worthy of investigation, whether certain peculiar cases of illness, resembling ague, which he had met with in the district, might not have been caused by miasma from the irrigated fields. The works are inconveniently near to the outskirts of the town, and may exercise a depreciatory influence on the value of adjoining houses; but, on the whole, we are satisfied that no ground exists for serious apprehension of miasma from fields irrigated with sewage.

"If sewage irrigation had really bred a special class of diseases, it would hardly have been tolerated for two centuries on so vast a scale near Edinburgh.

"It is necessary not to mistake instances of abuse for defects in the system of sewage irrigation. Sewage, if fresh, and in the open air, is scarcely perceptible to the smell. If sewage be pent up in sewers and discharged on the land in a state of active putrescence; or if, as took place once at Norwood, the depositing tank is allowed to get out of order; or if, as at Edinburgh, the carriers are so rudely constructed and so neglected as to become reservoirs of stagnant sewage and accumulating places of corrupt sewage deposit, unpleasant, if not mischievous, consequences must be expected; but these are cases of abuse, preventible by common care.

"Sewage water, if passed over a sufficient area of grass land, passes off bright, tasteless, and without smell. At Croydon, ever since the town was sewered (about the year 1852), the sewage of about 17,000 of the inhabitants has been discharged into the river Wandle, a clear trout stream which breaks out from the chalk above the town and flows, as ornamental water, through residential properties. For fouling this stream the Local Board of Health, so long as they resorted to chemicals to purify their sewage, were exposed to continual litigation. They then commenced the irrigation process upon land at Beddington, and discharged the effluent water from their irrigated fields into the Wandle. Mr. Gurney, finding a dearth of water at his mills, applied to the Local Board for leave to bring the effluent water from the sewaged fields into the

Sewage
irrigation.

Wandle at a point above his mills; and having obtained leave, formed at his own expense a conduit of considerable length, whereby the effluent water is now conducted through his grounds by the side of his carriage drive into the river as it flows through his estate. It appears, from the evidence both of Mr. Gurney and of his agent Mr. Reynolds, who resides upon the estate close to the outfall at Beddington, that there is still occasional cause to complain of the condition of the effluent water, as it sometimes comes off the land either turbid or so imperfectly cleansed from sewage that it pollutes both the river Wandle and the atmosphere in the vicinity. These evils, so far as they exist, we are satisfied admit of explanation. When the water is turbid (as distinct from being foul from sewage), the cause probably is, as suggested by Mr. Gurney, that cattle sent in to graze upon the irrigated fields (a very large number in proportion to the acreage), have trodden the surface and fouled it with their dung. When the effluent water flows off, carrying both to sight and smell unmistakeable signs of sewage, it has not been applied to a sufficient area of land. The smell has been found most objectionable on Sunday evenings, probably, because the men have on those days neglected to do the amount of work necessary to effect a proper distribution of the sewage. Mr. Reynolds expressly states that the grievance is only occasional; that at other times the water comes down as pure to look at as he could desire, as pure as the river water; that he has no fault to find with sewage irrigation if properly managed; that, on the contrary, he believes it to be a great principle, and thinks it a pity that it should be called in question through the neglect of those who conduct the works. If at any time Mr. Gurney finds the effluent water objectionable, he has only to close his conduit and keep the water out. This hitherto he has not done.

“Sewage irrigation requires to be undertaken and conducted with strict attention; the site must not be too near to dwellings, adjoining wells should be watched, and if the soil be very porous, disused; the sewage must be applied fresh, and over a sufficient area of land. If these conditions are observed, irrigation will be found to be the mode of dealing with sewage which results in the largest amount of good to the land and the smallest amount of harm to flowing water.

“There may be difficulty in some cases in finding land available for sewage irrigation, but, with the exception of lands liable to be flooded, there seems to be no soil that will not serve the purpose. Between the light and blowing sands of Edinburgh and the stiff clay of South Norwood are included all the mechanical differences of soil which can be met with in this country, but at both extremes we find the application of sewage attended with success. In some respects, indeed, a heavy clay is even more suitable than lighter soils; from its very nature it is more productive of healthy vegetation; and

from its well-known chemical properties, it is more effective in the purification of sewage. Sewage
irrigation.

"The same land will serve the purpose of sewage irrigation continuously. The process to the soil is one not of exhaustion, but of constant renovation. Part of the Craigentenny meadows has been continuously irrigated for two centuries. Sewage can be pumped any height and carried any distance. Its conveyance therefore to a given point is merely a matter of cost. There is no real difficulty in dealing with sewage, whether the volume be, as at Norwood, a few gallons per head, or, as we are informed that it is at Croydon, from two to four times as great as the water supply of that town. On a clay soil (or wherever pumping is necessary) it is desirable to restrict the dilution. On a gravelly porous soil, on the contrary, as shown by Mr. Marriage, it is an advantage that the sewage should be largely diluted, since it is then much more readily distributed over the surface.

"If a farm be large enough, there is no time when some portion of the land may not be capable of receiving the sewage. The process of irrigation may go on day and night, in wet and drought, in summer and in winter. At Croydon, where advantage is taken of gravitation, the sewage (though varying in volume at different hours) does run upon the land unintermittently, 'continuous as time itself.' This is a matter of first importance, regard being had to the necessity that sewage, as soon as produced, should be removed from the town and be applied whilst fresh.

"The powers which towns now possess for the purposes of applying their sewage to land are contained in—Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 45, 46, 84; Local Government Act, 1858, 21 & 22 Vict. c. 98, ss. 30, 68–75; Local Government Amendment Act, 1861, 24 & 25 Vict. c. 61, ss. 4–7; Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75; Land Improvement Act, 1864, 27 & 28 Vict. c. 114.

"At present there is no power of taking land for sewage irrigation except by agreement. If, however, the application to land of town-sewage be no longer optional, it will be necessary that towns should be furnished with adequate powers to take land compulsorily for irrigation; the exercise of such powers might be made subject to proper restrictions to prevent abuse.

"The cost to a town of sewage irrigation depends upon the balance of expenditure and profit. This must vary in different places.

"In the selection of a site for irrigation due regard should be had to economical considerations. The cost of conveying the sewage depends partly upon the distance, but still more upon the height to which it is to be pumped, the volume to be pumped, and the price of coal. Laying main pipes an additional length of a mile or two through open country involves an out-

Sewage
irrigation.

lay, the interest of which may be trifling as compared with the annual expense of pumping. Unless, therefore, there is much difference in the price of land, it would be cheaper to let the sewage flow by its own gravity a distance down the valley than to pump it to an adjoining upland. But saving in the first cost of land may be more than a set-off against the expense of additional piping and of pumping even to a considerable height. If all the land in the immediate neighbourhood of a town is building land, and none is to be had except for an inordinate price, the circumstance need create no difficulty; it will only be necessary to go farther for a site where land is to be had at a lower value. The Croydon Local Board of Health, as would appear from the evidence of their chairman and their engineer, are prepared, in the event of their being refused a renewal (on reasonable terms) of their present lease of Beddington Farm, to pump their sewage to an elevation of 150 feet, so as to command land at a distance.

“It is not necessary that the cost of preparing the land for sewage irrigation should be great. The carriers and distributing branches, whether made as open trenches or of earthenware or cast-iron piping, need not be costly. Whether the liquid is pumped or flows to its destination, its distribution over the land should always be effected by gravity.

“‘Filtration,’ in the sense in which the term is used of filtering water for domestic uses, is not applicable to sewage. Town sewage cannot be *filtered* through an ordinary sand filter, either by the downward or upward process; nor is it necessary in any case to attempt this form of filtration for sewage. Mechanical deposition and separation of grit and flocculent matter are alone required, and these operations can best be performed in open canal-like tanks.

“Fields irrigated with sewage can be used for horses and milch cows to graze upon, and will fatten cattle and sheep. But there are practical objections to such use. Cattle grazing in a sewaged field tread the surface and foul it with their dung, and are apt also to tread down the banks of the sewage-carriers and thereby to foul the effluent water. Dung, so applied, is not required for manure by the owner of a sewage farm. Sewage fields will yield wholesome hay; but in this uncertain climate there would be great difficulty in making hay from crops of grass so heavy. Where irrigation is carried on upon a large scale, if the crops are to be converted into hay, probably some artificial process of haymaking will be required.

“The most profitable course is, we believe, to sow Italian rye grass, and to sell the crop fresh cut as food for horses and cows. A field will in the year produce four or five crops, each of extraordinary weight. How often the grass should be re-sown depends upon a balance of considerations. Crops from the same seed annually deteriorate; on the other hand, to break up the soil involves temporary suspension of crops, additional

labour, and other expenses. At Norwood, where sewage opera-
tions commenced only a year ago (1865), the tenant has already
over part of the farm had crops of 50 tons per acre, and expects
in the ensuing year to obtain about 50 tons per acre uniformly
over the whole. At Edinburgh the strips of irrigated land are
let yearly at public roup, and fetch from £20 to £40 per Scotch
acre. At Croydon the meadows are equally productive. At
Worthing part of the sewage from a population of about 9000
persons was applied last year (1865) to 25 acres of land. The
value received for the produce was £645, or about £25 16s. per
acre. The expenses incurred were £229, viz.:—For labour,
£164, for sundries, £65;—£229, or at the rate of £9 3s. per
acre, leaving a balance of £16 13s. per acre for rent and inter-
est on outlay.

“After a consideration of the actual results, extending over
a number of years and obtained at various places and under
various conditions, we confidently endorse the third conclusion
of the last Report of the Royal Commission to which we have
already referred, that ‘When local circumstances are favour-
able, and undue expenditure is avoided, towns may derive
profit, more or less considerable, from applying their sewage
in agriculture. Under opposite circumstances there may not
be a balance of profit; but even in such cases a rate in aid,
required to cover any loss, need not be of large amount.’

“Upon many points connected with sewage-farms it would
be unwise to lay down any fixed rules, the proper course vary-
ing under different conditions of soil, climate, lie of the land,
&c., or remaining yet undetermined. For instance, as to what
is the most convenient disposition of the main carriers and dis-
tributing branches; what area of land suffices to purify a given
quantity of sewage; how often and at what times relatively to
the state of the crop such volume should be applied; the com-
parative effects of more and less diluted sewage; the compara-
tive value of light soil and heavy soil under sewage irrigation;
these and other like questions we prefer to leave to be settled
by further experience. But we would suggest that in carrying
out sewage irrigation the following points should be attended
to: 1. The irrigated fields should be at least one mile from the
town, and if possible in the direction of North or East. 2. The
extent should be not less than in the proportion of one acre to
every 150 inhabitants whose sewage is to be applied. 3. The
carriers should be so constructed as to retain as little residuum
of the sewage as possible. 4. Care should be taken so to
appropriate the land as to leave for each day a sufficient area
available for irrigation.

“The above remarks apply to the utilization of sewage of
towns of a considerable size; but sewage irrigation on a
smaller scale is practicable. It is carried out, for instance, at
Broadmoor asylum, under the superintendence of Mr. Menzies,
in the manner described by him in his paper (*Appendix, No. 18*).

Sewage
irrigation.

The success of these works is attested by a letter from the Chairman of the Board of Supervision of the Asylum, the Right Honourable Sir W. G. Hayter, Bart. (*Appendix, Nos. 19, 20*), who likewise permitted us to visit Broadmoor and see the works in operation. Sewage irrigation is also successfully carried on at Stafford county gaol and lunatic asylum; particulars were furnished to us by the governor of the gaol, and will be found in the *Appendix, Nos. 15, 16, 17*.

"Nor is there any difficulty in dealing with the sewage of isolated houses. In such cases the Rev. Mr. Moule's dry earth system may be advantageously employed: but, independently of this, direct application to land of such sewage is both easy and profitable.

"There is no reason why all sewage, whether from towns, villages, or separate houses, should not be applied to land instead of being passed direct into flowing water."

The Rivers Commissioners in their third report, p. xiv., say that "the only general rules applicable to sewage irrigation in all cases, are that the works should be simple and cheap. Land to be irrigated does not require costly work in shaping and levelling, neither need there be expensive tanks to receive and store sewage. Heavy clay land which has been ridge and furrow ploughed, may have the surface brought to an uniform slope by lowering the ridges and filling in furrows, so as to prevent sewage, when applied, falling into each furrow as into a conduit, leaving the ridges comparatively bare. Such work may cost about £5 per acre. Small fields may have useless hedges removed, so as to have larger areas at command. Under-draining may or may not be necessary; this must be settled after an examination of the subsoil to be dealt with. If under-draining be adopted, cheap drains answer best, and these should be laid so as to extract water and admit air. Where the surface contours will allow of interception, sewage water from drains may be turned on to the land three or four times with advantage, and with a certainty of extracting more of the salts of sewage. Sewage meadows ought to be laid out on a plan similar to that adopted for water meadows. Carriers should contour the surface at intervals apart, in proportion to the character of the soil and the slope of the surface. Where main open carriers may be considered a nuisance, as near houses, roads, or footpaths, they may be covered conduits having cheap outlet-valves at a chain apart; carriers in the fields may be open grips, formed with plough or spade, and such as to be broke up if necessary when a change of crop is made. A cheap main carrier can be formed with common agricultural drain tiles, butt-jointed, laid half in and half out of the ground; a single piece or length of pipes can then be removed by hand at any point, to allow of irrigation, and these same pipes can be readily replaced again. Where foul smells are complained of as coming from sewage irrigated lands, the

causes are in the state of the sewage, and in the rude mode of Sewage using it. If old and putrid sewage is stored in large tanks, or irrigation. is conveyed in large open ditches which are never cleaned, there will be offensive taint. Fresh sewage does not give off so offensive a taint, and if conveyed at once by covered conduits to land, all nuisance ceases immediately. Cast-iron piping and hose, and jet application, are costly to provide and expensive to manipulate. If they are adopted, some special reason must have been urged to warrant this form of extra outlay, as for lawns and fields near houses, or for gardens. The produce from properly irrigated land will be from five to ten fold that of the same land under ordinary cultivation."

But leaving theoretical teaching, let us see what the legal powers of Local Boards are with regard to the removal of sewage matter from towns and dwellings.

The Local Board are to cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied; and for that purpose they may construct, either above or under ground, such works as may be necessary, and cause all or any of the sewers to communicate with and be emptied into such places as may be fit and necessary, or the sewage and refuse to be collected for sale, but so as not to create a nuisance.

Cleansing
and emptying
sewers, etc.
11 & 12 Vict.
c. 63, s. 46.

The jurisdiction of the Local Board under this provision is however confined to sewers vested in them, and therefore within their own district. (1) If the works of sewerage and drainage create a nuisance and an injury to the property of individuals, the Local Board may be restrained by injunction from proceeding with the works. (2)

Section 46 of 11 & 12 Vict. c. 63, does not authorize a Local Board of Health to enter upon the lands of a person *in invitum* for the construction of a reservoir or cesspool to be used for collecting and deodorizing sewage matter. The section only applies to the right to purchase lands, such right being followed by what may be necessary for emptying and cleansing the sewers, and therefore the Court will grant an injunction to restrain such entry. The section, Kindersley, V.C., said, applies only to keeping the sewers in a proper state, so as not to create a nuisance, and for cleansing and emptying them, and for that purpose to make reservoirs, sluices, etc., and it would be very unfair to construe the section so as to give the Board the power of making a reservoir for the purpose of retaining the sewage, and not to carry it off. (3)

The plaintiffs were owners of land on the bank of a river in which they had watering-places and a free-fishery; a Local

(1) *Haywood v. Lowndes*, 5 Jur. (N. s.) 185; 32 L. T. 366.

(2) *Attorney-General v. Birmingham*, 22 J. P. 561,

(3) *Sutton v. Norwich (Mayor, &c.)*, 27 L. J. (N. s.) Ch. 739; 31 L. T. 389.

Pollution of
river by sewer-
age.

Board having carried their sewers through lands with an outlet into the river, it was held that the plaintiffs had an "interest" in the river within the Act, and were entitled to an injunction to restrain the Board from interfering with it, but that they would not be able to maintain an action for an interference with their rights unless they were injured thereby. (1) So also the prescriptive right of owners of certain houses to drain their premises into a river is not vested in the Local Board of Health, that being a new body, who were therefore held not to be entitled to carry down any additional sewage into the river without first obtaining the consent of the owners, the Local Board of Health, as a modern body, having no prescriptive rights. (2)

In *Oldaker v. Hunt* (1) it was also held that works of a Local Board of Health, producing an outfall of the sewerage of a town above such a watering-place as that referred to, was such an interference as to cause injury to the landowners, and that whether this was established or not, it ought (if not consented to by them) to be restrained by injunction, being the act of a public body exercising its powers. So where one owner sues another for injury to his riparian rights by polluting a stream, it is not a conclusive answer that the stream was originally artificial, for the circumstances under which it was made may show that the owners acquired riparian rights in it. (3)

Again, the owner of land through which water flows in an artificial subterraneous course, and not in a distinct stream, cannot maintain an action for the diversion by another of such water from such course. (4)

Pollution of
stream.

Where, however, the owner of a paper-mill used a stream of water which flowed from a cavern in his lands, and the owner of a lead mine on a higher elevation, after washing his lead ore, discharged the refuse into a drain which found its way through rocky ground into the cavern, and thus polluted the stream of water used by the owner of the paper-mill, it was held that the latter had a right of action, for the owner on the higher ground was bound to see that his refuse water did no injury to his neighbour. (5)

Pollution of
well.

If sewage percolates from a cesspool through the soil into a well on an adjoining property, the Court will restrain the use of the cesspool in such a manner as to pollute the water in the well. (6)

In some districts, before sewage or sewage water can be dis-

(1) *Oldaker v. Hunt*, 6 De G. Mac. & G. 376; 1 Jur. (N. S.) 785.

(2) *Attorney-General v. Luton*, 20 J. P. Ch. 163; 2 Jur. (N. S.) 180. See also *Laing v. Whally*, 31 L. T. 368, in error from the Exchequer.

(3) *Sutcliffe v. Booth*, 9 Jur. (N. S.) 1037; 32 L. J. (N. S.) Q. B. 136.

(4) *Wardle v. Brocklehurst*, 1 E. & E. 1058, affirmed in error from Q. B. ib. 1065.

(5) *Hodgkinson v. Ennor*, 4 B. & S. 229.

(6) *Womersley v. Church*, 17 L. T. (N. S.) 190.

charged into a river, it must be filtered, so as to be free from noxious and offensive matter, as is the case at Leamington, where it is required that before the sewage is discharged into the rivers Avon or Leam, it shall be "certified to be free from such matter, by the General Board of Health under their hands and seal, after examination and report thereon by one of their superintending inspectors."

Discharge of filtered sewage into rivers.

15 & 16 Vict. c. 69, s. 5.

For the purpose of disposing of sewage matter, the Local Boards may, —

Disposal of sewage.
21 & 22 Vict. c. 98, s. 30.

- (1.) Exercise the powers given by 11 & 12 Vict. c. 63, s. 46, also without their district, if necessary for the purpose of outfall and distribution of sewage, upon making due compensation, to be settled in the manner provided in the 144th section of the Public Health Act, 1848. They could only do so "if necessary," and for the purpose of the 46th section of the 11 & 12 Vict. c. 63; (1) but see the subsequent enactments in the 24 & 25 Vict. c. 61, ss. 4 to 7 (*ante*, pp. 94-95), and *Cator v. Lewisham*, *ante*, p. 92.

- (2.) Contract with any company or person for the sale of sewage, or for the distribution of it over any land; and

- (3.) Contract to purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage:

Provided that these things shall be done so as not to create a nuisance.

Where a sewer authority, or any corporate or other body, under any power enabling them in that behalf, or by any agreement confirmed by Parliament, has agreed or hereafter agrees with any person or persons or body of persons, corporate or unincorporate, as to the supply of all or any of the sewage of any place, and the works to be made for the purpose of that supply, they may contribute to the expense of carrying into execution by such person or persons or body of persons all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to such matters has been or may hereafter be entered into by such sewer authority or corporate or other body, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested. All expenditure in consequence of the exercise of the power so conferred shall be deemed to have been incurred by the sewer authority or corporate or other body in the construction or due maintenance of the necessary sewers for carrying away the said sewage, and shall be provided for accordingly.

Contribution to works under contracts relating to supply of sewage.
30 & 31 Vict. c. 113, s. 15.

A subject which is not strictly in connection with the powers

(1) *Haywood v. Lowndes*, 5 Jur.(N. S.) 185; 32 L. T. 366.

Easement
with regard
to drainage.

of Local Boards with regard to sewerage, but which is nevertheless one of considerable interest to owners of property, may be adverted to in concluding this section. The subject is the right an owner may have to an easement in his neighbour's property with regard to the conveyance of sewage matter over or through such property. Such right can only be in the nature of an easement by express grant, or by an implied grant. If it be acquired by express grant, the terms of the grant will regulate the extent and enjoyment of the easement. If on the other hand it be by an implied grant, then it will be to consider what amounts to such a grant, and the nature of it. The following are the leading cases on the subject. The first (though it has since been dissented from, as will be presently stated) established that where the owner of two or more adjoining houses sells and conveys one of them to a purchaser, such house is entitled to the benefit, and is subject to the burden, of all existing drains communicating with the other house, without any express reservation or grant for that purpose. Thus, the plaintiff's and defendant's houses adjoined each other; they having formerly been one house and converted into two by the owner of the whole property. Subsequently the defendant's house was conveyed to him, and after that the plaintiff took a conveyance of his house. At the time of these conveyances a drain ran under the plaintiff's house, and then under the defendant's house, and discharged itself into the common sewer. Water from the eaves of the defendant's house fell on the plaintiff's house, and then ran into a drain on the plaintiff's premises, and then through the drain into the common sewer, through which the plaintiff's house was drained. On the trial of the action a verdict was entered for the plaintiff with leave to the defendant to move to enter a verdict for him, and it was held by the Court that the plaintiff was, by implied grant, entitled to have the use of the drain as it was used at the time the defendant purchased his house. (1) In a later case, however, it was held that an easement which is neither continuous nor apparent cannot be supported; and that mere knowledge of the manner in which property conveyed was used by a vendor for the convenience of an adjoining tenement will not affect the purchaser, if the property is conveyed without reservation. Therefore a grantor cannot claim rights over property absolutely granted, even if such rights were at the time of the grant continuous and apparent easements enjoyed in respect of an adjoining tenement, which remains the property of the grantor. (2) In giving this judgment the Lord Chancellor, with reference to *Pyer v. Carter*, said that he could not look upon that case as rightly decided, and must wholly refuse to accept it as any authority. It is, however, thought

(1) *Pyer v. Carter*, 1 H. & N. 916.

(2) *Suffield v. Brown*, 10 Jur. (N. S.) 111.

to be by no means clear that it would be held by the highest tribunal, if the question should arise before it, that *Pyer v. Carter* was wrongly decided. (1) The other case referred to above establishes that where two properties are possessed by the same owner, and there has been a severance made of part from the other, anything which was used and was necessary for the comfortable enjoyment of that part of the property which was granted must be considered to follow from the grant. Therefore where the owner of two adjoining properties, consisting of a tan-yard and a house and garden, made a cesspool in the corner of the garden, and a drain to carry water into it from the tan-yard, which gradually sloped down towards the garden, and in the year 1819 sold the two properties to different persons, the conveyance making no allusion to the existence of the drain and cesspool, it was held on appeal to the House of Lords from a decision of the Court of Session in Scotland, that the easement passed by an implied grant with the tan-yard; and per Campbell, L.C., "I consider the law of Scotland as well as the law of England to be, that when two properties are possessed by the same owner, and there has been a severance made of part from the other, anything which was used and was necessary for the comfortable enjoyment of that part of the property which is granted shall be considered to follow from the grant if there be the usual words in the conveyance." (2) Again, where a conveyance contained the following clause, "save and except and always reserved unto the said A. B., his heirs and assigns, the power to enter upon the said land, and to dig and make a covered sewer or watercourse through the said land in order to convey the waste water from the premises of the said A. B. into the river W. on making reasonable compensation to the said C. D. for any damage or injury which might be occasioned thereby, either to the surface of the ground, or the building under which the same might be made," and A. B. having constructed a covered drain or sewer in pursuance of the power, and C. D. made an opening into it and drained his premises through it, it was held that the reservation gave A. B. a right to the exclusive use of the sewer. (3)

In the case of a right of way over a tenement which had been severed, the Master of the Rolls held that there could be no grant of such a right under the words "all ways heretofore occupied or enjoyed," when the user arose solely during the unity of possession for the convenience of the former owner while holding both tenements, when such convenience ceased to exist after the severance. (4)

(1) See the M. R. in *Morland v. Cook*, L. R. 6 Eq. 265.

(2) *Ewart v. Cochrane*, 7 Jur. (N. S.) 925.

(3) *Lee v. Stevenson*, 1 E. B. & E. 512; 4 Jur. (N. S.) 950.

(4) *Thomson v. Waterlow*, 18 L. T. (N. S.) 545; L. R. 6 Eq. 36; 37 L. J. Ch. 495. See also *Langley v. Hammond*, L. R. 3 Exch. 161; 37 L. J. Exch. 118; 18 L. T. (N. S.) 858.

§ 4. DRAINAGE INTO THE RIVER THAMES.

The district drained by the river Thames is so extensive, and there are so many Local Board districts in the immediate neighbourhood of that river, or in close proximity to it, that this work would be incomplete without a reference to the clauses of the Thames Navigation Act, 1866 (29 & 30 Vict. c. 89), which restrains drainage from towns into the river so as to pollute the water.

Interpretation
of terms :
extent of Act,
29 & 30 Vict.
c. 89, s. 2.

The preamble recites, "And whereas it is expedient that provision be made in this Act for preventing the pollution of the Thames between Cricklade and Staines, and that application for another Act for preventing the pollution of the Thames between Staines and the western boundary of the district under the authority of the Metropolitan Board of Works be made to Parliament by the Conservators;" and by section 2 enacts, the term "the Thames" or "the river" means (unless a different meaning is expressed or implied) the river Thames or rivers Thames and Isis from the City stone near Staines to Cricklade.

Extension
from Staines
to Metropolis
of provisions
against
pollution.
30 Vict.
c. ci. s. 3.

By the Thames Conservancy Act, 1867, 30 Vict. c. ci. (which is to be construed as one with the Thames Conservancy Acts, 1857 and 1864, and the Navigation Act of 1866), the provisions of section 52 and sections 63 to 69 (both inclusive) of the Navigation Act of 1866, are extended so as to apply to the Thames from the City stone near Staines to the western boundary of the metropolis, and to so much of every river, stream, cut, dock, canal, and watercourse communicating with that part of the Thames as lies within three miles of the Thames measured in a direct line therefrom, and for that purpose the term "this Act" used in those provisions shall be taken to include the 30 Vict. c. ci.

Surface of
river to be
scavenged.
29 & 30 Vict.
c. 89, s. 52.

By section 4 of the Act the Conservators of the river Thames are incorporated, and they shall cause the surface of the Thames to be (as far as is reasonably practicable) effectually scavenged, in order to the removal therefrom of substances liable to putrefaction.

Duty of con-
servators to
preserve flow
and purity of
water down
to Metropolis.
30 Vict.
c. ci. s. 5.

Subject and without prejudice to their existing powers, rights, and privileges, it shall be the duty of the Conservators by all lawful and proper means to preserve and maintain at all times as far as may be the flow and purity of the water of the Thames and its tributaries down to the western boundary of the metropolis, and the discharge of that duty, and the proper exercise and execution of the powers and functions of the Conservators under the Thames Conservancy Acts, 1857 and 1864, and the Navigation Act of 1866, and the Upper Navigation Acts therein referred to, shall be deemed purposes of the Thames Conservancy Act, 1857, within the meaning of sections 111 to 113 (both inclusive) of that Act.

Any body corporate, commissioners, or other body, and any trustees or other persons, may from time to time contribute out of or by means of the funds or property under their respective management or control, and lawfully at their disposal for this purpose, or belonging to them, such sums of money in such form and on such terms and conditions as they think fit (but not so as to prejudice any right or interest of any person) towards the cost of such improvements in or relating to the Thames under this Act, as they deem beneficial to any lands under their management or held by them, or to the inhabitants of any town or district in or adjoining to which those lands are situate.

Powers for bodies corporate, etc. to contribute towards cost of improvements in river Thames.
29 & 30 Vict. c. 89, s. 62.

From and after the passing of this Act it shall not be lawful for any person to do any of the following things, namely:—

- (1.) To open into the Thames any sewer, drain, pipe, or channel with intent or in order thereby to provide for the flow or passage of sewage, or of any other offensive or injurious matter:
- (2.) To cause or without lawful excuse (the proof whereof shall lie on the person accused) to suffer any sewage or any matter aforesaid to flow or pass into the Thames down or through any sewer, drain, pipe, or channel not at the passing of this Act used for that purpose:
- (3.) To open into any river, stream, cut, dock, canal, or watercourse communicating with the Thames at any point within three miles of the Thames, measured in a direct line therefrom, any sewer, drain, pipe, or channel with intent or in order thereby to provide for the flow or passage of sewage or of any matter aforesaid in such manner that the same will be carried or be likely to be carried by, through, or out of that river, stream, cut, dock, canal, or watercourse into the Thames:
- (4.) To cause or without lawful excuse (the proof whereof shall lie on the person accused) to suffer any sewage or any matter aforesaid to flow or pass into any such river, stream, cut, dock, canal, or watercourse at any point within the distance aforesaid down or through any sewer, drain, pipe, or channel not at the passing of this Act used for that purpose, in such manner that the same will be carried or be likely to be carried by, through, or out of that river, stream, cut, dock, canal, or watercourse into the Thames.

Pollution of water: when sewage, etc. prohibited from being sent into river Thames.
Ib. s. 63.

If any person does any act or thing in contravention of this enactment, he shall for every such offence be liable on summary conviction to a penalty not exceeding £100, and to a further penalty not exceeding £50 for every day during which the offence is continued after the day on which the first penalty is incurred.

Whenever any sewage or any other offensive or injurious matter is caused or suffered to flow or pass into the Thames, or is caused or suffered to flow or pass into any river, stream,

Notice for discontinuance of existing

sewerage
works.
29 & 30 Vict.
c. 89, s. 64.

cut, dock, canal, or watercourse communicating with the Thames, at any point within three miles of the Thames, measured in a direct line therefrom, in such manner that the same is carried or is likely to be carried into the Thames, then and in every such case, whether any such sewage or other matter aforesaid had or had not been so caused or suffered to flow or pass before the passing of this Act, the Conservators within a reasonable time after knowledge of the fact shall and they are hereby required to give notice in writing under their common seal to the person or body causing or suffering the same so to flow or pass, to the effect that they require him or them to discontinue the flow or passage thereof as aforesaid within a time to be specified in the notice, not being in any case less than twelve months or more than three years: provided that the Conservators may, if they think fit, at any time and from time to time extend the time specified in the notice by another notice in writing under their common seal; but nothing in this section shall authorize the Conservators, until the expiration of six months after the passing of this Act, to give to the owner or occupier of any mill or work a notice requiring him to discontinue the flow or passage as aforesaid of any liquid matter produced or used in the manufacture of paper or in any process incidental thereto.

Penalty for
disregard of
notice.
Ib. s. 65.

Subject to the provisions of this Act, any person to whom any such notice is given by the Conservators shall, notwithstanding anything in any other Act, within the time allowed by the notice, discontinue the flow or passage of the sewage or other offensive or injurious matter to which the notice refers, and if any person fails to do so he shall be guilty of a misdemeanor, and shall be liable, on summary conviction thereof before two or more justices, or on conviction thereof on indictment, to a penalty not exceeding £100, and to a further penalty not exceeding £50 for every day during which the offence is continued after the day on which the first penalty is incurred.

Power to
obtain extension of time.
Ib. s. 66.

Provided always, that if any person to whom any such notice is given thinks himself aggrieved by reason of the time allowed, either by the original or by any subsequent notice, not being sufficient to enable him to discontinue the flow or passage of the sewage or other offensive or injurious matter to which the notice refers, he may, not later than one month before the expiration of the time so allowed, by writing delivered to the secretary of the Conservators, demand an extension of such time; and in case the Conservators refuse to comply with such demand, the question of such extension shall be referred to an arbitrator appointed by agreement, or, failing agreement, by the Board of Trade, on the application of either party, and the decision of the arbitrator shall be final, and the costs of the reference shall be in the discretion of the arbitrator.

Definition of
"person."

In construing the foregoing section (section 66) the word "person" shall include any corporation or any other local

authority to whom the notice under section 64 of the 29 & 30 Vict. c. 89, may be given by the Conservators.

Notwithstanding anything in the Thames Conservancy Act, 1857 (section 160), any proceeding in pursuance of this Act in respect of such a misdemeanor as aforesaid may be removed by certiorari into Her Majesty's Court of Queen's Bench at Westminster; and notwithstanding anything in the same Act (section 162), the Court of Quarter Sessions shall hear and determine with a jury any appeal brought against any adjudication or determination in respect of such a misdemeanor as aforesaid.

It shall not be competent for any person, other than the Conservators, their officers, attorneys, solicitors, or agents, to institute or carry on any proceeding or prosecution under the provisions of this Act relative to the flow or passage of sewage or of any matter aforesaid.

Nothing in the provisions of this Act relative to the flow or passage of sewage or of any matter aforesaid shall be deemed to legalize or permit any nuisance, or shall take away or prejudicially affect any remedy or right which the Conservators or any person would or might have had or exercised if this Act had not been passed as against the person for the time being causing or suffering the flow or passage thereof.

Carrying out the recital in the preamble (*ante*, p. 130), as to an application to Parliament for a further Act, it is enacted that the Conservators shall apply to Parliament, so soon as the usage and practice of Parliament will permit, for an Act containing such provisions in relation to the Thames between Staines and the western boundary of the district under the authority of the Metropolitan Board of Works as are not already in force in relation to that part of the Thames, and as are contained in this Act in relation to the Thames between Cricklade and Staines, or such other provisions as will enable them efficiently to preserve and purify the waters of the Thames.

In the following session of Parliament the Thames Conservancy accordingly applied for and obtained an Act, "The Thames Conservancy Act, 1867," 30 Vict. c. ci., to extend their powers from the City stone, near Staines, to the western boundary of the metropolis. The sections of that Act which are material to this work (*i.e.* sections 3, 4, 5) will be found *ante*, p. 130.

NOTICES under the Act 29 & 30 Vict. c. 89, s. 64, were served under the seal of the Conservators of the River Thames, according to the following form:—

"WE, the Conservators of the River Thames, hereby give you notice, in conformity with the provisions of the 64th section of the Act 29 & 30 Vict. c. 89, that we require you to discontinue, within 13 months from this date, the flow or passage of sewage or any other offensive or injurious matter into the River Thames from the sewers, drains, pipes, or channels at or near
 , all within or near to the
 , or from any other sewer, drain, pipe, or channel under your management or control which discharges into the River Thames, or into any river,

30 Vict.
c. ci. s. 4.

Power for
removal of
proceedings
by certiorari,
and appeal to
be with a jury.
29 & 30 Vict.
c. 89, s. 67.

Right to pro-
secute to be
in Conser-
vators only.
Ib. s. 68.

Nothing
deemed to
legalize
nuisances, or
affect any
remedy which
Conservators
at present
have.
Ib. s. 69.
Conservators
to apply to
Parliament for
further
powers.
Ib. s. 90.

Notices served
under Act.

Notices.

stream, cut, dock, canal, or watercourse which communicates with the River Thames at any point within three miles of the said river, measured in a direct line therefrom."

LIST of Bodies and Persons on whom such Notices were served :—

Body or Person on whom Served.	Locality of Sewer.	Date.
Mayor, &c. of the city of Oxford.	Folly Bridge Magdalen Bridge, Hythe Bridge.	4 May 1867
Oxford Local Board . .	Folly Bridge, Magdalen Bridge, Hythe Bridge.	4 May "
Chancellor, Masters, and Scholars of the university of Oxford.	Folly Bridge, Magdalen Bridge, Hythe Bridge.	4 May "
Mayor, &c. of Abingdon .	Abingdon Bridge and St. Helen's Church.	2 May "
Commissioners for Improving the town of Abingdon.	Abingdon Bridge and St. Helen's Church.	2 May "
Justices of the Peace for the county of Berks.	County Gaol, Abingdon . .	2 May "
Mayor, &c. of Wallingford	Wallingford Bridge . . .	3 May "
Wallingford Local Board .	Wallingford Bridge . . .	3 May "
Mayor, &c. of Reading . .	At Reading	4 May "
Reading Local Board . .	At Reading	4 May "
Justices of the Peace for the county of Berks.	County Gaol, Reading. . .	2 May "
Mayor, &c. of Henley-upon-Thames.	One on the north and the other on the south side of the bridge which crosses the River Thames at Henley-upon-Thames, both of which are on the Oxfordshire side of the said river.	3 May "
Local Board for the district of Henley.	One on the north and the other on the south side of the bridge which crosses the River Thames, at Henley-upon-Thames, both of which are on the Oxfordshire side of the said river.	4 May "
Surveyor of the Highways for the parish of Great Marlow.	At or near the bridge of Great Marlow on the Bucks side.	3 May "
Surveyors of the Highways for the parish of Cookham.	Near the bridge which crosses the Thames at Cookham on the Berks side.	3 May "
Local Board of Health of the borough of Maidenhead.	To the eastward of the village of Bray.	1 Oct. "
Mayor, &c. of New Windsor	Near the "Albert" Bridge on the Berks side.	4 May "
Windsor Local Board of Health.	Near the "Albert" Bridge on the Berks side.	4 May "
Clerk of the Works at Windsor Castle, and all others whom it may concern.	Near the "Albert" Bridge on the Berks side.	4 May "

Body or Person on whom served.	Locality of Sewer.	Date.
Provost, Vice-provost, and Fellows of Eton College.	Near Romney Pound Lock on the Bucks side.	27 May 1867
Local Board of Health, Eton.	Near Romney Pound Lock on the Bucks side.	27 May „
Guardians of the Poor of the Eton Union.	Near the Union Workhouse at Upton, Bucks.	4 Dec. „

LIKE NOTICES were served under the Acts 29 & 30 Vict. c. 89, and 30 Vict. c. 101, on the following Bodies and Persons:—

Body or Person on whom Served.	Locality of Sewer.	Date.
Rev. John Clarke, Cowley House, Chertsey.	Into the Bourne Brook, Chertsey.	5 Nov. 1867
Henry Roake, market gardener, Chertsey.	Into the Bourne Brook, Chertsey.	5 Nov. „
Robert Harris, butcher, Chertsey.	Into the Bourne Brook, Chertsey.	5 Nov. „
Dearle, butcher, Chertsey	Into the Bourne Brook, Chertsey.	5 Nov. „
Churchwardens and Overseers of the parish of Sunbury.	Near the "Flower Pot," Sunbury.	4 Sept. „
Churchwardens and Overseers of the parish of Hampton.	To the westward of the Ferry at Hampton.	3 Sept. „
Her Majesty's Secretary of State for War, Whitehall.	Barracks and other premises at Hampton Court, and discharging above Hampton Court Bridge.	5 Sept. „
Commissioners of Her Majesty's Works and Public Buildings, Whitehall.	Hampton Court Palace, and discharging below Hampton Court Bridge.	5 Sept. „
Surbiton Improvement Commissioners.	Footpath adjoining Portsmouth-road.	29 Aug. „
Mayor, &c. of Kingston-on-Thames.	North-east side of the Railway Bridge at Kingston.	29 Aug. „
Local Board of Health of Hampton Wick.	Lower side of Kingston Bridge	29 Aug. „
Kingston District Highway Board.	Near the Draw Dock, Mortlake	20 Sept. „
	Near the "Bull's Head" public-house, at Barnes.	20 Sept. „
Churchwardens and Overseers of the parish of Thames Ditton.	Near the ferry at the "Swan" Inn, Thames Ditton.	5 Nov. „
Local Board of Health of Teddington.	Near the Draw Dock, at Teddington.	3 Sept. „
Board of Surveyors of the parish of Twickenham.	To the north of Eel Pie Island	29 Aug. „
	Near the towing-path to the east of St. Helena-terrace, Richmond.	21 Sept. „
Vestry of the parish of Richmond.	Near the public stairs at the south-east of Richmond Bridge.	21 Sept. „
	Near the railway bridge at Richmond.	21 Sept. „

Notices.

Body or Person on whom Served.	Locality of Sewer.	Date.
Board of Guardians of Richmond Union.	Near Bull's Alley, Mortlake, Surrey.	3 Dec. 1867
Local Board of Health of the parish of Ealing.	Near Smith's Hill, Brentford	29 Aug. „
Secretary of the South Western Railway Company.	Near the "Indian Queen" public-house, at Strand-on-the-Green.	27 Aug. „
Vestry of the parish of Mortlake.	Near Bull's Alley, Mortlake.	30 Nov. „
Chiswick Improvement Commissioners.	{ Near the parish church of Chiswick.	7 Sept. „
	{ Near the Draw Dock, Chiswick	7 Sept. „

NOTICES in the following form were served on Proprietors of PAPER MILLS, under Act 29 & 30 Vict. c. 89, s. 64:—

"WE, the Conservators of the River Thames, hereby give you notice, in conformity with the provisions of the 64th section of the Act 29 & 30 Vict. c. 89, that we require you to discontinue, within 13 months from the service hereof, the flow or passage of sewage, or any other offensive or injurious matter, whether solid or liquid, and whether produced or used in the manufacture of paper, or in any process incidental thereto, or otherwise, from the mill and premises at or near _____, in your occupation or under your management or control, into the River Thames, or into any river, stream, cut, dock, canal, or watercourse which communicates with the River Thames at any point within three miles of the said river, measured in a direct line therefrom."

Name of Proprietor.	Locality of Mill.	Date.
T. Routledge & Co.	Eynsham, Oxfordshire	3 Sept. 1867
T. Cambe	Wolvercote, near Oxford . . .	4 Sept. „
Robert Moore Jeffries . . .	Liberty of Grandpont, parish of St. Aldates, county of Berks; Weirs Mill.	4 Sept. „
John Towle	Hinksey, South Hinksey, Berkshire.	4 Sept. „
Granville, Pixley, & Co. . .	Sandford Paper Mills, Sandford-on-Thames, Oxfordshire.	4 Sept. „
John Thomas Norris . . .	Sutton Courtney, Berkshire .	5 Sept. „
William Edward Saker . . .	Shiplake, Oxfordshire	7 Sept. „
Harriet Allen and Mary Allen.	New Mills, Peppard, near Henley, Oxfordshire.	7 Sept. „
Charles Venables, junior . .	Taplow Mills, Taplow, Buckinghamshire.	10 Sept. „
William and Joseph Wright	Marlow Paper Mills, Great Marlow, Buckinghamshire .	11 Sept. „
Henry Wheeler	Hedge Mill, near Loudwater, Buckinghamshire.	11 Sept. „
Thomas Henry Saunders . .	Beech Mill, High Wycombe, Buckinghamshire.	11 Sept. „
Thomas Plaistowe, Richard Henry Plaistowe, and James Plaistowe.	{ Lower Mill, near Loudwater, Buckinghamshire.	11 Sept. „
	{ Upper Mill, near Loudwater, Buckinghamshire.	11 Sept. „

Name of Proprietor.	Locality of Mill.	Date.	No. ices.
Thomas Burch Ford . .	{ Snakely Mill, near Loudwater, Buckinghamshire.	11 Sept. 1867	
Grosvenor, Chater, & Co. .	{ Overshot Mill, near Loudwater, Buckinghamshire.	11 Sept. „	
John Goodson Tuney . .	{ Glory Mills, Wooburn, Buck- inghamshire.	11 Sept. „	
Thomas Stephens & Green	{ Wooburn Mills, Wooburn Green, near Beconsfield, Buckinghamshire.	11 Sept. „	
John Hezekiah Jackson .	{ Soho Mill, Wooburn, Bucking- hamshire.	11 Sept. „	
William Wilson Morley .	{ Prince's Mill, Wooburn . .	11 Sept. „	
Thomas Lunnon . . .	{ Gunpowder Mill, Marlow-road, near Great Marlow, Buck- inghamshire.	11 Sept. „	
William Lunnon . . .	{ Lower Mill, Marlow-road, Marlow, Buckinghamshire.	11 Sept. „	
Mary Venables . . .	{ Hedsor Mill, Marlow-road, near Great Marlow, Buck- inghamshire.	11 Sept. „	
Ladelle & Co. . . .	{ Cookham Mills, Cookham, Berkshire.	11 Sept. „	
P. Ibotson & Sons . . .	{ Wraysbury, Buckinghamshire	16 Sept. „	
Edward Tyrrell . . .	{ Hythe End, near Staines, Buckinghamshire.	16 Sept. „	
	{ Horton Mills, Horton, Buck- inghamshire.	16 Sept. „	
	{ Poyle Mills, Poyle, Middlesex	16 Sept. „	
	{ Horton Mills, Horton, Buck- inghamshire.	16 Sept. „	

The Conservators have, with a view to preserving from impurity the waters of the Thames above the point of the water supply, provided a steam-tug to pass up and down the river, and remove any objectionable substance which may be observed. They have also given instructions to all the lock-keepers and other persons in their employ to the same effect.

The following are the instructions given by the Conservators for scavenging the river:—

“Every lock-keeper, workman, and all other persons in the employ of the Conservators on the river throughout the jurisdiction, about 120 in number, have orders to remove all dead animals and other substances calculated to pollute the water, and care is taken that those orders are efficiently performed; and the crew of the steam vessel, which is constantly passing up and down the river, are specially employed for the same purpose.”

CHAPTER III.

DITCHES, DRAINS, &c.

Offensive
ditches,
drains, etc.,
to be cleansed
or covered.
11 & 12 Vict.
c. 63, s. 58.

THE Local Board are to drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health; and cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon any such exists, requiring him, within a time to be specified in the notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge (of the contents) thereof, as the case may require.

Ib.

If the person to whom the notice is given fail to comply with it, the Local Board shall execute the works, and the expenses incurred in so doing are recoverable in a summary manner before two justices (29 & 30 Vict. c. 90, s. 54), or in the County Court if the amount is below £20 (24 & 25 Vict. c. 61, s. 24), or the Local Board may by order declare them to be private improvement expenses, and recover them as such. The Board may, however, order that the whole or a portion of the expenses so incurred shall be defrayed out of the general district rates, and in case they make any such order, the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly.

The proceedings of the local authority in the above-mentioned respects must be confined to matters existing within their district, as they are not authorized to go beyond their district in the execution of the Public Health Acts. In a clause in the Local Act of the parish of St. Mary, Islington, on this subject, it was held that it applied to the description of nuisances provided against only when committed within that parish, and not when committed beyond its limits. (1)

Cleansing
ditches, etc.

With regard to the primary liability to cleanse and repair drains, it was held, in an action for nuisance to the plaintiff's lands by reason of the foul state and bad repair of drains, of which the defendant was the owner and proprietor, situate on his land adjoining that of the plaintiff, and which the defendant, as owner, ought to have repaired, that the cleansing and repairing

(1) *Flight v. Clarke*, 13 M. & W. 155.

drains and sewers is, *primâ facie*, the duty of him who occupies the premises, and does not devolve upon the owner merely as such. (1) (See *post*, p. 146.)

Special powers with respect to drainage are conferred upon some Local Boards of Health, as in the case of the Wakefield Board, who are empowered to straighten, deepen, cleanse, and cover over all becks and running streams within the borough, and to prevent all pollution of such becks and streams by the discharge of any sewage, refuse, dye-stuff, washings, or other noxious or offensive matter therein. For these purposes, as well as for the purposes of assessment to defray the costs of the necessary works, the word "sewer" in the Public Health Act, 1848, is to include becks and running streams of water within the borough.

Special powers,
Wakefield.
16 & 17 Vict.
c. 24, s. 6.

Every Local Board may, with the consent of the Local Board of any adjoining district, or with the consent of any adjoining place maintaining its own poor, do and execute in the adjoining district or place all or any of such works and things as the Local Board may do and execute within their own district, and upon such terms as to payment or otherwise as may be agreed upon between the respective local authorities. Any sums agreed to be paid by the Local Board of the adjoining district, are payable out of the rates leviable under the Public Health and Local Government Acts; and any sums agreed to be paid by a local authority, acting under the Nuisances Removal Act, 1855, are payable out of the same rates as the expenses of executing that Act. The consent of any place to any work or thing proposed to be done as above mentioned, is to be signified in the same manner in which the consent of a place to the adoption of the Local Government Act is required to be signified (see *ante*, p. 12); and where the expenses of any such work or thing would, if it had been executed in a district under the Local Government Act, have been recoverable from owners or occupiers, such expenses are recoverable by the Local Board or local authority of the district or place respectively from such owners or occupiers.

Power to
Local Board
to execute
works in
adjoining
places.
21 & 22 Vict.
c. 98, s. 28.

In case any watercourse or open ditch lying near to or forming the boundary between the district of any Local Board and any adjoining parish or place shall be foul and offensive, so as injuriously to affect the district of the Local Board, any justice of the peace for the county, city, or borough in which the adjoining parish or place may be situate may, on the application of the Local Board, summon the local authority for the purposes of the Nuisances Removal Act, 1855, of the adjoining parish or place, to show cause why an order should not be made by the justices for cleansing the watercourse or open ditch, and for executing such permanent or other structural works as may appear to be necessary; the justices, after hearing the parties,

Cleansing foul
and offensive
watercourses,
etc., near to or
forming the
boundaries of
districts.
Ib. s. 31.

(1) *Russell v. Shenton*, 3 A. & E. (N. S.) 449.

Cleaning foul and offensive watercourses, &c., near to or forming the boundaries of districts.
21 & 22 Vict. c. 98, s. 31.

or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom they shall be executed, and by whom and in what proportions the costs shall be paid, and also as to the amount of such costs, and the time and mode of payment, as shall seem reasonable. Any sums ordered so to be paid by the justices are to be a charge upon and be payable out of the poor rates of such adjoining parish or place, as if they were legally incurred in the relief of the poor, and in default of payment may be levied upon the goods and chattels of the overseers by distress and sale.

Where boundary between two districts is a highway, the sea, or a river.

With regard to the boundary of a district, it has been held that where the boundary between two conterminous parishes is a highway, the presumption is that the half highway on either side of the *medium filum* belongs to the parish on that side. (1) And, again, where a parish extends up a tidal river, but there is nothing to show whether it does or does not extend beyond the line of ordinary or medium high-water mark, land between such high-water mark and low-water mark cannot be assumed to be within the parish, as there is no distinction in this respect between land on the sea-shore and land on the shore of a tidal river. (2) Now, by 31 & 32 Vict. c. 122, s. 27, every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the 25th of December, 1868, shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for all civil and parochial purposes be annexed to and incorporated with the parish to which the accretion, &c., adjoins, in proportion to the extent of the common boundary.

Execution of works beyond limits of district.

24 & 25 Vict. c. 61, ss. 4, 5, 6, 7.

Application of surplus borough funds to improvement of drainage, etc.

23 Vict. c. 16, s. 12.

Local Boards have been empowered to exercise the powers given to them by the 11 & 12 Vict. c. 63, s. 45, for the purpose of outfall or distribution of sewerage without their district if necessary, upon making due compensation.

Where in any borough subject to the provisions of the 5 & 6 Wm. IV. c. 76, a surplus is standing to the credit of the borough fund, arising from the rents and profits of the property of the corporation, and not from a borough rate, and such borough is a district within the meaning of the Public Health Act, 1848, the corporation acting as the Local Board of Health of such borough may, with the consent of such corporation, apply such surplus in payment of any expenses that have been incurred previously to the 15th of May, 1860; or may thereafter be incurred by them as the Local Board of Health of such borough, in the improvement of the borough or of any part thereof, by drainage, enlargement of streets, or otherwise, in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or of one of such Acts.

(1) *Reg. v. Board of Works for the Strand District*, 33 L. J. (N. S.) M. C. 33.

(2) *Bridgewater Trustees, Apprs., Bootle-cum-Linacre, Resp.*, L. R. 2 Q. B. 4; 15 L. T. (N. S.) 351.

CHAPTER IV.

CLEANSING STREETS, REMOVING FILTH, &c.

THE Local Board may, in their discretion, provide, in proper and convenient situations, boxes or other conveniences for the temporary deposit and collection of dust, ashes, and rubbish, and also fit buildings and places for the deposit of the sewage, soil, dung, filth, ashes, dust, &c., collected by such Board.

Provision of places for deposit of dust, soil, etc. 11 & 12 Vict. c. 63, s. 56.

With respect to the power conferred upon Local Boards to provide in proper and convenient situations boxes or other conveniences for the temporary deposit and collection of dust, &c., it is to be observed that public bodies, although acting under the general powers given them by statute, have not therefore a licence to do whatever they think right, yet if the Court is called upon to interfere, it is its duty first to consider whether the proposed exercise of the power is or is not *bonâ fide*. Therefore the Lords Justices on appeal being satisfied upon the evidence that a public urinal intended to be erected would not of necessity be a public nuisance, and further, that it was neither certain nor probable that the public body were exceeding or would exceed their powers, and that they were not influenced by any improper motive, dissolved an interlocutory injunction which Stuart, V.C., (1) had issued to restrain the construction of the work. (2)

Local Boards may themselves undertake or contract with any person for—

The proper cleansing and watering of streets ;

The removal of house refuse from premises ;

The cleansing of privies, ashpits, and cesspools ;

either for the whole or any part of their district ; and all matters thus collected by the Local Board or contractor may be sold or otherwise disposed of, and the profits, if any, carried to the district fund account.

Local Boards to cleanse or contract for cleansing. 21 & 22 Vict. c. 98, s. 32. No. 1.

If any person, not being the occupier of a house within the district, removes, or obstructs the Local Board or contractor in removing, any matters authorized to be removed by the Local Board, he shall for each offence incur a penalty not exceeding £5 ; and if any person, being the occupier of a house within the district, removes, or obstructs the Local Board or contractor

Penalty for obstructing Local Board. Ib. No. 2.

(1) 8 L. T. (N. S.) 44.

411 ; 8 L. T. (N. S.) 558 ; 9 Jur.

(2) *Biddulph v. St. George, Han-*
over Square, 33 L. J. (N. S.) Ch.

(N. S.) 953

in removing, any matters (except in cases where such matters are produced on his own premises, and are removed for sale, or for his own use for manure, and are in the meantime kept so as not to be a nuisance), he shall for each offence incur a penalty not exceeding 40s.

Byelaws as to
cleansing.
21 & 22 Vict.
c. 98, s. 32.
No. 3.

In parts where the Local Board do not themselves undertake or contract with any person for—

The cleansing of footways and pavements adjoining any premises;

The removal of refuse from any premises;

The cleansing of privies, ashpits, and cesspools;

they may make byelaws imposing the duty of such cleansing or removal on the occupier of the premises.

By the 31 & 32 Vict. c. 115, s. 5, the powers vested in Local Boards by section 32 of the Local Government Act, 1858, with respect to the removal of house refuse from premises, and the cleansing of privies, ashpits, and cesspools, are extended to sewer authorities.

Byelaws as to
nuisances.
Ib. No. 4.

The Local Board may also make byelaws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish within their district, or of the keeping of animals so as to be injurious to the public health.

A byelaw made by a town council under the 5 & 6 Wm. IV. c. 76, s. 90, imposed a fine upon every person "who shall keep, or suffer to be kept, any swine within the said borough, from the 1st day of May to the 31st day of October, inclusive of any year," is bad, for it is directed generally against the keeping of swine, and not merely against the keeping of them so as to be a nuisance. (1)

What is not
refuse.

The following cases illustrate what substances may not be considered refuse within the meaning of the Act. Where brewers occupying premises in a parish within the district of the Metropolitan Paving Act, 57 Geo. III. c. 29, burnt coals there in the process of brewing, and when they were partially consumed by having passed once through the fires, removed them intermixed with the dust and ashes arising from the same fires to other premises occupied by them in another parish, where they used them for heating water to cleanse their casks, it was held that the scavenger of the parish first referred to was not entitled, under ss. 59 & 60 of the Paving Act, to claim any of the articles so removed. (2)

So also where a brassfounder, having extracted a quantity of metal from ashes which fell into the ashpit during the process of casting, was accustomed to give the refuse, in which some metal still remained, as a perquisite to his apprentices, by whom it was sold to brass refiners, who extracted from the ashes a further quantity of metal, it was held that the ashes,

(1) *Everett v. Grapes*, 3 L. T. (N. S.) 669.

(2) *Filby v. Combe*, 2 Mee & W. 677; 1 Jur. 721.

being available for a commercial purpose, were not "dust, cinders, or ashes," within the meaning of the same Act. (1) What is not refuse.

On the other hand it has been held that the Commissioners under a Local Improvement Act were not compellable to remove from a manufactory dust, ashes, and rubbish arising from the combustion of coal, and otherwise in the course of the manufacture of edge tools within the limits of the district of the Commissioners, as the intention of the Act was that only the rubbish arising from the domestic use of houses should be removed. (2)

Whosoever keeps any swine or pigsty in a dwelling-house, or so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the Local Board to remove the same, and whosoever allows the contents of any watercloset, privy, or cesspool to overflow or soak therefrom, for every such offence is liable to a penalty not exceeding 40s., and to a further penalty of 5s. for every day during which the offence is continued. The Local Board are to abate or cause to be abated every such nuisance; and the expenses incurred in so doing are to be repaid to them by the occupier of the premises, and be recoverable from him in summary manner. Keeping swine, etc., in improper situations, allowing waste water to remain in cellars, etc. 11 & 12 Vict. c. 63, s. 59. 29 & 30 Vict. c. 90, s. 54.

The provision in the 11 & 12 Vict. c. 63, s. 59, as to the keeping of swine, applies not merely to the place of keeping but to the manner of keeping the animals, and, therefore, an information and conviction for keeping swine upon premises, and also pigsties thereon, so as to be a nuisance to the inhabitants of the dwelling-houses and premises near and adjoining thereto, were held to be good. (3) Moreover, if the swine be kept so as to be a nuisance to any person, the statute will apply though the locality of the nuisance may not be near any dwelling-house.

If at any time it appear to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter, ought to be removed, he must give notice to the person to whom it belongs, or to the occupier of the premises whereon it exists, to remove it; and if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, &c., or matter referred to, shall be vested in and be sold or disposed of by the Board, and the proceeds carried to the district fund account. Removal of filth on certificate of inspector of nuisances. 11 & 12 Vict. c. 63, s. 59.

Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, he was held liable to be convicted under a local Act which imposed a penalty on offensive matter being kept so as to be a nuisance. Accumulation of dung.

(1) *Law v. Dodd*, 1 Exch. 845; & N. 45; 26 L. J. (N.S.) Exch. 386.
17 L. J. (N.S.) M. C. 65. (3) *Digby v. West Ham*, 22 J. P.

(2) *Lyndon v. Standbridge*, 2 H. 304.

Per Cockburn, C.J., "a dunghill may or may not be a nuisance, according to the way in which it is kept. If the dung is kept accumulating so long that a stench arises, and annoyance to the neighbouring inhabitants, then I think the case comes within the enactment, and the party may be convicted." (1)

Recovery of
expenses.
21 & 22 Vict.
c. 98, s. 32.
29 & 30 Vict.
c. 90, s. 54.

Whenever the Local Board have removed any noxious or offensive accumulation as above mentioned, the expenses of removal, so far as they are not covered by the sale of the accumulation, are recoverable in a summary manner from the occupier, or, where there is no occupier, from the owner of the premises on which the accumulation existed, or from the person causing the accumulation; or may, by order of the Board, be declared to be private improvement expenses. If they amount to less than £20, instead of proceeding in a summary manner the Local Board may recover them in the County Court.

When in
County Court.
24 & 25 Vict.
c. 61, s. 24.

Act not to
affect present
law as to
nuisances.
11 & 12 Vict.
c. 63, s. 65.

Nothing in the Public Health or Local Government Act is to be construed to render lawful any act, matter, or thing whatsoever which, but for these Acts, would be deemed to be a nuisance; nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

(1) *Smith v. Waghorn*, 27 J. P. 744.

CHAPTER V.

HOUSE DRAINAGE, SEWERAGE, AND PURIFICATION.

THE Local Board must see and provide that all drains, and the waterclosets, privies, cesspools, and ashpits within their districts, are constructed and kept so as not to be a nuisance or injurious to health; and their surveyor may, by their written authority (to be granted upon the written application of any person showing that the drain, watercloset, privy, cesspool, or ashpit, in respect of which application is made, is a nuisance or injurious to health, but not otherwise), and, after twenty-four hours' notice in writing, or in case of emergency without notice, to the occupier of the premises to which the drain, watercloset, privy, cesspool, or ashpit is attached or belongs, enter the premises, with or without assistants, and cause the ground to be opened, and examine and lay open the drain, &c. If it be found to be in proper order and condition, he must cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works are to be defrayed by the Local Board; if, on the other hand, upon examination, the drain, &c., appear to be in bad order and condition, or to require alteration or amendment, the Local Board are to cause notice in writing to be given to the owner or occupier of the premises, requiring him forthwith, or within such reasonable time as shall be specified in the notice, to do the necessary works; and if the notice be not complied with, the person to whom it is given is liable to a penalty not exceeding 10s. for every day during which he continues to make default, and the Local Board may execute the works, and the expenses incurred in so doing are recoverable by them from the owner in a summary manner, or may be declared to be private improvement expenses, and be recoverable as such.

With reference to the foregoing, it is to be observed that the power to determine the nature and extent of the works required by 11 & 12 Vict. c. 63, s. 54, is vested in the Local Board; and when proceedings are taken before justices to recover penalties for non-compliance with the notices of the Local Board under that provision, the justices have no power to review the determination of the Local Board. (1)

The 54th section of the Public Health Act, 1848, as amended

(1) *Hargreaves v. Taylor*, 32 L. J. 149; 9 Jur. (N. S.) 1053; 3 B. & S. (N. S.) M. C. 111; 8 L. T. (N. S.) 613.

Inspection
of drains,
sewers, etc.

by any subsequent Act "providing that the Local Board of Health shall see that drains, waterclosets, privies, and ashpits within their district do not become a nuisance," is by the 31 & 32 Vict. c. 115, s. 4, extended to the district of every sewer authority in which there is no enactment in any public or private Act of Parliament to the like effect in force.

21 & 22 Vict.
c. 98, s. 33.

The Public Health Act, 1848, required the surveyor to cause the ground to be closed before the necessary works are set about; but it is not now necessary for him to do so, provided that the necessary works are undertaken forthwith. It would seem, however, that if the necessary works are not undertaken forthwith, that is, within a reasonable time, it will be the duty of the surveyor to cause the ground to be closed, in accordance with the 11 & 12 Vict. c. 63, s. 54.

Liability of
owner and
occupier.

The occupier, and not the owner, is *primâ facie* liable for the repair of the drains and sewers of the premises in his occupation; and a declaration against an owner for not cleansing the drains or sewers, not alleging that he was the occupier, or showing a reason for the alleged liability, was held to be bad. (1) The owner in some cases may, however, be liable, as in the case of *Rex v. Pedley*, (2) in which it was held that if the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for the nuisance being continued or created during the term, owing to his not having taken effectual means to prevent it. So also if he let a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur from want of that care on the part of the tenant.

It is necessary to observe here that this portion of the work is confined to an exposition of the law contained in the Public Health and Local Government Acts, and that the subject of the removal of nuisances injurious to health, and the prevention of diseases, will be found treated at length in a subsequent part of the work.

Drains,
privies, etc.
to new house.
11 & 12 Vict.
c. 63, s. 49.

No house can be erected, or, if it has been pulled down to or below the ground floor, rebuilt, nor occupied, until a covered drain or drains shall have been constructed in such a manner as upon the report of the surveyor shall appear to be necessary and sufficient. If the sea, or a sewer of the Local Board, or a sewer which they are entitled to use, be within one hundred feet of any part of the site of the house to be built or rebuilt, the drains to be constructed must lead from and communicate with such one of those means of drainage as the Local Board may direct; if however no such means of drainage be within that distance, then the drains must be made to communicate with and be emptied into such covered cesspool or other place,

(1) *Russell v. Shenton*, 11 L. J. (N. S.) Q. B. 289.

(2) 1 A. & E. 822; 3 L. J. (N. S.) M. C. 119.

not being under any house, and not being within such distance from any house as the Local Board may direct. Whosoever erects or rebuilds any house or constructs any drain contrary to these requirements is liable to a penalty not exceeding £50, which may be recovered by any person, with full costs of suit, by action of debt.

Drains,
privies, etc.,
to new houses.
11 & 12 Vict.
c. 63, s. 49.

If at any time, upon the report of the surveyor, it appear to the Local Board that any house, whether built before or after the time when the Act is applied to the district in which it is situate, is without any drain, or without such a drain or drains communicating with the sea or a sewer as may be sufficient, and if the sea, or a sewer of the Local Board, or a sewer which they are entitled to use, be within one hundred feet of any part of the house, they are to cause notice in writing to be given to the owner or occupier, requiring him forthwith, or within a reasonable time to be specified, to construct and lay down, in connection with the house and one of those means of drainage, one or more covered drain or drains of such materials and size, and at such level and with such fall as upon the report of the surveyor may appear necessary.

Construction
of works of
drainage by
Local Board.
Ib.

It would seem from *Austin v. Lambeth* (1) that the Local Board have the exclusive power to determine whether their directions have been carried out with regard to the materials to be used in the construction of the covered drain.

If the notice be not complied with, the Local Board may, if they think fit, execute the necessary works, and the expenses incurred by them in so doing are recoverable by them from the owner in a summary manner, or, by order of the Local Board, may be declared to be and be recoverable as private improvement expenses.

For the purposes of the Act the word "house" includes schools, factories, and other buildings in which more than twenty persons are employed at one time; but other definitions of the word "house" are not excluded, for the term "include" is not exhaustive, and does not exclude other definitions. "New buildings" are defined by the 21 & 22 Vict. c. 98, s. 34, *post*, p. 202. In a case where the Local Commissioners had paved a footway extending from certain premises to certain other premises, and called upon the owner to pay for the same under the Local Act, his liability to do so depended upon whether the length of footway paved was less than thirty yards from "house to house." The length so paved exceeded thirty yards to the next dwelling-house, but less than thirty yards to the next "house," if a coach-house can be called or considered to be a part of a "house." The Court said that they had no doubt that a coach-house and stables are part of a house within the meaning of the Act, and that the owner was liable. The measurement was to be made from house to house, which means not the

House
defined.
Ib. s. 2.

Coach-house.

House defined. house only, but the house and buildings occupied therewith. In some stations of society, the Court said, the coach-house and stables are as much part of the house as a coal-hole would be in other stations. In the argument a case was cited (2 Chan. Rep.) to show that a garden is not part of a house; but in the present case the Court said that it was unnecessary to determine whether a garden is part of a house within the meaning of the Act. (1) Where under a Local Improvement Act a rate was imposed upon all houses within the parish, the Court held that buildings and yards used for the purposes of business did not come within the description of "house," unless they were also within the curtilage of the house; but gardens or orchards subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were to be included in the term "house." A mill which opened into the yard adjoining the house, and had internal communication with the out-building and house, was therefore held to be part of the house, and properly included in the rate. (2)

Under the 92nd section of the Lands Clauses Act, 1845 (8 Vict. c. 18), a piece of land occupied in connection with a public-house, but between which and the house was a paved public footway, was held to be part of the house, as being of the curtilage. (3)

Land.

As to land forming part of a building within the meaning of sect. 92 of the 8 Vict. c. 18, the cases of *Grosvenor v. Hampstead Junction Railway Company*, (4) and *Reddin v. Metropolitan Board of Works*, (5) may be consulted.

User of drains.

With regard to the use of drains, it has been held that a person entitled to a limited right, who exercises it in excess so as to cause a nuisance, cannot maintain a right of action for an obstruction of the original right of easement until its exercise has been reduced within its original limits. Thus, if a man has a limited right to the use of a window, and he enlarges it considerably, the only way in which the person who is annoyed by the enlargement of the window can prevent that nuisance is by erecting a barrier, and stopping the whole up. So if a limited right to the use of a drain exists, such as to send clean water only through it, and the person claiming that right sends dirty or foul water, the person having the property in the drain may stop the whole of the water from flowing until the use of the right is brought within its original limits. (6)

As to the right of adjoining proprietors to the use of a drain in common, see *Pyer v. Carter*, *Suffield v. Brown*, *Ewart v. Cochrane*, and *Lee v. Stevenson*, ante, pp. 128-129.

(1) *Reg. v. Warwickshire JJ.* 15 J. P. 417.

(2) *Hole v. Commissioners of Milton, Watson v. The Same*, 31 J. P. 804.

(3) *Marson v. London, Chatham,*

and Dover Railway Company, 37 L. J. Ch. 483.

(4) 26 L. J. (N. S.) Ch. 731.

(5) 31 L. J. (N. S.) Ch. 660.

(6) *Cawkwell v. Russell*, 26 L. J. (N. S.) Exch. 34.

As regards the use by Local Boards of deodorizing disinfectants, the following case may be useful to note in this place. A patent was entitled "treating chemically the collected contents of sewers and drains in cities, towns, and villages, so that the same may be applicable to agricultural and other useful purposes." The description of the process stated that, for the purpose of precipitating the matter, the patentee preferred to employ hydrate of lime; and he claimed the precipitation of animal and vegetable matter from sewage water by the means before described. It stated that the invention consisted in the use and application of a chemical agent for the purpose of precipitating the solid animal and vegetable matter contained in sewage water; and that what was claimed was the precipitation of animal and vegetable matter from sewage water by means of the chemical agent before described. In an action for an infringement of the patent it appeared that the defendant, who was sued as the clerk to a Local Board of Health, had applied the process of the hydrate of lime for the purpose of deodorizing sewage water, in the course of which some precipitate of animal and vegetable matter was produced, which, however, the defendant did not use as an article of value, but *bonâ fide* rejected as an article accidentally produced; and it was held that this was no evidence for a jury of the infringement of the patent. (1)

Right to use
deodorizing
disinfectants.

The following extracts from a memorandum by the Barrack and Hospital Improvement Commission, on the use of disinfectants, are important. They say:—

Disinfectants.

A great variety of disinfectants have at different times been manufactured, some of them gaseous, some fluid, some solid; and the effect, more or less, of all of them, when properly used, is to destroy odour, either by bringing about a chemical change in the odorous particles, or by arresting the putrefaction of substances giving rise to odours: certain of them appear to act in both ways.

The first question which arises out of this fact—the destruction of smell—is, to what extent (if any) would disinfectants be useful in protecting the public health, when applied to the destruction of odours proceeding from decomposing substances? In replying to this question, it is necessary to state that smell proceeding from decomposing matters is intended by nature as a warning against danger: that the true use of the warning is not merely to destroy the smell and leave the substance, but either to remove the offending matter to a distance from human dwellings, or to get away from it. It has never been shown that organic matter, after being deodorized, has ceased to be dangerous; while, on the other hand, it is known that the generation of disease has been promoted by effluvia from organized matter in a state of decomposition while the effluvia were little, if at all, appreciable to the sense of smell.

(1) *Higgs v. Goodwin*, E. B. & E. 529.

Disinfectants. Disinfectants, as a means of preserving health, are of doubtful efficacy, and their use for such purpose should not be sanctioned.

This being our opinion, they say, it remains for them to consider whether disinfectants can be used with safety for merely temporary purposes.

No disinfectant can compensate for the necessity of frequent removal of the matter; hence, if it were proposed to use any disinfectant merely to render frequent cleansing and removal less necessary than it would be if the offensive smell were allowed to remain, they recommend that no disinfectants be used, but that cleansing at short intervals be imperative.

The Medical Officer of the Privy Council, in a memorandum on disinfection, dated July, 1866, states as follows:—

“It is to cleanliness, ventilation and drainage, and the use of perfectly pure drinking water, that populations ought mainly to look for safety against nuisance and infection. Artificial disinfectants cannot properly supply the place of those essentials: for, except in a small and peculiar class of cases, they are of temporary or imperfect usefulness. That no house-refuse—not only no excremental matter—but also no other kind of dirt or refuse, should remain on or about inhabited premises, is a first rule against infection. That the air within the house should never in any part of the house be stagnant, but should always be in course of renewal from without by uninterrupted and abundant supplies of fresh air, is a condition of equal importance. And that all water meant to be used for drinking or cooking should be drawn from sources which cannot have been polluted by any kind of refuse-matter, is a third most important rule for the avoidance of infection.

“If dwelling-places have within them any odour of drainage, particular examination should be made (1) whether the filth which house-drains are meant to carry away is retained in or near the premises in ill-made drains or sewers, or cesspools, or perhaps is leaking from house-drains within the house; and (2) whether, inside the house, the inlets of drains and sinks are properly trapped; and (3) whether the drains and sewers are sufficiently ventilated outside the house. All water-closets within houses should have free openings for ventilation from and into the outer air. Of a cesspool, the only true disinfection is to abolish it. In country-places, where proper drainage is not provided, the nuisance of open privies may be best avoided by the use of the so-called earth-closet.

“If a sewer is much complained of, as stinking into the public way, generally the presumption is, that from original ill-construction or some other cause, it does not properly fulfil its object, but has filth accumulated and stagnant in it; and such a sewer, besides occasioning nuisance in the public way, may be the source of serious danger to the inhabitants of houses which drain into it. It is most important that all sewers should be

well ventilated at points where their effluvia will be least injurious; and ordinary drain-pipes may be used to conduct the effluvia to a distance. Disinfectants.

"For artificial disinfection on a large scale—the agents which most commonly prove useful are—quicklime, chloride of lime, carbolic acid, sulphate of iron, perchloride of iron, and chloride of manganese. The following are also efficient disinfectants, but, as being dearer, are less suited for large operations: sulphate of zinc, chloride of zinc, chloride of soda, and permanganate of potash. In certain cases chlorine gas, or nitrous acid gas, or sulphurous acid gas, may advantageously be used; and, in certain other cases, powdered charcoal or fresh dry earth.

Quicklime ought to have been recently burnt, and may be used in the form of dry powder, or stirred up with water, ten times its bulk of water as milk of lime. Chloride of lime is best used with water, and thoroughly mixed with it, in the proportion of a pound to the gallon; or, of the solution, as commonly sold, about two pints may be mixed with a gallon of water. Carbolic acid (in the fluid form in which it is commonly sold) should be dissolved in about eighty times its volume of water, with which it must be mixed by strong shaking in a closed vessel. Sulphate of iron should be dissolved in ten times its weight of water; a solution which is best effected by employing hot water and stirring. Of perchloride of iron and chloride of manganese, the common concentrated solutions may be used, diluted with ten or twelve times their bulk of water. Sulphate of zinc should be dissolved in about ten times its weight of warm water. Of chloride of zinc, the common concentrated solution may be diluted with eight or ten times its bulk of water. Of chloride of soda, the common solution may be used like that of chloride of lime. Of permanganate of potash an ounce may be dissolved in a gallon of water.

"All disinfectants must be used in quantities proportionate to the amount of matter or surface to be disinfected. When the matters requiring to be disinfected have an offensive smell, the disinfectant should be used till this smell has entirely ceased; and as often as the smell recurs, the disinfectant must again be used."

Houses cannot be erected, or rebuilt when pulled down to or below the ground floor, without a sufficient water-closet or privy and an ashpit, furnished with proper doors and coverings, under a penalty not exceeding £20; and if at any time, upon the report of the surveyor, it appear to the Local Board that any house, whether built before or after the time when the Act is applied to the district in which it is situate, is without a sufficient water-closet or privy and an ashpit, furnished with proper doors and coverings, the Local Board is to give notice in writing to the owner or occupier of such house, requiring him forthwith, or within a reasonable time to be specified, to

Erecting
houses with-
out water-
closets, etc.
11 & 12 Vict.
c. 63, s. 51.

Provision of
water-closets,
etc.

11 & 12 Vict.
c. 63, s. 51.

Recovery of
expenses.

Ib.

29 & 30 Vict.
c. 90, s. 54.

provide a sufficient water-closet or privy and an ashpit, as the case may require; and if the notice be not complied with, the Local Board may cause to be constructed a sufficient water-closet or privy, and an ashpit, or either of them, or do such other works as the case may require; and the expenses incurred in so doing are recoverable by the Board from the owner in a summary manner, or may, by order of the Local Board, be declared to be private improvement expenses, and be recoverable as such. Where, however, a water-closet or privy is used in common by the inmates of two or more houses, or if, in the opinion of the Local Board, a water-closet or privy may be so used, the Board need not require them to be provided for each house separately from the other.

By 21 & 22 Vict. c. 98, s. 34, *post*, the Local Board may make bye-laws as to water-closets, privies, &c.

The Local Board are not empowered to purchase land on which to erect the conveniences contemplated by 11 & 12 Vict. c. 63, s. 51, if, as has happened, no land is attached to the premises and unbuilt upon.

The 51st section of the Public Health Act, 1848, is, by the 31 & 32 Vict. c. 115, s. 4, extended to the district of every sewer authority in which there is no enactment of any public or private Act of Parliament to the like effect in force.

Earth-closets.
31 & 32 Vict.
c. 115, s. 7.

Any enactment of any Act of Parliament in force in any place requiring the construction of a water-closet shall, with the approval of the Local Authority, be satisfied by the construction of an earth-closet, or other place for the reception and deodorization of fæcal matter, made and used in accordance with any regulation from time to time issued by the Local Authority.

Ib.

The Local Authority may, as respects any houses in which such earth-closets or other places as aforesaid are in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to the water-closets in such houses, on such terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water.

Ib.

The Local Authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earth-closets or other places as aforesaid.

Ib.

The Local Authority may themselves construct or require to be constructed earth-closets or other such places as aforesaid in all cases where, under any enactment in force, they might construct water-closets or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earth-closet or other place as aforesaid in any house instead of a water-closet if he prefer to comply with the provisions of the enactment in force requiring the

construction of a water-closet, and a supply of water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earth-closet or other place as aforesaid than he would be put to by compliance with the provisions of any enactment as to water-closets or privy accommodation which he might have been compelled to comply with if this section had not been passed.

Local Authority shall, for the purposes of this Act, mean any Local Board and any Sewer Authority.

Under section 81 of 18 & 19 Vict. c. 120, the vestry or district board may require the owner or occupier of a house to provide a sufficient water-closet; and if he do not comply with such requirement, the vestry or district board may cause it to be constructed, and may recover the expenses incurred by them in so doing from the owner of the house. (1)

In proceedings for the recovery of expenses incurred by a Local Board under section 51 of the 11 & 12 Vict. c. 63, the complaint must be made within the six calendar months limited by the 11 & 12 Vict. c. 43, s. 11, of the works being done, and notice of the amount due being given to the party, and not within six months of the demand of payment. (2)

If at any time it appear to the Local Board, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above twenty in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the Board may, by notice in writing to the owner or occupier, require, within a time to be specified in the notice, to be constructed a sufficient number of water-closets or privies for the separate use of each sex; and neglect or refusal to comply with the notice, subjects the offender for each default to a penalty not exceeding £20, and a further penalty not exceeding 40s. for every day during which the default is continued.

The Local Board of Health may, if they think fit, provide and maintain, in proper and convenient situations, water-closets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of the district rates to be levied in the district, that is, the general district rates levied under sect. 87; the provision in sect. 86 as to special district rates was repealed by the 21 & 22 Vict. c. 98, s. 54.

If, upon the certificate of the officer of health, if any, or of any two medical practitioners, it appear to the Local Board that any house or any part of it is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or

Earth-closets.
31 & 32 Vict.
c. 115, s. 7.

Provision of
water-closets.
18 & 19 Vict.
c. 120, s. 81.

Time limited
for recovery
of expenses.

Water-closets
to be con-
structed in
factories, etc.
29 & 30 Vict.
c. 90, s. 52.

Public
necessaries.
11 & 12 Vict.
c. 63, s. 57.

Purification
of houses.
Ib. s. 60.

(1) *St. Luke, Middlesex, v. Lewis*,
31 L. J. (N. S.) M. C. 73; 1 B. & S.
865.

(2) *Eddleston, App., Francis*,
Resp., 7 C. B. (N. S.) 568; see also
Jacomb v. Dodgson, post, p. 161.

Recovery of expenses.

11 & 12 Vict.

c. 63, s. 60.

29 & 30 Vict.

c. 90, s. 54.

Premises unfit for human habitation.

31 & 32 Vict.

c. 130, s. 5.

Ib. s. 12.

purifying of any house or any part of it would tend to prevent or check infectious or contagious disease, the Local Board are to give notice in writing to the owner or occupier to white-wash, cleanse, or purify the house, or part of it, as the case may require. If the person to whom notice is given fail to comply with the notice within such time as shall be specified in the notice, he is liable to a penalty not exceeding 10*s.* for every day during which he continues to make default; and the Local Board may cause the house, building, or part of it to be white-washed, cleansed, or purified, and the expenses incurred by them in so doing are to be repaid by the owner or occupier in default, and are recoverable from either of them in the summary manner provided by the Act.

In a Local Board district containing 10,000 or more persons, if the officer of health find that any premises therein are in a condition or state dangerous to health so as to be unfit for human habitation, he shall report thereon to the Local authority of the District. He is also to do so on receiving a representation from one or more householders living in or near the street where the premises are. The Local authority are then to take action thereon in the manner provided for by the Act, "to provide better dwellings for artizans and labourers." As regards the provisions of that Act, see *post*, p. 272.

CHAPTER VI.

MANAGEMENT OF STREETS.

§ 1. PAVING, LIGHTING, AND IMPROVING STREETS.

ALL present and future streets, being, or which at any time become, highways within any district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the Local Board, who shall from time to time cause all such streets to be levelled, paved, flagged, channelled, altered, and repaired, as and when occasion may require. The Board may also from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit; and place and keep in repair fences and posts for the safety of foot passengers. Whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the Local Board, shall be liable for every such offence to a penalty not exceeding £5; and a further sum not exceeding 5s. for every square foot of the pavement, stones, or other materials displaced, taken up, or injured.

Management of streets vested in Local Board. 11 & 12 Vict. c. 63, s. 68.

Penalty for injuring, etc. *Ib.*

The term "highway" used in sect. 68 of 11 & 12 Vict. c. 63, shall mean any highway repairable by the inhabitants at large; and by 11 & 12 Vict. c. 63, s. 2, the word "street" shall apply to and include any highway (not being a turnpike road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley, or passage, within the limits of any district.

Highway defined. 15 & 16 Vict. c. 42, s. 13.

The strict and *primâ facie* meaning of the word "street," is confined to the road and footways, but it may include the houses fronting or abutting on the thoroughfare. (1)

Street, meaning of.

With regard to taking up pavement, the following general principle is laid down in *London and Blackwall Railway Company v. Limehouse*: (2) where the legislature has vested special powers in a particular body for certain purposes, a general Act will not override those special powers; thus a railway company

Taking up pavement.

(1) *London, Chatham, and Dover Railway Company v. Mayor, &c., of London*, 19 L. T. (N.S.) 250.

(2) 25 L. J. (N. S.) Ch. 164.

were held to be empowered to build a station, which abutted upon a street in the metropolis, without the consent of the District Board, their Local Act, which preceded the Metropolis Local Management Act, authorizing them to do so. More recently the Court of Chancery held that a Local Act of Parliament is not, in the absence of any indication of intention to the contrary, repealed by a subsequent general public Act. (1)

Compensation for private injury.

If, in raising or lowering the levels of any street (and a bridge may be so situated as to be a "street" within the meaning of a statute) (2) within the district, private injury is sustained, it was held that the person injured cannot claim compensation for the injury; for though a private inconvenience may be sustained, it must yield to the public good; and the Courts have no right to grant compensation for a private injury when it is not provided for by the Act. (3) In giving their judgment in the case of *Bold v. Williams*, however, the Court (as well as the counsel engaged in the case) appear to have overlooked the provision in the 144th section of the 11 & 12 Vict. c. 63, which enacts that full compensation shall be made out of the general district rates to all persons sustaining any damage by reason of the exercise of any of the powers of the Act—as to which, see the case of *Brady v. Southampton*, *post*.

In an action against a Local Board for negligently permitting a footpath to remain unfenced, by which the plaintiff's husband fell into an adjoining goit and was drowned, the Court held that the goit was not a hole within the meaning of sect. 83 of 10 & 11 Vict. c. 34, and that there was no absolute duty to fence under sect. 68 of 11 & 12 Vict. c. 63. The Court also held that a notice of action was necessary, but declined to express any opinion on the point whether, if there had been negligence in the defendants in the course of their public duty, any action would have lain against them at the suit of the plaintiff. (4)

Though by 11 & 12 Vict. c. 63, s. 68, the highways within the district "vest" in the Local Board, the common law liability of a parish to repair its highways does not appear to be thereby transferred to the Local Board; therefore no action would lie against the Board at the suit of an individual who has sustained damage in consequence of a neglect to repair a common highway within the district. (5)

Protection of sewers.

With regard to the protection of sewers, it has been held that where certain commissioners of sewers used for the pur-

(1) *Fitzgerald v. Champneys*, 7 Jur. (N. S.) 1006; 30 L. J. (N. S.) Ch. 777.

(2) *Beaver v. Manchester*, 26 L. J. (N. S.) Q. B. 311.

(3) *Bold v. Williams*, 21 J. P. 84; see also *Boulton v. Crowther*,

2 B. & C. 703.

(4) *Wilson v. Halifax*, 17 L. T. (N. S.) 660; 37 L. J. Exch. 44; L. R. 3 Exch. 114.

(5) *Parsons v. St. Matthew, Bethnal Green*, 37 L. J. C. P. 62; L. R. 3 C. P. 56; 17 L. T. (N. S.) 211.

pose of their sewerage an ancient tidal ditch which ran along the side of a public highway, they were under no legal obligation to fence the sewer, so as to protect persons frequenting the highway. (1) The case, however, would obviously be different if the sewer were one which was completely under the control of the local authority, or which they themselves might have made.

When, for the purposes of the Public Health Act, the Local Board deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks laid in any street, they may, by notice in writing, require the person to whom such pipes, &c. belong to raise, sink, or otherwise alter their situation, as may be specified in the notice. The expenses attendant upon or connected with any such alteration are to be paid by the Local Board out of the general district rates; but if, under any Local Act, they are directed to be borne by the person to whom the pipes or works belong, his liability in that respect is to continue unchanged. If the notice be not complied with, the Local Board may make the alteration required: but no such alteration can be required or made which will permanently injure the pipes, &c. or prevent the water or gas from flowing as freely and as conveniently as usual.

Power to require gas and water pipes to be moved.
11 & 12 Vict. c. 63, s. 71.

Town commissioners empowered by statute to light the public streets with gas, and to break up the footways and carriageways for laying down the gas pipes, and to enter into contracts with other companies to execute such works, cannot confer on a private gas company, not having any parliamentary powers, authority to break up the footways or carriageways for the purpose of laying down service pipes for private houses, and connecting them with the main pipe; and a householder who gives directions to have such works done for the purpose of lighting his house with gas, is liable to be convicted as a principal giving orders to commit a nuisance, as the acts could not be justified as having been done in the exercise of the right of each householder to make such a slight temporary obstruction on the highway as may be necessarily incidental to the enjoyment of his property. (2)

Laying water and gas pipes.

An information was filed at the relation of a gas company to restrain a rival gas company and the town of Cambridge Improvement Commissioners from breaking up the streets of Cambridge and injuring the gas pipes of the plaintiff company. On the hearing, Vice-Chancellor Malins said that the alleged injury to the pipes of the plaintiff company was not proved; but that the decision of the majority of the Court in the *Attorney-General v. Sheffield Gas Company* (*ante*, p. 102), being in his

(1) *Cornwall v. Metropolitan Commissioners of Sewers*, 10 Exch. Rep. 771.

(2) *Reg. v. Longton Gas Company*, 2 L. T. (N. S.) 14; 6 Jur. (N. S.) 601.

Laying water
and gaspipes.

opinion inconsistent with more recent authorities, especially that of *Regina v. Longton Gas Company* (*suprà*), he should follow the later decisions, and hold that the acts complained of constituted a nuisance to the public, which the Court would restrain by injunction. (1) But on appeal before the Lords Justices, the decree of Malins, V.C., was discharged; the nuisance being of too temporary and trivial a character to justify the interference of the Court by injunction. (2)

With regard to this latter subject it is to be observed that an Act empowering a company to contract for purposes of public advantage ought not to receive a narrow construction, and that therefore in construing a Gas Company's Act, which after requiring the consent of certain local commissioners to breaking up the pavements, provided that where any consent was required, and should be obtained by the company to break any pavement, to lay down pipes, or for any other purpose which might be required under the Act, nothing in the Act should (after consent obtained, and after twenty-four hours' notice) prevent the company from breaking up the pavement, for the purpose of laying down pipes, or for any other purpose which might be required under the Act, it was held that a construction, "*reddendo singula singulis*," was not the correct one, and that the power to break the pavement was not to be confined to the particular purpose for which the consent had been expressly given. (3)

Paving, etc.,
of private
streets.
11 & 12 Vict.
c. 63, s. 69.

In case any present or future street, or any part thereof, not being a highway repairable by the inhabitants at large (15 & 16 Vict. c. 42, s. 13), be not sewered, levelled, paved, flagged, and channelled to the satisfaction of the Local Board, the Board may, by notice in writing to the respective owners or occupiers of the premises fronting, adjoining, or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, &c., such street or part thereof, within a time to be specified in the notice. If the notice be not complied with, the Local Board may, if they shall think fit, execute the works mentioned or referred to in the notice; and the expenses incurred by them in so doing shall be paid by the owners in default, according to the frontage of their respective premises, and in such proportion as shall be settled by the surveyor, or, in case of dispute, as shall be settled by arbitration (having regard to all the circumstances of the case), in the manner provided by 11 & 12 Vict. c. 63, s. 123. (As to the form of the preliminary notice, see *post*, p. 168.)

Ibid. and
29 & 30 Vict.
c. 90, s. 54.

The expenses may be recovered from the last-mentioned owners in a summary manner, or they may be declared by order of the Local Board to be private improvement expenses, and be

(1) *Attorney-General v. Cambridge Consumers Gas Company*, L. R. 6 Eq. 282; 19 L. T. (N. S.) 117.

(2) *Ibid.* 19 L. T. (N. S.) 508.

(3) *Dover Gas Light Company v. Dover (Mayor of)*, 7 De G. Mac. & G. 545.

recoverable as such. Proceedings for the recovery of demands below £20, which Local Boards are now empowered by law to recover in a summary manner, may at the option of the Local Board be taken in the County Court as if such demands were debts within the cognizance of such Courts. 24 & 25 Vict. c. 61, s. 24.

As to the meaning of the word "street," see *ante*, p. 155, and *post*, p. 173.

If within the expiration of three months from the time that notice is given to the owners or occupiers by the Local Board, or their surveyor, of the amount of the proportion as settled by the surveyor to be due, the owner do not by written notice dispute the same, he will be concluded by the apportionment. Finality of apportionment, when. 21 & 22 Vict. c. 98, s. 63.

In the following case a definition was given to the word "owner," under the Metropolis Local Management Act, upon a case stated under 20 & 21 Vict. c. 43. The case stated that Lord Holland was the owner in fee of certain land, and entered into a building agreement with one Hall, according to which Hall was to build certain houses and lay out the land adjoining as a garden, which was to be for the exclusive use of the inhabitants of the houses. Lord Holland agreed to grant leases of the houses to Hall as they were built, and to grant him a lease of the garden with the last house; and it was expressly agreed that Hall should have no interest in any part of the land till a lease of it was granted. Lord Holland died, and left the property to Lady Holland; some of the houses had been built, but not all, and the garden had been laid out. The appellant had sold the reversions of such houses as had been built. The vestry of Kensington having paved a road past the garden, took out a summons against Lady Holland as the owner of the garden to recover the expenses, and the magistrate having held she was liable, the Court affirmed his judgment, holding that Lady Holland was the owner of the garden within the meaning of the Act. (1) What an owner.

A notice under section 69, informing the owners that the street was not "sewered, levelled, &c.," and intimating that in default the works would be executed by the Local Board, was held to be sufficient, without going on to specify the breadth, level, or any other particulars,—the notice containing a note at the foot: "Particulars of the necessary works may be obtained from the Borough Surveyor Office, No. 3, Town Hall," where plans and specifications were lodged. (2) Notice to owners—private streets.

Where a committee of a Local Board appointed under 11 & 12 Vict. c. 63, s. 36, *ante*, p. 60, passed certain resolutions relating to the sewerage, levelling, &c., of certain streets, and the minutes of the committee were submitted for the approval of the Local Board, who by resolution approved of them, and directed

(1) *Holland (Lady)*, App., *Kensington Vestry*, Resps., L. R. 2 C. P. 565; 36 L. J. (M. C.) 105; 17 L. T. (N. S.) 73.

(2) *Bayley*, App., *Wilkinson*, Resps., 16 C. B. (N. S.) 161; 10 L. T. (N. S.) 543; 10 Jur. (N. S.) 726; 33 L. J. (N. S.) M. C. 161.

Levelling of
street.

the matters referred to to be carried out, and notices were thereupon served upon the various parties in the name of such Board to do the works required; this was held to be sufficient, as the acts done were the acts of the Board, and did not require to be under seal and under the hands of five of their body. (1)

Under 11 & 12 Vict. c. 63, s. 69, a Local Board have power only to require a street to be levelled with reference to any want of equality or want of uniformity in the street itself. They have no power to require the level of a street to be raised or lowered so as to bring it into uniformity with the adjacent streets, as the power only attaches where the particular street requires to be levelled, &c., looking at it as an isolated street. Per Cockburn, C.J., under the words of the 69th section the Board has no power to require the appellant to raise the footpath to the level of the adjoining streets. The object was to make each street uniform, and it must be looked at as one isolated street so far as this question is concerned. If there are inequalities in it, there is power to make it level. It may be that it would be a convenience for the neighbourhood if this street was made of the same level as those near it, but there is no power to throw the expense of doing so upon the owners. (2)

In another case with reference to a provision in a Local Act substantially the same as the 51st section of the Towns Improvement Clauses Act, 1847, the Court of Queen's Bench expressed their opinion that the section would not justify the lowering the level of a street for a purpose unconnected with paving or repairing the pavement. (3)

Serving of
notice.

With regard to the service of a notice under 11 & 12 Vict. c. 63, s. 69, it has been held that service on a person de facto receiving the rent, is a service on the owner within the meaning of the second section of that Act. (4) So also the service of a notice under section 69 of 11 & 12 Vict. c. 63, upon a clerk at the office of the "owner," where the owner carries on his business, is a sufficient service, and is a service upon some "inmate of his place of abode" under section 150 of that Act. Per Pollock, C.B., that section is in aid of the service of notices, and applies where the name of the owner or occupier is unknown, in which case it prescribes a particular mode of delivery. (5)

Private
streets.

Under section sixty-nine of the 11 & 12 Vict. c. 63, a railway and canal company whose premises abut on a street,

(1) *Barnsley v. Sedgwick*, L. R. 2 Q. B. 185; 8 B. & S. 202; 15 L. T. (N. S.) 569; 31 J. P. 165; 36 L. J. M. C. 65.

(2) *Caley v. Kingston-upon-Hull*, 11 L. T. (N. S.) 339; s. o. *Cary v. Kingston-upon-Hull*, 34 L. J. (N. S.) M. C. 7; 11 Jur. (N. S.) 171.

(3) *Brown v. Clegg*, 16 Q. B. 681.

(4) *Peck v. Waterloo and Seaford*, 2 H. & C. 709; 33 L. J. (N. S.) M. C. 11; 9 L. T. (N. S.) 338; 9 Jur. (N. S.) 1344.

(5) *Mason v. Bibby*, 9 L. T. (N. S.) 692; 33 L. J. (N. S.) M. C. 105; 10 Jur. (N. S.) 519; 2 H. & C. 881.

but with a fence between them and the street, is liable to be charged. (1)

Where a railway ran in a cutting adjoining a new street which a vestry in the metropolis were about to pave, and the railway was separated from the street by a wall, through which there was no communication between the street and the railway, it was held that the railway "bounded" the street within the meaning of 25 & 26 Vict. c. 102, s. 77. (2)

Under the Manchester General Improvement Act, 1851, which enacts in section 17 that the expenses incurred by the Town Council in sewerage and flagging a street shall be borne by the owners "according to the extent of their respective houses and grounds lying alongside or adjoining to the said street," it was held that the owner of ground at the end of a street forming a cul de sac was liable to pay an apportioned share of the expenses, although a wall divided his property entirely from the street. (3)

Where under the Metropolis Local Management Act the Fulham Board of Works repaired a street and then divided the expenses of the works into sections, making a separate estimate for each section, and apportioning the rate to pay the expense of each section on the owners of land abutting on that section, their so doing was held not to be warranted by the statute; as the expenses of the repairs ought to have been distributed among the owners of the lands abutting on the whole street, and not upon those of the sections. (4)

The provision in 11 & 12 Vict. c. 43, s. 11, "that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose," applies to expenses incurred by a Local Board under sect. 63 of 21 & 22 Vict. c. 98; but the six months do not commence to run till after the expiration of the three months during which the apportionment of the expenses may be disputed. (5)

To an action by a Local Board to recover certain expenses declared by the Board to be "private improvement expenses," under the 69th sect. of 11 & 12 Vict. c. 63, in respect of a street declared "not a highway repairable by the inhabitants at large," it was pleaded that the street was a "public highway," to which

Paving, etc.,
private
streets.
Apportion-
ment of
expenses.

Recovery of
expenses.

(1) *Reg. v. Newport*, 32 L. J. (N. S.) M. C. 97; 3 B. & S. 341; 9 Jur. (N. S.) 746.

(2) *London and North Western Railway Company v. St. Pancras*, 17 L. T. (N. S.) 654.

(3) *Manchester (Mayor, &c., of) v. Chapman*, 18 L. T. (N. S.) 640; 32 J. P. 582.

(4) *Whitchurch v. Fulham Board of Works*, 30 J. P. 229; 12 Jur. (N. S.) 353; 35 L. J. (N. S.) M. C. 145; 13 L. T. (N. S.) 631; 7 B. & S. 212.

(5) *Jacomb v. Dodgson*, 32 L. J. (N. S.) M. C. 113; 7 L. T. (N. S.) 674; 9 Jur. (N. S.) 848; 3 B. & S. 461.

Paving, etc.,
private
streets.
Recovery of
expenses.

there was a replication that the street was not, and never had been, a public highway repairable by the inhabitants at large. The plea, however, was held to be naught, because it merely alleged the street to be a highway, not that it is a highway repairable by the inhabitants. The action was also held to be maintainable because, although sect. 69 of the 11 & 12 Vict. c. 63, points to a summary remedy for the recovery of the expenses, sect. 68 of the Local Act applicable to the case expressly enacts that all money payable by virtue of that Act may be recovered by distress, or by action of debt, and this is money payable by virtue of that Act, with which the provisions of the Public Health Act are incorporated. (1)

A Local Act authorized the corporation of Blackburn, when any street, not being a highway, was not sufficiently sewered, levelled, paved, flagged, and channelled, to give notice to the respective owners of the premises fronting to such street, to sewer, level, pave, flag, or channel the same, and if the requirements of the notice were not complied with, the corporation might execute the works referred to in such notice, and the expenses may be recovered as damages from such owners. The corporation gave notice to certain owners of premises in a street, not a highway, to "repair, form, and pave the same;" which not being complied with, the corporation did the works, and brought an action to recover from the owner the expenses incurred by them in paving a street abutting on his frontage, the declaration not stating the amount claimed, and it was held on demurrer to the declaration, that the provisions of sect. 149 of the Towns Clauses Improvement Act, 1847, which was incorporated with the special Act, were "expressly varied and excepted" within the meaning of sect. 1 of that Act by sect. 34 of the special Act, and that therefore the corporation had not the option of enforcing an unliquidated claim for expenses by an action at law, but were confined in such cases to the remedy prescribed by sect. 34 of the special Act, and sect. 140 of the Railway Clauses Consolidation Act, 1845 (8 Vict. c. 20), also incorporated, viz., the recovery of the expenses as damages before the justices. (2)

The following case is important as showing the liability which a Local Board may incur in respect of works executed by them under sect. 69 of the 11 & 12 Vict. c. 63, when the notices on the owners are informal. The Local Board, in the exercise of the powers given to them by that section, gave notice to the owners of premises in a private street to sewer, &c., the same, and on the default of the owners, contracted with the plaintiffs to do the work, stipulating as follows:—"The work to be completed within five months, and the contractors to be paid for the work when the money is collected from the

(1) *Sunderland v. Herring*, 17 J. P. 741.

(2) *Blackburn v. Parkinson*, 1 E. & E. 71.

owners of the adjacent property." The notices which were served upon the owners being bad, according to the decision in the case of *Blackburn v. Parkinson*, *supra*, the money could not be collected from the owners, and the Local Board not being in possession of funds to pay the contractors, the latter brought their action upon the contract, and it was held that the contractors might sue the Local Board on an implied undertaking that the Board was in a condition to collect the money, and had done or would do all that was in their power to collect it, and judgment was accordingly for the plaintiffs. (1) But see *Rowell v. Hartlepool*, *ante*, p. 99, and *Worthington v. Hulton*, *post*.

Paving, etc.,
private
streets.
Recovery of
expenses.

Where works were executed by a Local Board, under sect. 69 of the Public Health Act, 1848, and bricks of a particular kind were used in the construction of the works, of which bricks the surveyor of the Local Board was the patentee, and upon the manufacture and sale of which he received a commission under a licence granted to the manufacturers, it was held that such constituted no valid objection to an order being made by justices to enforce payment of the apportioned costs of the works from an adjoining owner; as there was no illegal bargain or contract within the meaning of 11 & 12 Vict. c. 63, s. 38. (2)

It was held that sect. 69 of the 11 & 12 Vict. c. 63, did not give the Board power to make new streets, and that it did not apply to streets repairable or partly repairable by the parish, but only to streets in no part repairable by the parish. (3)

But it has since been enacted that the powers given by the 69th and 70th sections of that Act shall extend to providing the means of lighting, metalling, or making good the streets, and may be exercised in respect of the carriageway, footway, or any part of the streets. Such powers are also deemed to have extended and to extend, and to be exercised in respect of any street or road of which a part was at the time of the application of the Public Health Act, 1848, or is or may be, a public footpath, or repairable at the public expense, as fully as if the whole of the street or road had been or was a highway not repairable at the public expense.

Local Board
to provide
for sewerage,
etc., of parts
of streets not
being high-
ways.
21 & 22 Vict.
c. 98, s. 38.

So the words "theretofore paved" in sect. 53 of the 10 & 11 Vict. c. 34, were held to refer to streets which have at any time been well and sufficiently paved and flagged, or otherwise made good to the satisfaction of the local commissioners, and not to the state of such streets at the time of the passing of a special Act, incorporated with the general Act. (4)

(1) *Worthington v. Sudlow*, 8 L. T. (N. S.) 283; 31 L. J. (N. S.) Q. B. 131; 2 B. & S. 508; 8 Jur. (N. S.) 668. See also *Collen v. Wright*, 27 L. J. Q. B. 115, on the same point.

(2) *Wednesbury v. Stevenson*, 27 J. P. 741.

(3) *Kingston-upon Hull v. Jones*, 1 H. & N. 489; 26 L. J. (N. S.)

Exch. 33; 2 Jur. (N. S.) 1193.

(4) *Reg. v. Great Western Railway Company and Others*, 28 L. J. (N. S.) Q. B. 24; *Ib.* M. C. 246; *s. c.* *Great Western Railway Company and Maud and Bullock*, *apps.*, *West Bromwich Improvement Commissioners*, *resps.*, 5 Jur. (N. S.) 1054; 1 E. & E. 806.

Paving, etc.,
private
streets.
Liability of
owners for
expenses.

The following was a decision upon sect. 69 of the 11 & 12 Vict. c. 63. A new street in the town of Bradford, in which the provisions of the Public Health Act, 1848, were duly applied, had been repaired by the owners in 1828, and the public had ever since been allowed freely to pass through it, and great numbers had used it. There had been no express dedication or certificate of justices rendering the township liable to repair it, and it had never in fact been repaired by any one since the above date, and it did not need repair. The Local Board of Health having called on the adjacent owner to sewer, pave, and level it, and on his refusal, having done so themselves, obtained an order of the justices on the owner to pay the expense. This being the state of facts, upon a case stated for the opinion of the Court of Queen's Bench, it was held that there was ample evidence that the road was a highway dedicated to, and adopted by the public, and the adjudication of the justices was quashed accordingly. (1)

The following are later decisions on the same point. In the year 1830 a street in a town, connecting two streets which were common and public highways, was made by the owner of the land, who, however, was only a leaseholder (though that fact did not come before the Court), and opened throughout to the public, and remained ever afterwards open. At the time when he opened it he intended the street or road to be used as, and to be a common and public highway, and it had been ever since adopted and used uninterruptedly as such. In the year 1825, a local Act was passed for paving, lighting, and cleansing the town, and under it commissioners were appointed for carrying its purposes into execution. By sect. 7 of that Act, when any new streets, &c., are made in the town, and well and effectually flagged and paved to their satisfaction, the commissioners on application by the owner or owners of the soil are required by writing under their hands to declare the same to be public highways, and from and after such declaration the same shall be deemed and taken to be highways, and be repaired by the commissioners. In the year 1852, the provisions of the 11 & 12 Vict. c. 63, with the exception of sect. 50, were applied to, and put in force in the town. The Local Board of Health having given notice to the respondents, who were owners of the premises in the street referred to, requiring them within a month to pave, flag, channel, and make good so much of the street as their premises respectively abutted upon, and the notice not being complied with, the Local Board thereupon executed the work, and demanded from the respondents payment of the expenses so incurred, which being refused, they took proceedings in a summary manner for the recovery of them. Upon the facts proved at the hearing of the information, it appeared that if the street was not on the 1st of Sep-

(1) *Illingworth v. Montgomery*, 2 L. T. (N. S.) 726.

tember, 1858, a highway within the meaning of sect. 69 of the 11 & 12 Vict. c. 63, the respondents were liable to the payment of the sum demanded of them; but if it was a highway within the meaning of that section they were not liable to the payment. The commissioners under the Local Act never exercised their option of declaring the street a highway, so as to render it repairable by them, and neither they nor the Local Board of Health, nor the respondents had ever repaired the street. Upon this state of facts it was held by the Court of Common Pleas, that the order made by the Local Board of Health, requiring the owners to repair the street, was a lawful order, the street not being a highway repairable by the inhabitants at large. (1)

Paving, etc.,
private
streets.
Liability of
owners for
expenses.

In 1825, by a Local Act, certain commissioners were appointed who were authorized to repair all streets and highways in the town, and it was enacted that when any new streets should be laid out, and the footways and carriageways thereof should be effectually paved and put in good order to the satisfaction of the commissioners, then, on the application of the owner of the soil, the commissioners were empowered to declare the same to be public highways; and thereafter they were so to be deemed, and to be repaired by the commissioners at the public charge. Before the 5 & 6 Will. 4, c. 50, a new street had been laid out in the town by the owner of the soil, who then opened and dedicated it to the public, and the same was afterwards, and continued to be used as a public highway. In 1852 the Public Health Act, 1848, was applied to the town. The Local Board, under the authority of sect. 69 of that Act, ordered the owners of premises abutting on the street so laid out and dedicated to the public to pave it. An owner having declined to repair the road, the Local Board executed the works and called upon her to pay a large amount. Error having been brought in the case to review the decision of the Court of Common Pleas in *Wallington v. White*, it was held that the order of the Local Board was a lawful one, inasmuch as the street was not a highway repairable by the inhabitants at large. The case involved another question, which was not thought of when *Wallington v. White* was before the Court below as to the effect of the repeal of the Local Act; but the Court said that the answer given by the counsel for the plaintiff was satisfactory, namely, that the repeal of the Local Act does not render null and void the effect which that Act had, for the time it was in existence, of making the road not repairable by the parish. (2)

A field having been laid out for buildings, and a street formed in 1836, which had ever since been used as a public thoroughfare, but was never formally dedicated to the public, and the proprietor having granted a licence to a person to lay down gas

(1) *Wallington*, app., *White*, resp. 30 L. T. (N. S.) M. C. 209; 4 L. T. (N. S.) 290; 7 Jur. (N. S.) 1013; 10 C. B. (N. S.) 128.

(2) *Willes v. Wallington*, 32 L. J. (N. S.) Exch. Ch. C. P. 86. Affirmed in the Exchequer Chamber, 13 C. B. (N. S.) 865.

Paving, etc.,
private
streets.
Liability of
owners for
expenses.

pipes, for which and for preventing others interfering, the proprietor received a small rent of £6 annually from the person to whom he granted the licence; afterwards and since 1853 the Board of Health of the district had repaired the street, and in 1858 they put up notices under the 11 & 12 Vict. c. 63, s. 70, to make it a highway. The person to whom the licence was granted, having been summoned for wilfully injuring the street, being a highway, it was held, that there was ample evidence from which the justices might infer that the street had been dedicated to the public by the proprietor, and was now a highway. (1)

The following illustrates the liabilities of owners and tenants as between themselves, for the costs of sewerage, levelling, &c., streets.

By a Local Act a Town Council was empowered to order that certain streets should be sewered and paved, and if the owner of a house in a street so ordered to be repaved should neglect to do his share of the work, the Council might carry out its orders, and charge the share of each house upon the owner. As a further remedy for obtaining the money, tenants were bound to pay to the Council the rent due to the owners if required. A tenant occupied a house in a street which was paved and sewered by the Town Council, after neglect by the owner to carry out the order. The owner paid the money, and brought an action against the tenant for the sum on his covenant in the lease, "to pay and discharge all taxes, rates, assessments, and impositions whatsoever (except property or income-tax) in respect of the said rent which, during the said term, should become payable in respect of the said demised premises;" but it was held that the Act created a personal duty to be performed by the owner, the amount of which was regulated by the extent of his house property in the street, and that he could not claim the sum which he had to pay upon neglect of this duty from the tenant under the lease. The word "imposition" in the covenant must be interpreted *ejusdem generis*, with taxes, rates, and assessments, and in respect of the demised premises. (2)

Certain
streets not
highways to
be deemed
such, and
repaired by
Local Board.
11 & 12 Vict.
c. 63, s. 70.

If any present or future street, not being a highway at the time when the Act is applied to the district in which it is situate, be sewered, levelled, paved, flagged, and channelled to the satisfaction of the Local Board, the Board may, by notice in writing put up in any part of the street, declare the same to be a highway, and it shall thereupon become a highway, and be from time to time repaired by them out of the rates levied "in that behalf" under the authority of the Act (see 21 & 22 Vict. c. 98, s. 37): every such notice must be entered amongst the proceedings of the Local Board. But no street shall so become

(1) *Thomas, app., Williams, resp.*,
24 J. P. 821.

(2) *Tidswell v. Whitworth*, 15 L.
T. (N. S.) 574; L. R. 2 C. P. 326.

a highway if within one month after notice in writing shall have been put up, the proprietor of the street, or the person representing or entitled to represent the proprietor, by notice in writing to the Local Board, objects thereto: no such objection, however, shall be of force unless made either by the sole proprietor, or (if more than one) by the majority in number of the proprietors; and in ascertaining such majority, joint proprietors are to be reckoned and considered one proprietor.

Further on the same point:—A landowner in a district under a Local Board of Health gave notice to the Local Board of his intention to dedicate a certain road as a highway; to which the Board replied that they could not adopt the road as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The owner, however, obtained and enrolled the certificate of two justices under the General Highway Act, 5 & 6 Will. IV. c. 50, s. 23; and the public then used the road, which was kept in repair by the owner for twelve calendar months as required by that Act. Afterwards, it becoming out of repair, an indictment was preferred against the inhabitants of the parish. It was, however, held that the inhabitants were not liable to the indictment, inasmuch as the road had not become a highway repairable by the inhabitants at large; for assuming that the 5 & 6 Will. IV. c. 50, s. 23, applied to the case, and that that section was not superseded by 11 & 12 Vict. c. 63, s. 70, the road had not been made to the satisfaction of the Local Board of Health, who were the surveyors of the highways in their district by s. 117 of the latter statute. (1)

With regard to what is not a street within the meaning of the Metropolis Local Management Act (18 & 19 Vict. c. 120), see *Reg. v. St. Mary, Islington*. (2)

Before giving the notice mentioned in the sixty-ninth section of the Public Health Act, 1848, the Local Board shall cause plans and sections of the works intended to be executed under that section and the thirty-eighth section of the Local Government Act, 1858, to be made, under the direction of their surveyor, on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground; and such plans and sections shall be deposited in the office of the Local Board, and shall be open at all reasonable hours for the inspection of all persons interested therein during the period for which such notice is required to be given, and a reference to such plans and sections in such notice shall be held sufficient without requiring any copy of such plans and sections to be annexed to such notice.

The following form of notice, or a notice to the like effect,

(1) *Reg. v. Dukinfield*, 4 B. & S. 158; 32 L. J. (N. S.) M. C. 230.

(2) *E. B. & E.* 743.

21 & 22 Vict.
c. 98, s. 42.

Dedication
of street as a
highway.

Before giving
notice for
paving, etc.,
of streets,
not being
highways,
plans and
sections to be
deposited.
24 & 25 Vict.
c. 61, s. 16.

Form of
notice.
24 & 25 Vict.
c. 61, s. 17,
and Schedule.

may be used for any of the purposes of the sixty-ninth section of the Public Health Act, 1848, and of the thirty-eighth section of the Local Government Act, 1858, and of the 24 & 25 Vict. c. 61, for which such form is applicable, and such form shall accordingly, to all intents, be deemed sufficient for such purposes.

Form of
notice (1) to
owners, etc.
Ib.

Local Board of Health for
County . The of in the
To of

the owner of certain premises fronting, adjoining, or abutting upon a certain street called

within the said [borough or district, as the case may be],

Whereas the said street is not sewered, levelled, paved, flagged, and channelled to the satisfaction of the above-named Local Board of Health; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channelled: Now, therefore, the said Local Board of Health hereby give you notice (in pursuance of the statute in that case made and provided) to sewer, level, pave, flag, and channel the same within the space of [*state the time*] (1) from the date hereof, in manner following: (that is to say), the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], (2) of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the Local Board.

Each gully for surface draining, and its connection with the sewer to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], (3) and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*] (4).

The channel stones to be [*here describe the mode to be adopted and the material to be used*] (5). The curb or side stones to be [*here describe the mode to be adapted and the material to be used*] (6).

The whole of the above-mentioned works to be executed by you in

(1) The following are examples in which the blanks in this Form may be filled up:—

1 "One month."

2 "Of well-burnt bricks, or of such other materials as shall be approved; that manholes of 9-inch brickwork be built upon the sewers; the surface or cross-drain be laid with metallic pipes from the sewers to the channels, and gullies be built of 9-inch brickwork. Flag-traps, with iron grates fixed upon the same in the channels."

3 "The carriage-way must be excavated to a depth of 2 feet 2 inches below the top of side stones when laid, and the footway to the depth of 6 inches below the top of side stones when laid with proper inclinations, and under the carriage-way a coating of stone, broken to pass through a two and a-half inch ring, or coarse gravel, must be put to a

depth of 15 inches in the middle and 9 inches at the side-stones."

4 "The carriage-way to be paved with sound hard stone setts 7 inches deep, not more than 9 inches long, 6 inches to 5 inches wide, and laid on 3 inches of fine gravel screened through a three-quarter inch mesh; the footway to be laid with the best hard-faced sett faced flags, 3 inches thick at the least, and three-quarters of a superficial yard in area, properly squared, laid with proper mortar, on three inches of gravel screened through three-quarter inch mesh."

5 "Sound hard stone sett laid to an uniform depth of 12 inches and 5 inches below the side stones."

6 "Sound hard stone 6 inches wide and 12 inches deep, and not less than 3 feet long, to be properly squared and tooled, and to be laid with proper inclination."

accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the Local Board, situate in street, in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said Local Board of Health or their surveyor.

Form of notice.

Dated this day of One
thousand eight hundred and

Clerk to the said Local Board of Health.

In districts where the Local Government Act, 1858, is in force, notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the Towns Improvement Clauses Act, 1847, may, at the option of the Local Board, be served upon owners instead of occupiers, or upon owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served upon owners, be recovered from owners instead of occupiers, and when such cost is recovered from occupiers they shall be entitled to make the same deduction from the rents payable for the premises where the work is done in respect of such cost as they are entitled to make in respect of private improvement rates by the Public Health Act, 1848,—that is to say, in the manner provided for by sect. 91 of that Act.

Service of
notices and
repayment
of costs.
24 & 25 Vict.
c. 61, s. 2.

No incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, is liable to any expenses under the 69th section of the Public Health Act, 1848, or the 21 & 22 Vict. c. 98, s. 38, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial-ground attached thereto, nor are any such expenses to be deemed to be a charge on such church, chapel, or other place, or on such church-yard or burial-ground, or to subject the same to distress, execution, or other legal process. The Local Board may, however, undertake any works from the expenses of which any such incumbent or minister is exempted as above mentioned.

Exemption
from contri-
buting
towards
expenses.
21 & 22 Vict.
c. 98, s. 38.

The exemption in 21 & 22 Vict. c. 98, s. 38, applies only to churches, &c., which are “now by law exempt from rates for the relief of the poor.” The 3 & 4 Will. IV. c. 30, s. 1, exempts from poor rates “churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship;” but the exemption does not extend to any land in immediate connection with the churches, &c., which may be occupied by the incumbent minister, or trustees of the churches or chapels.

The Local Board may purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street; and resell any part of the premises so purchased which may not be wanted for that purpose, and the proceeds shall be carried to the district fund account. (See *post*, page 201).

Purchase of
premises in
order to im-
prove streets.
11 & 12 Vict.
c. 63, s. 73.

Purchase of premises in order to improve streets. 11 & 12 Vict. c. 63, s. 73. 29 & 30 Vict. c. 90, s. 47.

With reference to the compulsory purchase of land, the Local Board of Hastings being desirous of widening a road in that town presented a petition to the Secretary of State stating that they proposed under the provisions contained in the Local Government Act, 1848, and the several Acts incorporated therewith, to widen the road, and praying to be allowed for that purpose to put in force the compulsory powers of the Lands Clauses Act, to enable them to take the land belonging to B. The Secretary of State, in spite of B.'s opposition, granted a provisional order to take his land contingent upon its being confirmed by Parliament. In 1865, the 29 & 30 Vict. c. 110 (*post*) was passed, confirming the order "so far as it was authorized by the Local Government Act, 1858, and the Acts incorporated therewith." Subsequently the Sanitary Act became law, and it was held upon the construction of sect. 47 of that Act, and the Acts referred to, that the Local Board had no power to take B.'s land otherwise than by agreement, for the confirmation of the provisional order must be express and not by implication. (1) Per Stuart, V.C. :—"I say this, because in all cases where it is sought to deprive a man of his land or property on any terms, the Act conferring on parties such rights should be very strictly construed by the Court." Further, with reference to this case, see the chapter on Purchase of Lands, *post*.

§ 2. SPECIFICATION AND CONDITIONS OF LEVELLING, PAVING, FLAGGING, AND CHANNELLING STREETS.

Materials.

The following is an example of specifications and conditions of a contract for levelling and paving streets:—

The setts to be 7 inches in depth, not less than 4 inches and not more than 7 inches in width, to be perfectly square on all sides; the bottom bed to be full and equal to the top bed, free from all faults and other defects whereby they are at all liable to split, either by wear or weather. To be from — quarry, or of an equal quality, and which, previous to being used, shall have the special approval of the surveyor. The flags to be from — quarries, of the quality termed *firsts* and *seconds*, self-faced, and not less than 3 inches in thickness. The bricks used for the gullies to be hard, sound, and well-burnt bricks. The cement, &c., for the gullies to be Roman, and mixed in the proportion of one to one with fine clean sharp sand, free from all loam, &c. The grates to be of the pattern or design approved of by the surveyor. No materials to be worked, set, or used in any manner whatever until the same have been examined by and received the approval of the surveyor to the Local Board of Health. No materials rejected, or considered defective by the surveyor, will be permitted to be used, but must be immediately taken off the ground. The contractor or contractors shall, without any extra charge, take up all the old materials, and place to one side such portion of them as may not be fit for use, which shall be removed by the respective owners thereof within one day's notice from the surveyor: failing to do this, the contractor or contractors to remove them at the cost of such owners.

Excavations.

The contractor or contractors to excavate, &c., from the surface to a

(1) *Frewen v. Hastings*, 16 L. T. (N. S.) 553.

proper level bed (unless authorized by the surveyor to the contrary), full width from sidestone to sidestone for the street formation, and to perform all labour in connection with the removal of the excavated materials.

The contractor or contractors to form the carriage-way, full width from sidestone to sidestone, with a foundation of broken stone 15 inches deep in the centre and 9 inches deep at the sides (each stone to be broken so as to pass through a ring 2½ inches in diameter), laid on and levelled to the requisite form, as shown on section, so as to bring the top line to the intended transverse section of the road, and the whole subjected to traffic until consolidated, and approved by the surveyor as in a condition to receive the paving stones. The contractor or contractors, during the period the foundation is being consolidated, to keep the same in repair, level and fill all ruts, and make good all sinkings. Previous to paving, the whole surface of carriage-way to be covered with clean, sharp, screened gravel, three inches deep.

The sidestone to be 12 inches by 6 inches, to be dressed to a bevel of 1 in 12 on the top, dressed 4 inches on the back, full dressed on the face, square jointed on the ends for at least 6 inches in depth, to be not less than 3 feet in length, and when set to be firmly bedded on gravel or other suitable materials. Circular curbs to be 12 inches by 10, to be worked to the proper radius, and when measured to be taken as a measure and a-half.

The channels to be formed of two courses of 6-inch setts, laid longitudinally, and firmly bedded in gravel. The footpaths to be the widths shown on the plan. The flags to be laid in regular courses from the wall breaking joint, and each flag, on an average, to measure 7 superficial feet. The flags to be well squared the whole thickness, jointed in good lime mortar, and well bedded on a beaten foundation of gravel and ashes. All old flags, when used, to be well squared, refaced, and laid as before specified. Circular flagging to be taken as a measure and a-half.

The contractor or contractors to pave the carriage-way with square paving setts 7 inches in depth, when laid to be put down in straight courses of equal breadth, to be well and firmly bedded in the gravel; joints not to exceed three-quarters of an inch, to have the gravel well crammed in with cramming-irons, all well beaten down with proper paving beaters, and afterwards covered with a coat of gravel one inch thick. The intersection of street crossings to be paved diagonally.

The contractor or contractors to build gullies to the form and dimensions shown on the drawing, to connect the same with the sewer, with six-inch socket-jointed stoneware pipes, jointed with puddle, laid on a solid bed and carried at one uniform inclination from gully to sewer. The brickwork of the gullies to be set in cement, to have a coat of puddle six inches thick under the footing or bottom of gully and round the outside of walls to the height of the water-line, and the inside to be pargetted with cement the full depth. The grates to be properly fixed. The contractor or contractors to connect all rain-water spouts with the channels nearest thereto with 4-inch pipes.

The contractor or contractors shall securely and properly fence off and light the work during the progress thereof, and in such places and at such times as the surveyor shall direct, or when necessary for the safety of the public, and will be held responsible for any accident that may occur through non-compliance with, or neglect of, this clause. The contractor or contractors to be held responsible for and to make good any damage to gas or water pipes, drains, fences, or other works or property damaged by him or them during the progress of the works, or which may occur in consequence of the said paving within twelve months after completion, and in case of default, the damage will be made good by the surveyor to the Local Board, and the amount thereof deducted from any money due, or which may become due, to the contractor or contractors.

§ 3. IMPROVING LINE OF STREETS AND REMOVING OBSTRUCTIONS.

Setting
houses for-
ward.
21 & 22 Vict.
c. 98, s. 45.
10 & 11 Vict.
c. 34, s. 66.
Widening
streets.
Ib. s. 67.
Setting
houses back.
Ib. s. 68.
Projections
to houses.
Ib. s. 69.

Removal of
existing pro-
jections.
Ib. s. 70.

Line of
street.
Byelaw.

With permission of the Board, and on such terms as they think fit, any building may be set forward for improving the line of streets; and the Board may purchase lands for the purpose of widening, enlarging, or otherwise improving streets, and resell such portions thereof as shall not be required. The Board may also require, on making compensation to the owners for any damage sustained, houses projecting beyond the regular line of the streets which have been taken down to be set backwards towards the line of the street or the line of adjoining houses or buildings. Further on this point, see *post*, p. 199. Future projections to houses or buildings which are an obstruction to passengers, are to be removed or altered by the occupier on notice from the Board within fourteen days thereafter, under a penalty not exceeding 40s., when the Board may themselves remove the obstruction, and recover the expense from the occupier as damages; and the occupier on the other hand may deduct the expense of removing the obstruction from his rent if it was not occasioned by himself. The Board may also cause existing projections from houses to be removed or altered, provided that they give thirty days' notice thereof to the occupier; but they must afterwards make reasonable compensation to every person who suffers damage by the removal or alteration.

A byelaw, made under the Municipal Corporations Act, 5 & 6 Will. IV. c. 76, imposed penalties on any person who caused obstructions in the streets, referring to them as of a temporary character, and concluded, "or shall cause or commit any other obstruction, nuisance, or annoyance in any of the streets." In May, 1852, the appellant became the owner of the house mentioned in the conviction, which had been used as a residence, in front of which was an area protected by iron railings set into a stone coping. In October, 1855, he began the construction of a shop front along the whole length of the house, and projecting in front of the walls of the house as far as the foot pavement of the street. This projection was substantially built, and formed the front of the appellant's house, and contained a door and shop-front, supported by wooden pilasters with large glass windows, and the floor of the shop inside was brought up to the new outside walls and thus covered the area, but the plinths of the pilasters extended an inch and a half over the footway, and the shop-front covered a space of two feet seven inches not previously covered in any way. Upon these facts the appellant contended that the byelaw in question did not authorize the conviction, as the general words in the byelaw related to obstructions of a temporary nature, and the provisions of the Local Act provided against an obstruction of a permanent nature. The Court held that upon the facts found

the obstruction was not temporary but a permanent one, and was therefore not an offence against the bye-law, but one which might be proceeded against by indictment under the Local Act, which gave a summary remedy. (1)

It shall not be lawful at any time or times hereafter, within the district of any Local Board, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of such house or building on either side of the same as aforesaid, without the previous consent of such Local Board.

No house to be brought forward without consent of Local Board.
24 & 25 Vict. c. 61, s. 28.

The word "street" in 24 & 25 Vict. c. 61, s. 28, applies only to a row of houses in some degree proximate and continuous, and not to a set of detached houses at irregular distances and not in a continuous line. It is a question of fact to be determined by a jury whether or not the house does form part of a "street," and, *semble*, that a set of detached houses, not being in a continuous line, but some facing one way and some another, and having no appearance of uniformity, is not a street within the meaning of the Act. (2) *Per curiam* with reference to the Metropolis Local Management Act, 28 & 29 Vict. c. 102, s. 98, the question is more or less one of fact, for the magistrate to see that there is enough of houses to make it (the *locus in quo*) a street, and if so, whether the appellant had left twenty feet from the crown of the road. (3)

Definition of "street."

With reference to the word "street" as used in a Local Act empowering the Corporation of the City of London to take lands, &c., for the purpose of forming a new street, in *Galloway v. Commonalty and Citizens of London*, and *The Metropolitan Railway Company and the Mayor, Commonalty, and Citizens of London v. Galloway*, (4) it was held by the House of Lords on appeal that the word "street" does not mean the mere roadway, but "a thoroughfare with houses on both sides." *Per Lord Chelmsford*:—"When the Legislature empowered the Corporation to take lands, houses, and buildings for the purposes of the Act, it did not confine them to the mere width of the intended road, but gave the authority to take as much land as might be necessary for the formation of the street itself, by the erection of houses or other buildings on each side."

With regard to what constitutes the line of building when there are fore-courts to the houses, the following judgment in a case which occurred under the Metropolis Local Management Act, 18 & 19 Vict. c. 120, s. 143, may be quoted. "Here was a regular line of building to the extent of 700 feet, no matter what was to the north or to the south of that portion, and in

Line of buildings.

(1) *Reg. v. Dickenson*, 7 E. & B. 831; 26 L. J. (N. S.) M. C. 204; 3 Jur. (N. S.) 1076.

(2) *Reg. v. Fullford*, 10 L. T. N. S.) 346; 10 Jur. (N. S.) 522; 33

L. J. (N. S.) M. C. 122.

(3) *Taylor, app., v. Metropolitan Board of Works, resp.*, 31 J. P. 87.

(4) 35 L. J. Ch. 492; 12 Jur. (N. S.) 747.

Line of
buildings.

the line stands the plaintiff's house. Before the building which was pulled down was erected, the fore-court was not built upon. The plaintiff has covered the whole of the fore-court in, and if all the other proprietors of the house were to do the same, the space for light and air would be considerably contracted, and the new building having been erected without the leave of the Board of Works, and being beyond the regular line of buildings in the street, the case falls within sect. 143, and the district surveyors might lawfully cause it to be removed." (1)

On the same point see *Ecclesiastical Commissioners for England and Courtenay v. St. James and St. John, Clerkenwell*, (2) which had reference to the erection of a church in the metropolis beyond the line of the adjoining buildings.

In a proceeding before a magistrate under s. 75 of the Metropolis Local Management Act, 1862 (25 & 26 Vict. c. 102), for building an "erection" beyond the general line of buildings in a street, the certificate of the superintending architect of the Metropolitan Board of Works as to what line is "the general line of buildings," does not preclude the magistrate from questioning and determining whether such line be a true line of buildings in that street or not. Wherefore a small conservatory having been erected over a projecting shop-front in that street, and the magistrate having decided that it was not an erection within the meaning of the Act, the Court refused to review his decision. (3) This decision of the Court of Common Pleas was, however, overruled in a case in the Court of Queen's Bench, in which that Court held that the "general line of buildings" was the general line of buildings as fixed by the superintending architect of the Metropolitan Board of Works. (4)

In relation to the 24 & 25 Vict. c. 61, s. 28, the following is instructive:—Mr. William Nicholson, of King's Bench Walk, and Brighton, a barrister, was arraigned upon an indictment which charged him with violating the provisions of the Local Government Act by building a porch to No. 35, Oriental Place, Brighton, beyond the line of frontage.

Mr. Hurst and Mr. Merrifield were counsel for the prosecution; Mr. Serjeant Parry and Mr. Philbrick appeared for the defendant.

Mr. Justice Willes, early in the trial, remarked that it was a civil proceeding, and he supposed the defendant had not been put in the dock. Mr. Serjeant Parry said the authorities of the town of Brighton had not proceeded to that extremity.

It appeared that after the porch had been commenced the town council objected, and Mr. Nicholson wrote a very proper letter repudiating any desire to set that body at defiance, and

(1) *Robins v. Merry*, 32 L. T. 256.

(2) 7 Jur. (N. S.) 326, 810; 30 L. J. (N. S.) Ch. 454.

(3) *St. George Hanover Square v. Sparrow*, 33 L. J. (N. S.) M. C. 118

10 L. T. (N. S.) 504; 10 Jur. (N. S.) 771; 16 C. B. (N. S.) 209.

(4) *Bauman v. St. Pancras*, L. R. 2 Q. B. 528; 36 L. J. M. C. 127.

expressing a hope that their consent would be given. The town council insisted on the porch being removed, and preferred this indictment at the last assizes for the purpose of enforcing its removal. In cross-examination it was insinuated that a member of the town council was a builder, that he had been in negotiation for the alterations at Mr. Nicholson's which some other builder was ultimately employed to effect, and that disappointment at losing the contract caused him to be very active in promoting the subsequent opposition. It was proved that this house was the freehold property of Mr. Nicholson, and that the porch of an adjoining house belonging to Lady Abinger projected more than three feet beyond the porch of No. 35, Oriental Place.

At the conclusion of the case for the prosecution, Mr. Serjeant Parry submitted that there was no case to go to the jury. Mr. Nicholson had not built beyond his own freehold, and the porch was neither an addition nor a part of the house. It was merely a reasonable accessory to the house, and it was said the next street was full of porches.

Mr. Justice Willes said he supposed it was an important question for the town council of Brighton, as they had proceeded by indictment, but all his sympathies were with Mr. Nicholson, because if it had been his house the first thing which he should have done would have been to build a porch. His Lordship (in summing up to the jury) said he did not feel at all sure that Mr. Nicholson had been guilty of any breach of this Act of Parliament, and although he did not in the least wish to pass a censure on the town council, he could not allow Mr. Nicholson to be found guilty for the mere purpose of getting a difficult question of law discussed and settled. After consulting Channell, B. (having left the court for that purpose), he said that he concurred with him that the erection of a porch of this particular description was not such an infringement of the Act as would support the indictment. Under his direction they would say that Mr. Nicholson was not guilty. The jury returned a verdict accordingly. (1)

The Municipal Corporation Mortgages, &c. Act, 1860 (*ante*, page 140), makes provision for the application of surplus borough funds in the improvement of the borough by enlargement of streets and otherwise.

Except in the case of public buildings, all doors and gates opening upon any street, put up after the adoption of the Act in the district, are to be made so as to open inwards; and if they be not so made, the Board may cause them to be altered after eight days' notice, and recover the expenses as damages in addition to a penalty not exceeding 40s. They may also alter existing doors or gates so that no part when open shall project over a public way. Entrances to vaults or cellars from

Line of
buildings.

Application
of surplus
borough fund.
23 Vict. c. 16,
s. 12.
Doors and
gates on
streets.
10 & 11 Vict.
c. 34, s. 71.
When they
may be
altered.
Ib. s. 72.

(1) *Reg. v. Nicholson*, 41 L. T. 657.

Openings to
cellars, etc.
10 & 11 Vict.
c. 34, s. 73.

the pavement are to have proper coverings made and kept in repair by the occupier in such manner as the Board may direct; failing in which, the occupier is to be liable to a penalty not exceeding £5.

Waterspouts.
Ib. s. 74.

The occupier of every house or building, after seven days' notice from the Board, is also to put up and keep in good condition waterspouts for conveying the water from the roof, so that it shall not fall on persons in the street, or on the foot-path, subject to a penalty not exceeding 40s. for every day of making default.

Byelaws as
to new streets.
21 & 22 Vict.
c. 98, s. 34.

Otherwise, as to new streets, the Local Board may make byelaws with respect to their level, width, and construction, and the provisions for the sewerage of such streets. A form of byelaws for this purpose, suggested for adoption by the Secretary of State, may be obtained from the publishers of this work.

§ 4. NAMING STREETS AND NUMBERING HOUSES.

21 & 22 Vict.
c. 98, s. 45.

10 & 11 Vict.
c. 34, s. 64.
Ib. s. 65.

Further, the Local Board are to cause the houses in the several streets within the district to be numbered, and the streets to be named; persons destroying or defacing the numbers or names are liable to a penalty not exceeding 40s. for each offence; the numbers are also to be renewed by the occupiers; and if they fail to renew them after notice, they are liable to a like penalty, not exceeding 40s., and the cost incurred by the Board in renewing the numbers is recoverable as damages.

§ 5. LIGHTING STREETS.

Watching and
Lighting Act
to be super-
seded.
21 & 22 Vict.
c. 98, s. 46.

In any district where the Public Health Act, 1848, is in force, or where the Local Government Act is adopted, and in which the Lighting and Watching Act, 3 & 4 Wm. IV. c. 90, has been adopted, that Act is superseded by the Local Government Act, and all lamps, lamp-posts, gas-pipes, fire-engines, hose, and other property vested under the Act in the inspectors for the time being, in all districts under the Public Health Act, 1848, and elsewhere upon the adoption of the Local Government Act, vest in the Local Board.

Upon this provision a question has arisen as to sums uncollected for Lighting Rates, where the Lighting Act, 3 & 4 Wm. IV. c. 90, is superseded by the Local Government Act being adopted; and also as to the recovery of sums in overseers' hands, and whether the word "property" in the 46th section of the Local Government Act gives power to require overseers who may have a balance of Lighting Rate in hand to pay the same over to the Local Board. It is understood that the authorities at the Local Government Act office say: "It is considered that balance in hands of overseers should be paid

over to the Local Board, which, under the provisions of the 46th section of the Local Government Act, 1858, supersedes the authorities under the Lighting and Watching Act."

The Act, however, is by no means explicit on the point; and if the overseers should decline to collect the arrears of rates, or to pay over any money in their hands to the Local Board, it is difficult to see in which way they could be compelled to do so.

On the subject of the transfer of the duty of lighting a public thoroughfare, as a bridge on which tolls are taken, see *Vauxhall Bridge Co. v. Lambeth*. (1)

The Local Boards may contract, for any period not exceeding three years at any one time, with any company or person for the supply of gas or oil, or other means of lighting the streets, roads, and other open places, markets, or public buildings within their districts; they may also provide such lamps, lamp-posts, and other materials and apparatus as they may think necessary for lighting such places. The expenses they may thereby incur are to be defrayed out of the general district rates. The Local Board, however, cannot fix gas-lamps to houses in the district without the consent of the owners of such houses. (2)

Contracts for lighting.
12 & 13 Vict.
c. 94, s. 8.

Where a gas company consented to light with gas certain streets at specified rates of payment, and the vestry of the parish covenanted that if the company "did well and sufficiently light the said lamps with gas, and perform and keep all their covenants, they (the vestry) would pay for every lamp at and by the rate of £4 10s. per annum," and to an action to recover the price of a large quantity of gas so supplied by the company, the vestry pleaded various pleas; it was held that the covenants on the part of the company were several and independent covenants, and that the performance of the several matters set forth in the pleas was not a condition precedent to the right of the company to recover by action, on the covenant of the vestry. (3)

Where, under a Local Act, a summary remedy was provided against a person accidentally damaging a lamp and pillar attached thereto set up by any person or persons at his or their private expense, or which belonged to the company supplying the gas, it was held that the Act applied to a lamp and pillar set up by a corporation, although the gas was provided by contract between a company and the corporation. (4)

Injury to lamps.

In connection with the subject of gas, reference may here be made generally to the Acts 22 & 23 Vict. c. 66, and the amending Acts 23 & 24 Vict. c. 146, and 24 & 25 Vict. c. 79, for regulating measures used in the sale of gas. These Acts, how-

Regulation of gas measures.

(1) 31 L. J. (N. S.) Q. B. 252.

(2) *Meek v. Langdon*, 37 L. T. 181.

(3) *London Gas Light Company v. Chelsea*, 2 L. T. (N. S.) 217.

(4) *Hereford (Mayor of) v. Moreton*, 15 L. T. (N. S.) 187.

ever, do not cast upon Local Boards of Health, as such, any duty in regard to the regulation of such measures.

Halifax.

19 & 20 Vict.
c. 26, s. 2.

Special provision is made for the town of Halifax, the Local Board of Health of which was required by the Halifax Gas Act, 1855, to purchase the works of the gas company of that town. By a subsequent Act they were empowered to borrow, on mortgage of the gas-works and the income to be derived from them or the general district rates, the money required to complete the purchase.

Newport—
Isle of Wight.
Lighting
contract with
Sir A. W.

Hillary, Bart.,
to be carried
out by Local
Board.
30 & 31 Vict.
c. 83, s. 3.

The mayor, aldermen, and burgesses of the district of the borough of Newport in the Isle of Wight, acting as the Local Board in such district, shall (any provisions of the Local Government Act, 1858, as to lighting, to the contrary notwithstanding) carry out the contract or covenant entered into by such mayor, aldermen, and burgesses with Sir Augustus William Hillary, Baronet, by indenture bearing date the 21st of January, 1852, for the term of twenty-one years from the 1st of January, 1852, for lighting the district with gas; and all expenses incurred in so doing by such mayor, aldermen, and burgesses, acting as such Local Board, shall be defrayed out of the general district rates levied by them as such Local Board.

§ 6. PUBLIC CLOCKS.

Public clocks.
21 & 22 Vict.
c. 98, s. 45.
10 & 11 Vict.
c. 34, s. 143.

The Local Board may provide such clocks as they consider necessary, and cause them to be fixed upon or against any public building, or, with the consent of the owner or occupier, upon or against any private building, the situation of which may be convenient for that purpose; and may cause the dials of the clocks so provided to be lighted at night. They may also from time to time alter the situation of such clocks as they shall consider expedient.

§ 7. PUBLIC PLEASURE-GROUNDS.

Public
Pleasure-
grounds.
11 & 12 Vict.
c. 63, s. 74.

The Local Board may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure-grounds, and support or contribute towards any premises provided by any person for that purpose.

As regards the purchase of lands for such a purpose by Local Boards, see the chapter of this work, *post*, which relates to that subject.

In a return presented to Parliament, Session 1865 (No. 461), will be found a list of all the commons and open spaces within a radius of twenty-five miles round *London* according to the Ordnance Survey; specifying the name of each common or open space, the acreage of each, and the parishes within which they are situated.

With regard to the protection of gardens and ornamental

grounds in cities and boroughs, see the Act of the 26 Vict. Public c. 13, in the Appendix, the object of which is to provide for the pleasure-grounds. due care and protection of gardens or ornamental grounds already set apart for the use of the inhabitants, and not to interfere with the rights of owners of land not so set apart. The Act only applies where land has been irrevocably set apart for the use of the inhabitants; that is in some way (whether by vesting it in trustees or otherwise) so set apart for their use as to give them a right, legal or equitable, which no one is in a position to revoke or put an end to. Consequently it does not apply to cases where the obligation (if any) to allow them the use of the land has been created by covenants, or even decrees in equity binding only as between the owners of the land and of adjoining land, and capable of being released or otherwise got rid of as between those parties. (1)

By a later Act, "An Act to facilitate Grants of Land to be made near Populous Places for the use of regulated Recreation grounds. of Adults, and as Play-grounds for Children," which, however, 22 Vict. c. 27. has no special reference to the powers of Local Boards of Health, it is provided that lands may be lawfully conveyed to trustees, to be held by them for the purposes contemplated by the Act, and that municipal corporations, and parish officers, subject to the vestry and the Poor Law Board, may grant lands for such purposes, and enables bye-laws in regard to them to be made. The Act also provides for bequests being made for the purpose of defraying the expenses of purchasing, preparing, maintaining, and preserving such grounds, and ornamenting them.

The recreation-grounds, when provided, cannot be diverted to any other purpose than that contemplated by the statutes; therefore, where by an Act of Parliament a corporation were directed to cause a piece of land to be drained and levelled, and kept in proper condition for the purposes of public recreation, the Court of Chancery restrained the corporation by injunction from permitting a cattle fair to be held on such piece of land. (2)

Another Act provides that the ratepayers of any parish maintaining its own poor, the population of which, according to the last census, exceeds 500 persons, may purchase or lease lands, or accept gifts and grants of lands for the purpose of forming any public walk, exercise or play-ground, and for the levying of rates for maintaining the same, and for the removal of any nuisances or obstructions to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats or shelters from rain, and for other purposes of a similar nature.

That Act may be adopted in any borough, or for any parish

(1) *Tulk v. Metropolitan Board of Works*, 17 L. T. (N. S.) 202; 57 L. J. Q. B. 11; L. R. 3 Q. B. 94, affirmed on appeal, 19 L. T. (N. S.) 18.

(2) *Attorney-General v. Southampton Corporation*, 29 L. J. (N. S.) Ch. 282.

Recreation
grounds.
Adoption of
Act.
23 & 24 Vict.
c. 30, ss. 2, 3.

having a population of 500 or upwards, according to the last census, in the same manner as the Baths and Washhouses Act, 9 & 10 Vict. c. 74, may be adopted. When the Act has been adopted, the following provisions of the 9 & 10 Vict. c. 74, shall take effect for the purposes of the Act. All the provisions concerning—

1. The authority by which and the manner in which the Act is to be carried into execution.
2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses).
3. The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts.
4. The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money).

Parish im-
provement
rate.
Ib. s. 4.

After the adoption of the Act "it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the '—— Parish Improvement Rate;' provided that such rate be agreed to by a majority of at least two-thirds in value of the ratepayers assembled at such meeting." (By "ratepayers in meeting assembled," ratepayers in *vestry* assembled were doubtless intended, and it will be proper that the vestry meeting at which the proposal is to be brought forward should be convened in the manner that vestry-meetings are required by law to be convened, and that due notice of the subject to be brought before the meeting should be given. If the first part of the section is obscure the proviso is still more so, and indeed the words "two-thirds in value of the ratepayers" admits of no intelligible meaning).

Corporate
bodies.
Ib. s. 5.

Corporate bodies shall be allowed to attend meetings to be held as aforesaid, and to vote thereat by some person to be deputed by them for that purpose under their corporate seal.

Amount of
rate.
Ib. s. 7.
Voluntary
subscriptions
or donations.
Ib. s. 6.

The rate to be made for the above-mentioned purpose shall not exceed sixpence in the pound; but "previous to any such rate being imposed, a sum in amount not less than at least one-half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation."

This Act, like the 22 Vict. c. 27, has no special reference to the powers of Local Boards of Health; but it was considered necessary to notice both Acts in this place as bearing upon the subject now under consideration.

Larceny of
things at-
tached to
public plea-
sure-grounds.
24 & 25 Vict.
c. 96, s. 31.

With regard to larceny of things attached to public pleasure-grounds, it is enacted by the 24 & 25 Vict. c. 96, s. 31, that "whosoever shall steal or shall rip, cut, sever, or break with intent to steal, any glass or woodwork, belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other

material, or of both respectively, fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial-ground, shall be guilty of felony, and being convicted thereof, shall be liable to be punished as in the case of simple larceny; and in the case of any such thing fixed in any such square, street, or place as aforesaid, it shall not be necessary to allege the same to be the property of any person."

Larceny of things attached to public pleasure-grounds. 24 & 24 Vict. c. 96, s. 31.

§ 8. MANAGEMENT OF COMMONS.

In this place may properly be noticed the Act (29 & 30 Vict. c. 122) to make Provision for the Improvement, Protection, and Management of Commons near the Metropolis.

For the purposes of the Act the local authority in relation to each such common shall be, in a district beyond the Metropolis as defined by the Metropolis Management Act, 1855, for a Metropolitan common, the whole or any part whereof is situate within the district of a Local Board constituted under the Public Health Act, 1848, and the Local Government Act, 1858, or one of them, and no part whereof is situate within the Metropolis as defined as aforesaid—The Local Board; and their expenses shall be paid out of the general district rate.

Definition of local authority. 29 & 30 Vict. c. 122, s. 2, & Sch. 1.

A scheme for the establishment of local management with a view to the expenditure of money on the drainage, levelling, and improvement of a Metropolitan common, and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order thereon, may be made under the Act, on a memorial in that behalf presented to the Inclosure Commissioners by the lord of the manor or by any commoners, or by the local authority, or in case of a common extending into the districts of two or more of the bodies described in the First Schedule to the Act, then by any one or more of such bodies.

Memorial for scheme as to common. Ib. s. 6.

The Act then provides for the establishment of a scheme and for its being confirmed by Parliament.

All expenses incurred by the Commissioners in relation to any memorial, or to any scheme consequent thereon, shall be defrayed by the memorialists, or by any ratepayers or inhabitants of the parish or district in or near to which the common is situate, or of the Metropolis, willing and offering to defray those expenses, or by the local authority if willing and offering to defray the same: and the Commissioners may, if they think fit, on or at any time after the presentation of the memorial, require the memorialists or those ratepayers or inhabitants, or any of them, or the local authority having so offered (as the case may be), to pay to the Commissioners such sum as the Commissioners think requisite for or on account of those ex-

Expenses of scheme. Ib. s. 24.

Power for
local au-
thority to
contribute
for purposes
of scheme.
29 & 30 Vict.
c. 122, s. 25.

Expenses of
local au-
thority to be
paid out of
district rate.
Ib. s. 26.

penses, or to give security to the satisfaction of the Commissioners for the payment of those expenses on demand.

The local authority may in relation to any Metropolitan common for which they are the local authority, and the Metropolitan Board of Works may in relation to any Metropolitan common (although not one for which they are the local authority), contribute such amount as they think fit (in a gross sum or by annual payments or otherwise) towards the expenses of executing any scheme under the Act when confirmed by Act of Parliament, including the payment of the compensation (if any) to be paid in pursuance thereof.

All expenditure incurred by a local authority under the Act shall be defrayed by them out of the general district rate.

CHAPTER VII.

HIGHWAYS.

§ 1. MANAGEMENT OF HIGHWAYS.

LOCAL BOARDS within the limits of their districts are, exclusively of any other person whatsoever, to execute the office of and be surveyors of highways, and to have all such powers, authorities, duties, and liabilities as any surveyor of highways in England is invested with or is liable to by virtue of his office, except in so far as they may be inconsistent with the provisions of the Public Health Act, 1848.

Local Board
to be surveyors of
highways.
11 & 12 Vict.
c. 63, s. 117.

The district of a Local Board, or any part of it, cannot be formed into a highway district under 25 & 26 Vict. c. 61; but any parish or part of a parish in a highway district may (subject to 26 Vict. c. 17, s. 2) adopt the Local Government Act in the same manner and under the same circumstances as if it had not been included in a highway district.

District of a
Local Board
cannot be
formed into
a highway
district.
25 & 26 Vict.
c. 61, ss. 7, 41.
Non-liability
in respect of
highways
beyond
district.
11 & 12 Vict.
c. 63, s. 117.

The inhabitants of any district are not in respect of any property situate therein to be liable to the payment of a highway rate or other payment, not being a toll, in respect of making or repairing roads or highways within any parish, or part of any parish, township, or place, situate beyond the limits of the district; and notwithstanding the application of the Act to the district the liability of any person whomsoever to defray or contribute towards the expense of paving or flagging or putting in order any street or part thereof within the district shall, if incurred previously to the time when the Act shall be applied to the district, continue and be enforced.

Ib. s. 118.

The several persons who at the time when the Act is applied are surveyors of highways within the district may, however, recover any highway rate made in respect of the district, and then remaining unpaid: and the money so recovered is to be applied, in the first place, in reimbursing themselves their expenses, and in discharging any debts legally owing by them on account of the highways within their jurisdiction; the surplus (if any) is then to be paid by them to the treasurer, and carried to the district fund account; but for every district or part of a district where the roads are repaired out of the highway rate, the surplus is to be carried by the treasurer to a separate account to be kept by him, and called the highway rate account.

Existing surveyors to
recover rates
in arrear.
Ib. s. 117.

Application
of surplus.
11 & 12 Vict.
c. 63, s. 117.
21 & 22 Vict.
c. 98, s. 37.

The Act of the 13 Vict. c. 35, "for requiring annual returns

Annual
returns.
13 Vict. c. 35.

of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament" is to apply to the clerk to every Local Board in like manner as to the clerk to any trustees or commissioners as in that Act mentioned.

Highways
defined.
11 & 12 Vict.
c. 63, s. 2.

For the purposes of the Public Health Act, 1848, streets (not being turnpike roads), roads, public bridges (not being county bridges), lanes, footways, squares, courts, alleys, passages, whether thoroughfares or not, and such parts of any of them as may lie within the district of the Local Board, are declared to be highways.

Local Boards
enabled to
act instead of
vestry of
townships in
their districts
in all matters
relating to
highways.
24 & 25 Vict.
c. 61, s. 10.

All the powers, authorities, and discretion which in and by the 5 & 6 Wm. IV. c. 50, are vested in and given to the inhabitants in vestry assembled of any parish, township, or place, shall, within the districts where the Local Government Act is in force, be vested in and exercisable by the Local Boards, or Commissioners exercising the powers of such Local Boards, under the provisions of this Act and of the Public Health Act (1848), and of the Local Government Act (1858); and all acts or consents already done or given or purporting to be so done or given by such Local Boards, under and by virtue of the 5 & 6 Wm. IV. c. 50, acting or assuming to act in lieu of the inhabitants in vestry assembled of any parish, township, or place within the district of the Local Board, shall operate and be as valid and effectual as if the same had been done and given or executed by such inhabitants in vestry.

Encroach-
ments on
highways
managed by
local
authority.
24 & 25 Vict.
c. 61, s. 26.

Where a Board of Improvement Commissioners, or other local authority, exercising any of the powers of the Local Government Act, 1858, maintains and repairs the highways within the area of its jurisdiction, the 69th section of the Act of the 5 & 6 Wm. IV. c. 50, shall be held to apply to all encroachments on such highways.

By 5 & 6 Wm. IV. c. 50, s. 69, if any person shall encroach by making, or causing to be made, any building, hedge, ditch, or other fence on any carriageway or cartway, within the distance of fifteen feet from the centre thereof, every person so offending shall forfeit on conviction for every such offence any sum not exceeding 40s.; and the surveyor (Local Board, 11 & 12 Vict. c. 63, s. 117) who hath the care of any such carriageway, or cartway, shall and is required to cause such building, hedge, ditch, or fence to be taken down or filled up at the expense of the person to whom the same shall belong; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy, as well the expenses of taking down such building, hedge, or fence, or filling up such ditch, as the several and respective penalties enforced, by distress and sale of the offender's goods and chattels, in the same manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of the Act.

In the borough of Wakefield there are funds applicable for the repair of certain roads, which vest in the Local Board of that district, to be applied in and towards the repairs of the public highways within the borough; and all persons liable to pay any money to the surveyors of highways towards the repair of any public roads or ways which the inhabitants of the borough are liable to repair are to pay the same to the Wakefield Local Board of Health, to be applied by such Board accordingly, saving the rights of the lord of the manor of Wakefield. The same statute further provides for the clerk or agent of the Local Commissioners of the district whose powers were transferred to the Local Board of Health being continued in office, or being paid an annuity of £40. And a somewhat similar provision is made by a subsequent statute, securing compensation to the officers under the Local Acts for the city of Bristol and the borough of Plymouth, who may be removed from their respective offices.

Wakefield.
16 & 17 Vict.
c. 24, ss. 7, 8.
Ib. s. 9.

Wakefield
Local Board
of Health.
Ib. s. 10.

Bristol.
14 & 15 Vict.
c. 98, s. 12.
Plymouth.
17 & 18 Vict.
c. 53, s. 2.

By the Local Government Supplemental Act, 1859, special provision is made in regard to the highways of a detached portion of the township of Newton Heath, known as Kirkmanshulme, which is to be considered and treated as a separate and distinct township within the parish of Manchester, for all purposes relating to the highways, and be liable to repair its own highways accordingly.

Township of
Newton
Heath.
22 Vict. c. 31,
s. 2.

As regards highways in the Matlock Bath district, see 28 Vict. c. 28, s. 2, *post*, in the Appendix.

The Local Board being exclusively the surveyors of the highways within the district, and invested with all the powers, duties, and liabilities of surveyors of the highways, though limited in certain specified cases, it was doubted whether in future the highways within the district were to be kept in repair out of the general district rates, levied under sect. 87 of the Public Health Act, 1848, or whether the Local Board of Health were to levy highway rates under the 5 & 6 Wm. IV. c. 50, for the purpose of defraying the necessary expenses of so doing. The doubt on the subject has been removed by 21 & 22 Vict. c. 98, s. 37, reciting that whereas doubts have arisen as to the rate out of which the repair of highways is to be provided for in districts under the Public Health Act, 1848, that in such districts, or in districts where the Local Government Act is adopted, and where no other mode of providing for the repair of highways is directed by any Local Act:

Cost of repair
of highways.

Cost of highway repair to be defrayed out of general district rate in certain cases.
21 & 22 Vict.
c. 98, s. 37.

(1.) Where the whole of the district is rated to public works of paving, water supply, and sewerage, or to works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate.

(2.) Where parts of a district are not rated for works of paving, water supply, and sewerage, or for such of these purposes as have been provided for by rate in the district, the cost

Power to
levy highway
rates in cer-
tain cases.
Ib.

of the repair of highways in the same parts shall be defrayed out of a highway rate to be separately assessed and levied in the same parts by the Local Board as surveyors of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate.

(3.) Where no public works of paving, water supply, and sewerage are established in the district, the repair of highways in the district shall be provided for by a highway rate, to be levied over the whole district by the Local Board as surveyors of highways.

For this purpose the Board cannot divide the district into separate divisions, and assess and levy a highway rate in each of the divisions separately. The highway rate in such case must be assessed and levied over the whole district. (1)

(4.) The Local Government Act, 1858, Amendment Act, 1861, 24 & 25 Vict. c. 61, repealed the subdivision numbered (4) in the 37th section of the Local Government Act, 1858, and in lieu thereof enacted as follows:—

(1.) Where part of a township, or place not comprised within any district in which the Local Government Act (1858) is in force, and which part is hereinafter referred to as “the excluded part,” was, before the said Act came into force in such district, liable to contribute to the highway rates for such township or place, such excluded part shall for all purposes connected with the repair of highways and the payment of highway rates be considered to be and be treated as if forming part of such district. But now where part of a parish is in pursuance of the Local Government Act, 1858, Amendment Act, 1861, s. 9, treated as forming part of a district constituted under the Local Government Act, 1858, for all purposes connected with the repair of the highways and the payment of highway rates but for no other purpose, such part shall for the purposes of the Highway Act, 1862, and the 27 & 28 Vict. c. 101, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district without requiring the consent of the Local Board to be given. (2)

(2.) It shall be lawful for a meeting of ratepayers of the excluded part (to be convened and conducted in the manner prescribed by the 13th section of the said Local Government Act, 1858, with respect to districts, not being corporate boroughs or towns, under the jurisdiction of Improvement Commissioners) to decide that such excluded part shall be formed into a separate

Repair of
highways in
parts of
parishes or
townships
not included
in districts
under Local
Government
Act.
24 & 25 Vict.
c. 61, s. 9.

Highways in
parts of
parishes.
27 & 28 Vict.
c. 101, s. 5.

(1) *Re Broughton*, 12 L. T. (N. S.)
310.

provision, see *Reg. v. Gascoign*, 29
J. P. 389.

(2) With reference to the above

highway district, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a township maintaining its own highways :

Highways in parts of parishes.
27 & 28 Vict.
c. 101, s. 5.

- (3.) The requisition for holding such meeting as last mentioned shall, in any excluded part where the said Local Government Act, 1858, has been in force before the passing of this Act, be presented within six calendar months after the passing of this Act, and in all other cases within six calendar months after the adoption of the said Local Government Act, 1858; but nothing in this section before contained shall apply to districts constituted under the Public Health Act, 1848, including a part only of any parish, township, or place which before the constitution of such district maintained its own highways.

(5.) It is not necessary for any Local Board, in the case of any highway rate made by them, to do the following acts, or any of them; that is to say:

- To lay the rate before any justices, or obtain their allowance;
- To annex thereto the signature of the Local Board;
- To lay the rate before the parishioners assembled in vestry;
- To verify before any justices any accounts kept by them of highway rates:

Acts not required to be done in making highway rate.
21 & 22 Vict.
c. 98, s. 37.

But all such accounts are to be audited in all respects in the same way as the other accounts of Local Boards, as to which see the Chapter on Audit of Accounts, *post*. Ministerial acts required by any Act of Parliament to be done by the surveyor of highways may be done by the surveyor of the Local Board, or by such other person as the Board may appoint.

Acts of surveyor of Local Board.
Ib.

Where by a Private Improvement Act power was given to the mayor, &c., to make and levy a highway rate upon the occupiers of all messuages, &c., within the borough, for maintaining and repairing "the present highways within the borough when sewered, drained, levelled, flagged, paved, and otherwise completed to the satisfaction of the mayor, &c., and such of the present and future streets as shall from time to time be declared public highways as aforesaid, and the main sewers under the same," and where the borough consisted of a part of four divisions of a parish, and the whole of another division of the same parish, and before the passing of the Act each of such districts separately maintained its own highways, and had its own surveyor, and the greater part of one district was a county district, it was held that under the above-quoted section of the Local Act, taken in connection with sections 48 & 49 of the Towns Improvement Act, 10 & 11 Vict. c. 34, the mayor, &c., were empowered to make two general rates within the borough—one for the repair of the urban streets within the said section of the Local Act, and the other for the repair of the rural ways

Rates for repair of highways.

not within that section, and therefore that a rate which had been made on the rateable property within each of the districts, exclusively for the repair of the highways within them as had not been sewered, &c., was bad. (1)

Local Boards
may agree as
to making
new public
roads.
21 & 22 Vict.
c. 98, s. 39.

Any Local Board may agree with persons for making roads for the public use through the lands of and at the expense of such persons, and such roads shall become, on completion, public highways maintainable and repairable at the public expense. The Board, with the consent of two-thirds of their number, may also agree to pay, and accordingly pay, any portion of the expenses of making such roads out of the funds at their disposal for Public Improvements.

And by con-
sent con-
struct public
bridges, etc.,
or adopt as
public and
improve ex-
isting bridges,
etc., over or
under canals,
railways, or
tramroads.
Ib. s. 40.
Local Boards
may by con-
sent construct
public
bridges, etc.
Ib. s. 40.

Any Local Board may further agree with the proprietors of any canals, railways, or tramroads, and with any landowners, or other persons willing to bear the first expense, for the construction or alteration of, and accordingly to cause or permit to be constructed or altered, any bridges, viaducts, or arches over or under any canals, railways, or tramroads, at the expense of such persons, and at the like expense, by agreement, to purchase so much of any slopes, embankments, or other parts of such canals, &c., or of any adjoining lands, as may be required for the foundation and supports of such bridges, viaducts, or arches, and the approaches. The Board may agree that such bridges, viaducts, and arches, with their approaches and accessories, shall become and they are accordingly to become, on completion, parts of public streets or roads, maintainable and repairable at the public expense. The Board, with the consent of two-thirds of their number, may agree to pay, and accordingly pay, any portion of the expenses of such construction, alteration, and purchase out of the funds at their disposal for public improvements; and with the consent of such proprietors and other persons interested, and on such terms as may be mutually agreed upon, they may adopt any existing bridges, viaducts, or arches over or under any canals, railways, or tramroads, and the approaches, as public bridges, viaducts, or arches, and parts of public streets or roads maintainable and repairable at the public expense.

Local Boards
may agree as
to repair, etc.
of turnpike
roads, county
bridges, etc.
Ib. s. 41.

As regards turnpike roads, the Local Board, by agreement with the trustees of any turnpike road, or with any corporation or person liable to repair the whole or part of any street or road, or with surveyors of any county bridge, may take upon themselves the maintenance, repair, cleansing, or watering of the whole or part of any such street or road, or of any road over any county bridge, and the approaches thereto, or of any part of such roads within their district; and remove any turnpike-gates, toll-gates, or bars which may be situate within two miles from the centre of any town or place within their district, and erect other turnpike-gates, toll-gates, or bars in lieu thereof,

(1) *Ashton-under-Lyne v. Slater*, 21 L. J. (N. S.) M. C. 185; 16 Jur. 992.

on such terms as the Local Board and the trustees or corporation or person or surveyor may agree upon between themselves. In case, however, any mortgage debt is charged upon the tolls of any turnpike road, no agreement can be made for the removal of any of the toll-gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees: and when the terms arranged include any annual or other payments from the Local Board to the trustees, then such payments may be secured on the local rates in the same manner as other charges on the rates are authorized. All executors, administrators, guardians, trustees, and all committees of the estates of idiots, and lunatics, who as such are for the time being entitled to any money charged or secured on the tolls of any turnpike road, may consent to any agreement of the nature above specified, as fully as if they were so entitled in their own right, and are severally indemnified for so doing.

Local Board may agree as to repair, etc. of turnpike roads, county bridges, etc. 21 & 22 Vict. c. 98, s. 40.

The following case bears upon the right of turnpike road trustees to the management of turnpike roads, where there is a Local Board. A piece of road forming the main street of a town was common to two trusts, and in 1829 it was agreed between the two trusts that it should be repaired at the sole expense of that trust which had the larger amount of traffic, and that the other trust should contribute the yearly sum of £25 towards the repair. This agreement was acted upon till 1856, when a Local Board of Health had been constituted for the town. On a case stated for the opinion of the Court, it was held that under section 78 of the Turnpike Act, 4 Geo. IV. c. 95, which empowers trustees of a turnpike road to make contracts for the repair of the road so as to bind their successors, the trustees who repaired the road under the agreement were entitled to recover from the other trustees the arrears of the annuity for two years; and that the latter trustees had the management of the road, notwithstanding that there was a Local Board of Health for the town—that Board having power only over highways not being turnpike roads. (1) This must, however, be taken to refer to a compulsory power on the part of the Local Board, for the new Act gives them power by agreement to undertake the management of turnpike roads within their district.

Notwithstanding the Public Health Act, 1848, and the Local Government Act, no Local Board is empowered to open or in any way disturb any of the public roads or footpaths under the charge of the Commissioners of the Metropolis turnpike roads north of the Thames, or of the New Cross turnpike roads, or of the trustees acting in execution of the Surrey and Sussex Roads Act, 1850, except upon the conditions and subject to the regulations following; that is to say:

Certain metropolitan roads not to be interfered with, except upon conditions. 21 & 22 Vict. c. 98, s. 43.

(1) *Swinburne v. Robinson*, E. & E. 80; 28 L. J. (N. S.) Q. B. 4; 5 Jur. (N. S.) 462.

Metropolitan
roads.

- (1.) The Local Board are to leave at the office of the Commissioners or trustees of the road, seven days previous notice containing full particulars of any works intended to be executed by them, and affecting any of the roads.
- (2.) If the general surveyors of the Commissioners or trustees directs the works to be on any particular part of such roads, the Local Board are bound to obey such directions.
- (3.) Except by the permission of the Commissioners or trustees, the traffic of any of the roads is not at one time to be stopped or in any way hindered along more than half of its width, nor, if the half left open is of less than the clear width of fourteen feet, along more than one hundred yards in length; and no alteration can be made in the inclination of any of the roads of more than one foot in sixty feet.
- (4.) All works are to be done under the superintendence of the general surveyor; and all precautions which he may direct for the protection and convenience of the public are to be taken by and at the expense of the party doing the works, and in default the surveyor is empowered to cause to be done in that behalf what he may think proper; and the party doing the works, in all cases of damage occurring by reason of the works, and whether the required precautions are taken or not, is answerable to the persons suffering the damage, the Commissioners or trustees being absolved from all liability in respect of the consequences of such works.
- (5.) The party doing the works, as regards every road opened or disturbed, is to restore it to its original state as to surface and materials, and in order to meet the expenses consequent upon the subsidence of materials newly filled in, is to repay to the Commissioners or trustees, on demand, such sum as they have expended in the restoration of the road, not exceeding one shilling for every superficial square yard; and so far as the works affect the same, make good all drainage, paving of water channels, curbs of footpaths, and otherwise in connection with the maintenance of the roads; and on default the surveyor may cause to be done in that behalf what he may think fit, and recover the expense in a summary manner.

With reference to the foregoing, however, see 26 & 27 Vict. c. 78.

It is necessary here to advert to the provision in the South Wales Highway Act, which affects Local Boards in the six South Wales counties, namely, the counties of Brecknock,

Cardigan, Carmarthen, Glamorgan, Pembroke, and Radnor. Contracts for repair of highways in South Wales. It enacts that the Highway Board of any district may contract with all or any of the following bodies:—(that is to say) any Local Board of Health constituted under the Public Health Act, 23 & 24 Vict. 1848, and any Local Board constituted under the Local Government Act, 1858, any Commissioners or other body acting under any Local Act of Parliament, the County Roads Board, the Court of Quarter Sessions of the county in which the district is situated, and the council of any borough, for the repair and maintenance by such Highway Board of all or any of the highways or turnpike roads under the care of such Local Board of Health, Local Board, County Roads Board, Commissioners, or other body (as the case may be), or of the highways over and at the ends of bridges, which are maintainable at the expense of the county or of any borough, or any other highways which are maintainable at the expense of the borough; and such Highway Board may so contract upon such terms as to the payments to be from time to time made to such Board in respect of their undertaking such repairs and maintenance as may be agreed upon between the parties; and any such Local Board of Health, Local Board, Commissioners, County Roads Board, or other body, Court of Quarter Sessions, and Council may so contract with such Highway Board. While any contract made under this provision is in force the Highway Board and their surveyor shall in respect of the repairs and maintenance of the highways and roads to which such contract relates, have and perform the same powers and duties, and be subject to the same responsibilities with regard to highways within the district of such Board, and the other contracting party shall be divested of all powers, duties, and responsibilities in respect of such repairs and maintenance, and all money payable under such contract shall be paid out of the moneys which would have been applicable to defray the expenses of the repairs and maintenance of such highways or turnpike roads, if such contract had not been made.

The South Wales Highway Act has been repealed in the following districts:—

Llanelly, by 28 & 29 Vict. c. 108, s. 2. Aberavon, by 26 & 27 Vict. c. 64; and 28 & 29 Vict. c. 108, s. 2. Briton Ferry, by 29 & 30 Vict. c. 79, s. 2. Llanwonno (portion of the district of Mountain Ash), by 30 Vict. c. 21, s. 4.

By the Telegraph Act, 1863, 26 & 27 Vict. c. 112, Telegraph Telegraphs. Companies are restrained from placing telegraph wires under streets, except with the consent of the Local Board of the district.

It will be perceived that the law in relation to public highways has been treated of in this chapter only so far as Local Boards of Health have special duties cast upon them by the Public Health and Local Government Acts. The Law of Highways is too extensive to be entirely dealt with in a work to which

it is only incidental; but those who may desire fuller information on the subject are referred to the second edition of Glen on the Law of Highways, and to the third edition of Glen's Highway Acts, 1862, 1864.

§ 2. LOCOMOTIVES ON HIGHWAYS.

28 & 29 Vict.
c. 83, s. 13.
Commence-
ment of Acts.

Ib. s. 1.
31 & 32 Vict.
c. 111.

Extent of
Acts.
24 & 25 Vict.
c. 70, s. 15.
Size and
weight of
locomotives.
Ib. s. 3.

In connection with the subject of highways in Local Board districts, it is necessary to refer to the use of locomotives on turnpike and other roads, which is regulated by the Locomotive Act, 1861, and the Locomotive Act, 1865, which are to be construed together as one Act. The former Act came into operation on the day of its passing, and the latter on the 1st of September, 1865, which day is hereinafter referred to as the commencement of the Act, and it shall cease and determine on the 1st of September, 1869, and end of then next Session of Parliament.

The Locomotive Act, 1861, applied to Great Britain only; but section 15 of that Act having been repealed by the amending Act, both Acts now apply to Great Britain and Ireland.

Every locomotive propelled by steam or any other than animal power, not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, and for every ton or fractional part thereof additional weight the tires of the wheels thereof shall be increased one inch in width; and every locomotive drawing any waggon or carriage shall have the tires of the wheels thereof not less than nine inches in width; but no locomotive shall exceed seven feet in width or twelve tons in weight, except as hereinafter provided; and the wheels of every locomotive shall be cylindrical and smooth soled, or used with shoes or other bearing surface of a width not less than nine inches; and the owner or owners of any locomotive used contrary to the foregoing provisions shall for every such offence, on summary conviction, forfeit any sum not exceeding five pounds: Provided always, that whereas it may be desirable that locomotives of a greater width than seven feet and of a greater weight than twelve tons should be allowed to be used under certain circumstances, any person desiring to use any such locomotive on any street or public highway within the limits of the metropolis as defined by the Act of the eighteenth and nineteenth years of her present Majesty, for the better local management of the metropolis, any city or municipal or parliamentary borough, or any turnpike road or other public highway, shall apply to the corporation, commissioners, trustees, and surveyors, or other persons having the charge of any such street, highway, turnpike, or other road over which it may be proposed to work such locomotive, for permission to use the same; and such corporation, commissioners, trustees, surveyor, and other persons as aforesaid, shall have power to authorize such locomotive to be

used on such road or roads, or part of any road or roads, and under such condition or conditions as to them may appear desirable; but in the case of the surveyor or surveyors of any highway in England no such permission shall be valid without also it be approved by the justices acting in petty sessions for any petty sessional division within which it is proposed to use such locomotive.

Size and weight of locomotives.

It shall not be lawful for any waggon, wain, cart, or other carriage so drawn or propelled as aforesaid, not having cylindrical wheels, to carry any greater weight than is permitted in such waggon, wain, cart, or carriage by the general Turnpike Act; and it shall not be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels to carry, over or above the weight of the waggon, wain, cart, or carriage, any greater weight than one ton and a half for each pair of wheels, unless the fellies, tires, or shoes are four inches or more in breadth; nor to carry a greater weight than two tons for each pair of wheels, unless the fellies, tires, or shoes are six inches or more in breadth; nor to carry a greater weight than three tons for each pair of wheels, unless the fellies, tires, or shoes are eight inches or more in breadth; and for every single wheel one-half of that permitted to be carried on a pair of wheels; nor in any case to carry a greater weight than four tons on each pair of wheels, or two tons on each wheel; but if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one-sixth more weight in addition to the above-mentioned weights upon each pair of wheels; provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree or one log of timber, or one block of stone, or one cable of rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals cast, wrought, or united in one piece.

Weight on each pair of wheels.
24 & 25 Vict.
c. 70, s. 4.

Subject to the provisions of this Act, any locomotive which shall not exceed nine feet in width or fourteen tons in weight may be used on any turnpike road or public highway, provided that the wheels of such locomotive be constructed according to the requirements of the said recited Act; and no locomotive exceeding nine feet in width or fourteen tons in weight shall be used on any such road, except subject to the provisions contained in the third section of the said Act as to the use of locomotives exceeding seven feet in width and twelve tons in weight.

Size and weight of locomotives which may be used.
28 & 29 Vict.
c. 83, s. 5.

Every locomotive propelled by steam or any other than animal power to be used on any turnpike road or public highway shall be constructed on the principle of consuming and so as to consume its own smoke; and any person using any locomotive not so consuming its own smoke shall, on conviction thereof before any two of Her Majesty's justices of the peace,

Locomotives propelled by steam to consume their own smoke.
24 & 25 Vict.
c. 70, s. 8.

forfeit any sum not exceeding five pounds for every day during which such locomotive shall be used on any such turnpike road or public highway.

Name and residence of owner to be affixed to locomotives. 28 & 29 Vict. c. 83, s. 7.

The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed, the owner shall, on summary conviction, be liable to a penalty not exceeding two pounds.

Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway, shall be worked according to the following rules and regulations, viz.—

Rules for the manner of working locomotives on turnpike roads and highways. *Ib.* s. 3.

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages :

Secondly, one of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotive, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses, and carriages drawn by horses, passing the same :

Thirdly, the drivers of such locomotive shall give as much space as possible for the passing of other traffic :

Fourthly, the whistle of such locomotive shall not be sounded for any purpose whatever ; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road ; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road :

Fifthly, every such locomotive shall be instantly stopped, on the person preceding the same or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped :

Sixthly, any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise.

Penalty on non-compliance with rules. *Ib.*

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding £10 ; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

Subject and without prejudice to the regulations hereinafter authorized to be made by local authorities, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding £10.

Limit of speed of locomotives on turnpike roads and highways. 28 & 29 Vict. c. 83, s. 3.

It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge nor over any bridge on which a conspicuous notice has been placed, by the authority of the surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road or bridgemaster under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge; and in case such owner of the locomotive and surveyor of the road or bridge, or bridgemaster, shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by one of Her Majesty's Principal Secretaries of State, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge.

Use of locomotives restricted over suspension and other bridges. 24 & 25 Vict. c. 70, s. 6.

Any provision in any Act contained prohibiting, under penalty, the erection and use of any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, shall not extend to prohibit the use of any locomotive steam-engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

Restrictions as to the use of steam-engines within 25 yards of roads not to apply to locomotives used for ploughing purposes. 28 & 29 Vict. c. 83, s. 6.

The following are the local authorities under the Act in England beyond the limits of the Metropolis, namely:—

Local authorities to make orders as to hours, etc., locomotives may pass through cities, etc. Ib. s. 8.

In any borough in England the population of which shall have exceeded five thousand at the last census, the council of the borough;

In any borough or town in England the population of which shall have exceeded five thousand at the last census, not within the jurisdiction of a council, but within the jurisdiction of any trustees or improvement commissioners

Penalty on
acting con-
trary to such
orders.
28 & 29 Vict.
c. 83, s. 6.

appointed under any public or private Act of Parliament, the trustees or commissioners ;
who may make orders as to the hours during which (and as to the speed, not in any case to exceed two miles an hour, at which) locomotives are to pass through the city or place subject to their respective jurisdictions ; and any person in charge of a locomotive acting contrary to such regulations shall, on summary conviction, be liable to a penalty not exceeding £10.

Every order made in pursuance of this section shall be reduced into writing, and shall have affixed thereto the common seal of the local authority, where they have a common seal, and shall be signed by the members of the local authority, or any two of them, where they have not a common seal.

A copy of such order shall be affixed to some public place within the jurisdiction of the local authority, and advertised in some newspaper circulating within the jurisdiction of the local authority, and the production of a newspaper containing such advertisement shall be evidence of the copy having been advertised in pursuance of this Act.

Damage
caused by
locomotives
to bridges to
be made good
by owners.
24 & 25 Vict.
c. 70, s. 7.

Where any turnpike or other roads, upon which locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or watercourse, navigable river, canal, or railway, by means of any bridge or arch (whether stationary or moveable), and such bridge or arch, or any of the walls, buttresses, or supports thereof shall be damaged by reason of any locomotive or any waggon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, none of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other person interested in or having the charge of such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, canal, or railway, but every such damage shall be forthwith repaired to the satisfaction of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons as aforesaid respectively interested in or having the charge of such river, canal, or railway, or the tolls thereof, or of such bridge or arch, by and at the expense of the owner or owners, or the person or persons having the charge of such locomotive at the time of the happening of such damage ; and all such owner and owners, person and persons, having the charge of such locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good, as well as the proprietors, undertakers, directors, conservators, trustees, commissioners, and other persons interested in or having the charge of any such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or

using, or who but for such obstruction, interruption, or delay would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any such obstruction, interruption, or delay, such losses and expenses to be recoverable by action at law, which action, in case of such proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons so interested as aforesaid, may be brought in the name or names of their agent or agents, clerk or clerks for the time being, or by any person or persons legally authorized to act in their behalf.

Nothing in this Act contained shall authorize any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance; and every such person so using such engine shall, notwithstanding this Act, be liable to an indictment or action, as the case may be, for such use, where, but for the passing of this Act, such indictment or action could be maintained.

Right of action in case of nuisance. 24 & 25 Vict. c. 70, s. 13.

Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive.

Saving as to actions at law. 28 & 29 Vict. c. 83, s. 12.

An action was maintained by a person who had sustained an injury through his horse being frightened by a traction engine used on a highway under 24 & 25 Vict. c. 70, the jury finding that the engine was likely to frighten horses, and that the defendant knew it, and *semble* the *scienter* is not material. (1) In instructing the jury, Erle, C.J., said, "The plaintiff is entitled to your verdict, if the engine was calculated by its noise or appearance to frighten horses, so as to make the use of the highway dangerous to persons riding or driving horses. For the defendant has clearly no right to make a profit at the expense of the security of the public."

The provisions relating to tolls on locomotives are omitted as not being applicable to local authorities; but it is enacted that all the clauses and provisions of any general or local Acts relating to turnpike roads or highways shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of this Act, apply to all locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power: provided always, that the weight of every locomotive, and the name of the owner or owners thereof, shall be conspicuously and legibly affixed thereon; and any owner not having affixed such weight and such name shall, upon conviction thereof before two justices,

Provisions of general Acts relating to turnpike roads to apply to locomotives. 24 & 25 Vict. c. 70, s. 12.

forfeit any sum not exceeding £5; and any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding £10.

How penalties to be recovered and applied in Ireland.
28 & 29 Vict.
c. 83, s. 10.

Every penalty imposed by the provisions of this Act shall, in Ireland, be recoverable before a justice or justices of the peace in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same, and shall be applied according to the provisions of the Fines (Ireland) Act, 1851, and any Act amending the same.

CHAPTER VIII.

REGULATION OF BUILDINGS.

§ 1. NEW BUILDINGS.

WHEN any house or building has been taken down, in order to be rebuilt or altered, the Local Board may prescribe the line in which any house or building to be hereafter built shall be erected, and such house or building must be erected in accordance therewith. The Local Board are nevertheless to pay or tender compensation to the owner or other person immediately interested in such house or building, for any loss or damage he may sustain in consequence of its being set back; the amount of which, in case of dispute, is to be settled in the same manner as compensation for land to be taken under the provisions of the Lands Clauses Consolidation Act, 1845, is directed to be settled; and all the provisions of that Act relating to the purchase of lands are to apply to the payment made for such loss or damage, as if it were a purchase under that Act.

When houses taken down, Local Board may prescribe line in which same shall be rebuilt. 21 & 22 Vict. c. 98, s. 35.

The Local Board may also in making compensation to the owners for any damage sustained, require houses projecting beyond the regular line of the streets which have been taken down, to be set backwards towards the line of the street, or the line of the adjoining houses or buildings.

Ib. s. 45. 10 & 11 Vict. c. 34, s. 68.

The following bears upon these provisions—a manufacturer being desirous of pulling down his manufactory, situated in a borough under the Public Health Act, 1848, and of erecting a new one, sent plans and sections of his proposed new building to the surveyor of the council, who returned to him an approval of the plans by the Building and Improvement Committee of the Town Council, but accompanied by a note (in a printed common form), stating that the ratification of the approval of any plans and particulars by the committee referred only to such matters as were required to be set forth or described therein in accordance with certain bye-laws; and that the approval of the committee gave no authority for the making of any projection on the front of any building into any street beyond the proper line of such street, &c. Relying on this approval, the owner pulled down the manufactory, and afterwards received a notice from the Town Council (acting under the 35th section of the Local Government Act, 1858) that any building thereafter to be built must be built on the line marked

Line within which houses shall be rebuilt.

Line within
which houses
shall be re-
built.

red in the plans thereto annexed, which line was about thirteen feet beyond the mark on the plans which had been approved by the committee. It was, however, held that the Town Council were not at liberty to give any such notice after the notice of approval of their committee given by their surveyor, and an injunction was granted to restrain the Council from interfering in any way with the erection of the building according to the plans and sections which had been approved.

Consequently the 35th section of the Local Government Act, 1858, applies only to such buildings as have been taken down "without any previous approval" by the Local Board of a plan for their re-erection. (1) And the 34th section of the Local Government Act, 1858, empowers a Town Council (being a Local Board under that Act) to make a bye-law requiring a notice, plans and sections of a new building to be given to the council. (2)

In *Brown v. Holyhead* (3), Pollock, C.B., said he much doubted whether a wall is "a building" within the Act. The Act says, "A house or building," and building there he thought must mean a chapel or warehouse, or an erection of that kind.

A rule for a certiorari was made absolute to quash an order of borough justices appointing a surveyor to survey and assess the value of certain property of the applicant, which was required by the corporation for the purpose of widening a street in the borough, the corporation in the case were acting as the Local Board under the Public Health Act, and the objection to the order was, that the justices who made it were interested parties, being ratepayers. (4)

Under the Metropolitan Building Act, 18 & 19 Vict. c. 122, sch. 1, "every building shall be inclosed with walls of brick, stone, or other hard and incombustible substance," and these words amount to a prohibition against building the walls of wood or other combustible substance. Therefore a wooden structure intended to be used as a shop of a considerable size, and likely to last a considerable time, resting on joists, but having no footings or foundations in masonry, and capable of being lifted bodily off the ground by the application of sufficient mechanical powers, is a building within the prohibition of the statute. On an action being brought by a builder for works executed under a contract in connection with the building, it was also held that a contract to erect such a structure within the limits of the Act was illegal, and that the plaintiff could not recover. (5)

The Local Board may also, with the sanction of the Secretary of State, purchase any premises for the purpose of making new streets; and, with regard to premises so purchased, they have

(1) *Slee v. Bradford*, 8 L. T. (N. S.) 491; 9 Jur. (N. S.) 815.

(2) *Ibid.*

(3) 7 L. T. (N. S.) 333.

(4) *Ex parte Westwick v. Nottingham Corporation*, 38 L. T. 203.

(5) *Stevens v. Gourley*, 29 L. J. (N. S.) C. P. 1; 1 L. T. (N. S.) 33.

Wooden
houses.

Purchase of
premises for
purpose of

all the powers given by the 73rd section of the Public Health Act, 1848 (*ante*, p. 169), which empowers the Local Board to purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, and any part of the premises which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account.

Injury will often be occasioned to property by an alteration of the level of the street in which it is situated; on this point it may be observed that an injunction was refused to restrain defendants from raising a footway under powers conferred by certain local Acts (which incorporated the Lands Clauses Act) in front of plaintiffs' house, and thereby preventing access to a warehouse, and from otherwise damaging their property, it having been established that the defendants were empowered under their Act to alter the footway, and also that plaintiffs had sustained, and would sustain, injury thereby; but it was referred to chambers to ascertain and certify the amount of injury, and what would be a proper sum to be awarded by way of damages in respect of such injury. (1)

It has been held with reference to the Metropolis Local Management Act, 18 & 19 Vict. c. 120, s. 143, that where a street is built with an irregular line of buildings, in order to judge whether a proposed new building is within the line, it is enough that a general uniformity be preserved. (2) The object of the Act, Crowder, J., said, is to obtain general uniformity in the construction of new streets; it does not require a mathematical line, but a general uniformity of line: and per Willes, J.: "The object of the Legislature is to enforce a general uniformity in the line of building in new streets; and it is not necessary to have a straight line, in order to make a regular line within the statute. If there is a general and uniform direction to the eye, that is a regular line of building, and new buildings must conform to this general rule." With regard to erections facing each other within prescribed distances in streets, see *Reg. v. Sidebotham* (3), which, however, related to the Manchester Local Improvement Act. Further on this point see *ante*, p. 173.

Every Local Board may make bye-laws, with respect to the following matters, that is to say:—

- (1.) With respect to the level, width, and construction of new streets, and the provision for the sewerage of such streets.
- (2.) With respect to the structure of walls of new buildings for securing stability and the prevention of fires.

(1) *Wedmore v. Bristol*, 7 L. T. (N. S.) 459.

(2) *Tear v. Freebody*, 4 C. B. (N. S.) 228.

(3) 28 L. J. (N. S.) M. C. 189; 33 L. T. 187; 5 Jur. (N. S.) 1083.

making new streets.

21 & 22 Vict. c. 98, s. 36.

11 & 12 Vict. c. 63, s. 73.

Compensation for injury occasioned to property by alteration of the level of the street.

Line of building.

Provision as to new streets and houses.

21 & 22 Vict. c. 98, s. 34.

(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings.

(4.) With respect to the drainage of buildings, to water-closets, privies, ashpits, and cesspools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation.

Provision as
to new
streets and
houses.
21 & 22 Vict.
c. 98, s. 34.

The Local Board may further provide for the observance of such bye-laws, by enacting therein provisions as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the Local Board, and as to the power of the Local Board to remove, alter, or pull down any work begun or done in contravention of such bye-laws. Bye-laws so made are not to affect any building erected before the date of the constitution of the district.

With respect to the width of new streets, the following case occurred under the Metropolis Local Management Amendment Act, 1862 (25 & 26 Vict. c. 102). The 98th section of that Act provides that "no existing road, passage, or way, being of a less width than forty feet, shall hereafter be formed or laid out for a building as a street for the purposes of carriage traffic, unless such road, passage, or way be widened to the full width of forty feet," the measurement to be taken half on either side from the centre or crown of the roadway to the external wall or front of the house, or to the fence or boundary of the forecourt, if any. This provision was held not to apply where the buildings abutted in the rear upon an old lane of less width than forty feet. (1)

In another case the Court held that the section does not apply to new houses where back gardens abut upon a road which the builders of other houses have begun to lay out for building as a street, even although the owner has erected a new fence instead of that which divided his ground from the previously existing road. (2)

What a new
building.
Ib.

For the purposes of the 21 & 22 Vict. c. 98, the re-erecting of any building pulled down to or below the ground floor, or of any frame building, of which only the framework is left down to the ground floor; or the conversion into a dwelling-house of any building not originally constructed for human habitations; or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

A Local Board of Health has no power under sect. 34 of 21 & 22 Vict. c. 98, to make a bye-law relating to buildings

(1) *Metropolitan Board of Works*
apps., *Cox*, resp., 19 C. B. (N. S.)
445.

(2) *Metropolitan Board of Works*
v. *Clever*, 18 L. T. (N. S.) 723.

erected before the date of the constitution of the district, and to the closing of such buildings when unfit for human habitation, and to the prohibition of their use for such habitation. (1)

The Local Government Act office, in a circular dated June, 1864, referring to the case of *Burgess v. Peacock*, say that the proviso in the 34th section of the Local Government Act, 1858, meant that, in the new parts of the town built since the Act came into force, owners of property could not complain if they were within the provisions of the Act; but that as to old houses built before the constitution of the district, the bye-law did not apply. The circular then cautions the Local Boards, while the law continues unaltered, not to attempt to put the bye-laws into execution except as to houses and buildings erected in the district after the adoption of the Local Government Act.

Buildings
erected before
adoption of
Act.

Some time before the coming into operation of the Local Government Act, certain parties proposing to lay out a new street within the district of a Local Board gave the necessary notices required by sect. 72 of the Public Health Act, 1848, to the Local Board, but did not proceed to lay out the street till the month of May, 1862. In the meantime, and in pursuance of the powers given by sect. 34 of the Local Government Act, 1858, the Local Board had made a bye-law requiring notices to be given of a more detailed character than had been required by the Public Health Act, 1848, and they contended that the street had not been begun within the meaning of the Public Health Act, and that, therefore, the parties ought to have given fresh notices so as to satisfy the new bye-law, and that they were liable to a penalty for proceeding to lay out the street without having done so. The Local Board thereupon summoned the parties before the justices for the penalty, who dismissed the complaint, and on a case stated under 20 & 21 Vict. c. 43, s. 2, the Court held that the decision of the justices was not wrong upon the statement of facts as they were shown in the case. The Court, however, intimated their opinion very guardedly, so that in case the parties chose to raise the question again, when subsequent dealings took place with the property, they could do so. (2)

New streets
and houses.

Where a Local Board under the 34th section of the 21 & 22 Vict. c. 98, made a bye-law requiring a person intending to erect a new building to give a month's notice to the Board of his intention so to do, and to deposit plans, and a person who had given notice commenced to build within the month and without approval of the plans by the Board, was convicted of contravening the bye-law, it was held upon a special case stated by the justices, under 20 & 21 Vict. c. 43, that the Board had no power to make such a proceeding an offence by their bye-law, and that the person so giving notice had a right to commence

(1) *Burgess v. Peacock*, 16 C. B. (N. S.) 624; 10 L. T. (N. S.) 617.

(2) *Felkin v. Berridge*, 9 L. T. (N. S.) 333.

New streets
and houses.

building when he pleased, subject to the right of the Local Board to pull down or alter his building, if built in contravention of their bye-laws. Per Martin, B., the power given is to make bye-laws as to the structure of walls and the sufficiency of space, and for the observance of the same to make provisions as to giving notice and the deposit of plans, the inspection of the Board, and the removing, altering, or pulling down the buildings that contravene the bye-laws. It seems to me that a man may be compelled to deposit plans and give notice, but there is no power to prevent him beginning his building the next day, subject to his liability to have it pulled down if it contravenes the bye-laws; and per Pollock, C.B., this section is a restriction on a man's common law right, and must not receive a vexatious interpretation. (1)

Where a bye-law of a Local Board of Health, framed under the 21 & 22 Vict. c. 98, s. 34, directed that "every building to be erected and used as a dwelling-house shall have an open space exclusively belonging thereto, to an extent of one-third of the entire area of the ground on which the dwelling-house shall stand;" and by another bye-law, under a general heading of width and level of new streets, provided for the width of new streets, dividing them into front, cross, and back streets, and in a subsequent separate paragraph stipulated that "no dwelling-house should be built immediately adjoining any back street," and the proprietor of a house, yard, and coach-house and stables erected before the constitution of a Board of Health for the district pulled down the coach-house and stable below the ground floor, and erected a building partly upon their site and partly upon the yard, with rooms over, the ground floor opening into the yard, and also into an old back street immediately adjoining, but the access to the rooms was by a covered way from the old house, the object of the new building being to increase the accommodation of the old house, which had been converted into an hotel; treating the old and new buildings either as one building or as separate buildings, the space left in the yard was insufficient within the bye-law; it was held that there was no violation of the bye-laws either in respect of an insufficiency of space or the building of a dwelling-house adjoining a back-street—as, first, the facts showed that there was no new building erected within the statute and bye-laws, but only an addition to the old building; and secondly, that the words "back street" must be read as "new back street." But *semble*, per Martin B., the bye-laws might have been lawfully framed so as to include the existing buildings. (2)

In another case, where a Local Board of Health made a bye-law under the 21 & 22 Vict. c. 98, s. 34, that wherever any

(1) *Hattersley v. Burr*, 14 L. T. (N. S.) 565; 12 Jur. (N. S.) 894; 4 H. & C. 523.

(2) *Sheil v. Sunderland*, 6 H. & N. 796; 30 L. J. (N. S.) M. C. 215.

open space had been left adjoining to any building, such space should never afterwards be built upon without the consent of the Local Board, and without leaving an open space belonging to such building of a specified size and dimensions, it was held that if the bye-law applied to open spaces belonging to old buildings it was bad, as exceeding the powers conferred by the Act. (1)

By a bye-law made under the Local Government Act, it was provided that "every building to be erected and used as a dwelling-house shall during such use have in the rear or at the side thereof an open space exclusively belonging thereto to the extent of at least 150 square feet, free from any erection thereon above the level of the ground, other than a privy; but where there is a water-closet and no other privy, an open space of not less than 100 feet may be allowed; and the distance across such open space between every such building, and the opposite property at the rear or side, exclusive of any common passage, shall be ten feet at least: if such building be two storeys in height above the level of such open space, the distance across shall be fifteen feet; if such building be three storeys, it shall be twenty feet; if more than three storeys, twenty-five feet."

Open space
in rear of
every new
building.

With reference to this bye-law it was held that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demarcation between such building and such opposite property, and that at no point should a less distance than that prescribed by the bye-law intervene between them, exclusive of any common passage. (2)

A bye-law under 21 & 22 Vict. c. 98, s. 34, that no dwelling-house shall be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the same, would be beyond the jurisdiction conferred upon the Local Board by the Act to make bye-laws. But, per Cockburn, C.J., the bye-law might have been valid if it had been that there should be no privy or ashpit belonging to the house without adequate means of access. (3)

The following words in a Local Improvement Act, "every house to be constructed shall have a *back yard or other vacant ground or area* from the ground upwards of not less than eight feet, extending from the main building for the whole length of such building," the Court, though no judgment was pronounced on the point, were inclined to think point to a yard *at the back*, and not to an open space *at the side* of the house, and therefore

(1) *Tucker v. Rees*, 7 Jur. (N. S.) 629. (N. S.) 1058; 32 L. J. (N. S.) M. C. 137.

(2) *Anderton, app., Rigby, resp.*, 13 C. B. (N. S.) 603. S. C. nom. *Anderton v. Birkenhead*, 9 Jur. (3) *Waite v. Garston*, L. R. 3 Q. B. 5; 17 L. T. (N. S.) 201; 37 L. J. M. C. 19.

that the leaving an open space of the requisite width at the side of the building was not a compliance with the terms of the enactment. (1)

Alterations
in works
after com-
pletion.

A Local Board made a bye-law, which provided that "if any person should construct or cause to be constructed any works, or do any act, or omit to do any act, or comply with any requirements of the Local Board, or should make any alterations in any works after they have been completed, whether in new or existing buildings, contrary to the provisions therein contained, the Local Board might cause such works to be removed, altered, or pulled down." This bye-law was held to be invalid, as the Local Board had no right to make a bye-law investing themselves with power beyond that conferred upon them by the Act, and such bye-law did not come within sect. 34 of the 11 & 12 Vict. c. 63. (2)

In another case a Local Board, by a bye-law, imposed continuing pecuniary penalties upon any person who should "construct any works, or do or omit to do any act, or to comply with any requirement of the Board, or should make any alteration in any works after completion, or any deviation from or alteration in any plan approved by the Board, whether in new or existing buildings, contrary to the provisions therein contained, or do any act, matter, or thing contrary to the bye-laws made under the authority of 21 & 22 Vict. c. 98, s. 34, or omit, neglect, or fail to perform and execute any of the matters or things required by such bye-laws, or in any manner transgress the same bye-laws or any of them;" and the Board, by the same bye-law, were empowered to remove, pull down, or otherwise deal with such works as the case might require. With reference to this bye-law, it was held that a conviction by justices imposing a pecuniary penalty under it was bad, as the bye-law was *ultra vires* and beyond the authority conferred on the Local Board by the Act. (3)

Omission of
builder to
give required
notice;
power of
Local Board.

On the same point, though with particular application to the Metropolis Local Management Act, sect. 76 of that Act empowers the District Board to alter or demolish a house where the builder has neglected to give notice of his intention to build seven days before proceeding to lay or dig the foundation; but this power does not empower the District Board to demolish the building without first giving the party guilty of the omission an opportunity of being heard; and this, on the principle which has been repeatedly recognized by the Courts (4), that no man is to be deprived of his property without an opportunity of being heard. "Per Erle, C.J., I think the Board

(1) *Pearson v. Kingston-upon-Hull*, 13 L. T. (N. S.) 180; 3 H. & C. 921; 35 L. J. M. C. 36.

(2) *Brown v. Holyhead*, 32 L. J. (N. S.) Exch. 25; 1 H. & C. 601; 7 L. T. (N. S.) 332.

(3) *Young v. Edwards*, 11 L. T. (N. S.) 424.

(4) See Dr. Bentley's case cited by Parke, B., in the *Hammersmith Rent-Charge Case*, 4 Exch. 96.

ought to have given notice to the plaintiff and to have allowed him to be heard. The apparent neglect might have been explained, for it is possible that the regulations may have been complied with though the notice to the Board may have been mis-carried" (1); and per Willes, J., "I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds; and that that rule is of universal application, and founded upon the plainest principles of justice." (2)

Omission of
builder to
give required
notice;
power of
Local Board.

Under the 53rd section of the Public Health Act, 1848, repealed by the 34th section of the Local Government Act, 1858, the Local Board could require notice of intended new buildings to be given to them; but such notice is now no longer necessary, unless it be required by any bye-law made in pursuance of sect. 34 of the 21 & 22 Vict. c. 98, and confirmed by the Secretary of State. If no bye-law be made on the subject the premises can be erected without notice.

The following questions are understood to have been submitted by the Kendal Local Board of Health to the Secretary of State for the Home Department respecting the term "any new building" in the bye-laws of that Board, which embody in chief the bye-laws issued by the Secretary of State for the guidance of Local Boards in the preparation of bye-laws:—

New build-
ings defined
by Secretary
of State.

1. Whether the expression "any new building" applies, besides to a dwelling-house, to the erection of any building not intended for habitation, as a warehouse, a barn, a stable, a privy, or a wooden shed for cattle.

2. Whether "any new building" applies to the erection of such within the boundary walls or premises of the owner or person intending to build, so that if a person, for instance, requires to build an outhouse in his yard or garden, whether notice must in such case be given.

3. Whether the taking down an old building, either wholly or partially, and erecting on the site thereof a similar building, or heightening the former building, or adding simply to the old building, say an additional wing, is to be considered a "new building," and notice in such case must be given.

The following are the answers given to those questions:—

1. The term "any new building" includes, besides dwelling-houses, any building not intended for habitation.

2. The term "any new building" applies to such building, whether within or without the boundary of premises belonging to the builder.

3. The last paragraph of the 34th section of the Local Government Act is an answer to this question, viz.:—"For the

(1) *Cooper v. Wandsworth*, 8 L. T. (N. S.) 278; 14 C. B. (N. S.) 180; 9 Jur. (N. S.) 1155; 32 L. J. (N. S.) M. C. 185.

(2) *Cooper v. Wandsworth*, 14 C. B. (N. S.) 190.

New build-
ings defined
by Secretary
of State.

purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework shall be left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building."

Occupation of
cellars, etc.
11 & 12 Vict.
c. 63 s. 67.

No vault, cellar, or underground room built or rebuilt after the passing of the Public Health Act, 1848, or which shall not have been so let or occupied before the passing of that Act, is to be let or occupied separately as a dwelling; and no vault, cellar, or underground room whatsoever, can be let or occupied separately as a dwelling unless it be in every part at least seven feet in height, measured from the floor to the ceiling; nor unless it be at least three feet of its height above the surface of the street or ground adjoining or nearest to it; nor unless there be outside of and adjoining, and extending along the entire frontage, and upwards from six inches below the level of the floor up to the surface of the street or ground, an open area of at least two feet and six inches wide in every part; nor unless it be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor; nor unless there be appurtenant the use of a water-closet or privy and an ashpit, furnished with proper doors and coverings, kept and provided according to the provisions of the Act (see *ante*, p. 151); nor unless it have a fireplace with a proper chimney or flue; nor unless it have an external window of at least nine superficial feet in area clear of the sash frame, and made to open in such manner as shall be approved by the surveyor, except in case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash-frame. Whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, for hire or rent, any vault, cellar, or underground room, contrary to the above-mentioned provisions, is liable for every offence to a penalty not exceeding 20s. for every day during which the premises continue to be so let or occupied after notice in writing from the Local Board. In any area adjoining a vault, cellar, or underground room there may be steps necessary for access thereto, if so placed as not to be over, across, or opposite to the external window, and so as to allow between every part of the steps and the external wall a clear space of six inches at the least, and that over or across any such area there be steps necessary for access to the building above to which the area adjoins, if so placed as not to be over, across, or opposite to any external window.

Penalty.
Ib.

Steps.
Ib.

Every vault, cellar, or underground room in which any person

passes the night is to be deemed to be occupied as a dwelling within the meaning of the Act.

What a dwelling.
11 & 12 Vict. c. 63, s. 67.
How in case of cellars, etc., already occupied as dwellings.
Ib.

The provisions of the Act, with respect to the letting and occupation of vaults, cellars, and underground rooms, so far as they relate to vaults, cellars, and underground rooms which have been let or occupied as dwellings before the passing of the Act, were not to come into force or operation until the expiration of one year from the passing of the Act; nor within any district until the expiration of six months from the time when the Act shall have been applied to such district.

All churchwardens and overseers of the poor from time to time after the passing of the Act are to cause public notice of its provisions with respect to the letting and occupation of vaults, cellars, and underground rooms, to be given in such manner as may appear to them to be best calculated to make them generally known.

Church-wardens, etc., to give notice of enactment.
Ib.

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

How when two convictions have occurred within three months.
29 & 30 Vict. c. 90, s. 36.

By the Sanitary Act, 1866, the 11 & 12 Vict. c. 63, s. 67, relating to cellar dwellings, is extended to every place in England where such dwellings are not regulated by any other Act of Parliament; and in construing the 67th section, nuisance authority shall be substituted for the Local Board.

§ 2. RUINOUS OR DANGEROUS BUILDINGS.

If any buildings or wall, or anything affixed thereon, within the limits of the district, be deemed by the surveyor of the Board to be in a ruinous state, and dangerous to passengers or the occupiers of neighbouring buildings, he is immediately to cause a board or fence to be put up for the protection of passengers, and then to give notice to the owner of such building or wall, if he be known and resident within the limits of the district, and shall also cause such notice to be put on the door or other conspicuous part of the premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require. If the owner or occupier do not begin to repair, take down, or secure the building, wall, or other thing within the space of three days after any such notice has been so given or put up, and complete such repairs, or taking down, or securing, as speedily as the nature of the case will admit, the surveyor may make complaint thereof before two justices, and it shall be lawful for such

Ruinous buildings to be taken down or secured.
21 & 22 Vict. c. 98, s. 45.
10 & 11 Vict. c. 34, s. 75.

How if owner, etc., neglect to repair.
Ib.

How if
owner, etc.,
neglect to
repair.

justices to order the owner, or in his default the occupier (if any), of the building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of the surveyor, the same or such part thereof as appears to be in a dangerous state, within a time to be fixed by the justices; in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the Board shall with all convenient speed cause all or so much of the building, wall, or other thing as shall be in a ruinous condition, and dangerous, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

Recovery of
expenses.

With regard to the recovery of such expenses, the following may be cited under the Metropolitan Building Act (18 & 19 Vict. c. 122, s. 73): all expenses incurred by the commissioners thereunder, in respect of any dangerous structure, shall be paid by the owner, and being recoverable in a summary manner, may, by sect. 103 of that Act, be recovered in manner directed by the 11 & 12 Vict. c. 43. In January, 1857, the commissioners took down a dangerous structure, and on the 30th April, 1858, gave the owner notice of the expenses, and demanded payment; the same not being paid on the 11th May, a complaint was made to a police magistrate for the non-payment of the expenses; and on a case stated, it was held that the matter of complaint was the non-payment of the expenses, and therefore the six months limited by the 11 & 12 Vict. c. 43, s. 11, ran from the time of the demand and refusal to pay, and not from the completion of the works of demolition; and therefore that the complaint was in time. (1)

In another case under the same statute, in proceedings for the recovery of the expenses attending the removal of a dangerous structure, it was held with reference to sect. 73, that the magistrate must consider the validity of the order for the removal of the structure; and that he rightly decided that it ought to show upon the face of it a summons to answer the complaint upon which the order was issued, and an adjudication that the complaint was true. (2)

The expenses
to be levied
by distress on
the owner.
10 & 11 Vict.
c. 34, s. 76.

If the owner can be found within the limits of the district, and if, on demand of the expenses, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

If, on the other hand, the owner cannot be found within the limits of the district, or sufficient distress of his goods and

(1) *Labalmondiere*, app., *Addison*,
resp., 28 L. J. (N. S.) M. C. 25;
5 Jur. (N. S.) 431.

(2) *Labalmondiere v. Frost*, 5 Jur.
(N. S.) 789.

chattels within the district cannot be made, the Board, after giving twenty-eight days' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on the building, or on the land whereon the building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the twenty-eight days, making compensation to the owner of the building or land in the manner provided by the Lands Clauses Consolidation Act, 1845, in the case of lands taken otherwise than with the consent of the owners and occupiers, and the Board shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the building or land for the purposes of the Act.

If any such house or building, or any part of the same, be pulled down by virtue of the powers aforesaid, the Board may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of the sale in payment of the expenses incurred in respect of such house or building; and the Board shall restore any overplus arising from such sale to the owner of the house or building, on demand; nevertheless, the Board, although they sell such materials, shall have the same remedies for compelling the payment of so much of the expenses as may remain due after the application of the proceeds of such sale as are given to them for compelling the payment of the whole of the expenses.

§ 3. PRECAUTIONS TO BE TAKEN DURING REPAIRS, ETC.

During the construction or repair of streets, sewers, or drains, the Local Board are to shore up and protect adjoining houses, and place bars or chains across the streets, to be lighted and guarded at night, so as to prevent accidents; and any one taking down such bars or chains, or extinguishing the lights without authority, is liable to a penalty not exceeding £5.

When buildings are to be erected or taken down, or alterations or repairs to be made where any street or footway will be obstructed, hoards or places are to be put up with a convenient platform and hand-rail, if practicable, and lighted at night; and persons failing in this respect, or who do not remove the same when required by the Board, are liable to a penalty not exceeding £5, and a further penalty not exceeding 40s. for every day of default. They are subject to like penalties for not lighting at night deposits of building materials or excavations, and for not properly fencing the same, as well as for allowing them to remain for an unnecessary time; the proof that the time has not exceeded the necessary time is to be upon the person causing the obstruction. Dangerous places near any street are to be repaired or inclosed by the Board, and the expenses to be recovered from the owner of the premises as damages.

If owner cannot be found, Board may take the house or ground, making compensation.
10 & 11 Vict. c. 34, s. 77.

Board may sell the materials, restoring to the owner overplus arising from the sale.
Ib. s. 78.

Bars on streets.
21 & 22 Vict. c. 98, s. 45.
10 & 11 Vict. c. 34, s. 79.

Hoards.
10 & 11 Vict. c. 34, s. 80.

Penalties.
Ib. s. 81.

Evidence.
Ib.

Dangerous places.
Ib. s. 83.

CHAPTER IX.

WATER SUPPLY.

Local Board
to provide
sufficient
supplies of
water, and
may erect
waterworks,
etc.

11 & 12 Vict.
c. 63, s. 75.
Waterworks
defined.
Ib. s. 2.

How where
Local Board
has made
default in
providing
sufficient
supply of
water.

29 & 30 Vict.
c. 90, s. 49.

Waterworks
generally.

THE Local Board may provide their district with such a supply of water as may be proper and sufficient for the purposes of the Public Health Act, and for private use to the extent required by the Act. For any or all of those purposes they may contract with any person, or purchase, take upon lease, hire, construct, lay down, maintain such waterworks, and do and execute all such works as shall be necessary and proper.

The waterworks here referred to may be either streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade of any waterworks company. The expression "waterworks company" means any corporation, person, or company of persons supplying, or who may hereafter supply water for their own profit.

Where complaint is made to a Secretary of State that a Local Board of Health has made default in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, the Secretary of State, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

The costs of this proceeding on the part of the Secretary of State are provided for as will be seen, *ante*, p. 89.

As regards waterworks in general, and water supply, see *ante*, p. 78.

The Select Committee on the Waterworks Bill, 1865, report (Sess. Paper 401): 1. That in all cases in which it is proposed

to construct a large reservoir, the undertakers should submit to the Home Office or Board of Trade plans and sections of the site selected for such reservoir, and of the works to be erected, and also descriptions of the mode of construction. Waterworks generally.

2. That in all cases it should be the duty of the Home Office or Board of Trade to send a competent person to such site in order to verify and report upon such plans and sections and descriptions.

3. That it should be the duty of the Home Office or Board of Trade to submit such plans and sections and descriptions, together with the observations of the person so sent, to any select committee appointed by either House of Parliament to consider any Bill by which powers are to be given to construct the contemplated works.

4. That it shall be the duty of the Home Office or Board of Trade to send some competent person to inspect and report on the works that are to be constructed, so that if there be any glaring deviation from the rules laid down by any private Act under which the reservoir inspected may be constructed, or by any general Act respecting waterworks that may be passed, the deviation may be made known to the Home Office or Board of Trade. And it seems important, in order that competent inspectors should be employed by the Government, that they should receive ample remuneration for their labour and services.

5. That when any reservoir inspected as above is completed, the undertakers should be bound to give due notice of such completion to the Home Office or Board of Trade, and that such reservoir shall not be filled with water until after the expiration of a specified time. And that during such time it shall be competent to the Home Office or Board of Trade to prohibit the undertakers from allowing water to be let into such reservoir. But if within the specified time no such prohibition be issued, then it may be competent to the undertakers to fill the reservoir with water.

6. And further, the Committee having found that large reservoirs have at times been allowed to decay and become dangerous, they suggest that an adequate supervision over all large reservoirs should be maintained by the Home Office or Board of Trade; and to that end, from time to time, competent persons should be sent to inspect and report upon such reservoirs.

7. The Committee do not intend to diminish in any degree the responsibility of undertakers of waterworks contemplated by the Bill referred to them, to pay all such damage as may result from the water stored by them. In the opinion of the Committee, the provisions by which such responsibility is imposed upon such undertakers should be stringent and completely unambiguous.

The following bears on the right to take water from streams when the right to such streams is vested in others. The justices

Right to
water in
streams.

of the county of Kent having by means of pipes and machinery taken water from a navigable river over which a company of proprietors had the control under a private Act, for the purposes of the county gaol, without the permission of the proprietors, and an action having been brought against the justices for the alleged trespass, and a verdict taken by consent subject to a special case; it was held that upon the true construction of the Act, the plaintiffs had not such a limited right in the river as a private grant of the river might have conveyed, but that it created such a property and interest in the water which was interfered with by the abstraction of it for the purposes to which it was applied by the defendants, which purposes were more extensive than those for which a riparian proprietor could insist on appropriating a stream as it passed his land, and that it was not necessary that there should be an actual damage to the navigation, because the legislature intended to give the company such an interest in all the water of the river for the purposes of navigation as was interfered with by the abstraction of any part thereof. (1)

A corporation was empowered by statute to erect a reservoir near a river, and on completion thereof to divert the water of the river, discharging down the river seventy-five cubic feet of water per second for twelve hours of every working day. The corporation was, however, by the nature of the ground prevented from completing the reservoir, but they diverted the water and discharged down the river more than its natural flow, but less than the quantity required by the statute. The riparian proprietors having thereupon brought their action against the corporation, it was held that they could recover at common law for any damage sustained by the diversion of the water, but could not recover for failure to comply with the statutory requirement to discharge seventy-five cubic feet per second. (2)

Reservation
of rights of
individuals to
reservoirs, etc.
21 & 22 Vict.
c. 98, ss. 73,
74.

The Local Government Act also restrains Local Boards from injuriously affecting reservoirs, rivers, streams, or their feeders, or the supply, quality, or fall of water contained therein, in which any company or individuals are interested, unless the Board shall have first obtained the consent in writing of such company or individuals, and provides for reference to arbitration questions upon which difference of opinion may arise between the Local Board and such company or individuals.

Power to
carry water
mains.
Ib. s. 52.

Where the Local Board supply water to their district they have the same power for carrying water mains within the district as they have for carrying sewers by the law in force for the time being; as to those powers, see *ante*, p. 90.

(1) *Medway Navigation Company v. Romney (Earl of)*, 7 Jur. (N. S.) 846; 4 L. T. (N. S.) 87. See also *Stockport Waterworks v. Potter*, 10 L. T. (N. S.) 748, as to rights of riparian proprietors.

(2) *Waller v. Manchester (Mayor of)*, 30 L. J. (N. S.) Exch. 293; 6 H. & N. 667; 7 Jur. (N. S.) 635.

If they pass through other parishes it seems that the Local Board will be liable to be rated to the poor rates of such parishes in respect of the occupation of the soil by the mains(1); and this it is apprehended even though a profit to the Local Board may not arise from their works of water supply.

Any waterworks company may contract with the Local Board to supply water for the purposes of the Act, or may sell and dispose of or lease their waterworks to the Local Board. The Local Board may provide and keep in any waterworks constructed by them a supply of pure and wholesome water, and the water supplied may be constantly laid on at such pressure as will carry it to the top storey of the highest dwelling-house within the district supplied. Before constructing or laying down any waterworks within the limits of any existing waterworks company, the Local Board must give notice in writing to such waterworks company, stating the purposes for and (as far as may be practicable) the extent to which water is required by the Local Board; and it shall not be lawful for the Local Board to construct or lay down any new waterworks, if and so long as the company is able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the Local Board. In case any difference arises as to whether the water which the company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the Local Board, or whether the purposes for which it is required are reasonable, as well as the cost, such difference is also to be settled by arbitration.

The following may perhaps not have general application, but the point, nevertheless, deserves to be noted in this place. By a Local Act a waterworks company was bound, at the request of the Town Improvement Commissioners, to fix fire-plugs into their mains, and to repair and keep them in proper order at the cost of the commissioners, in whom the property in the plugs was vested by virtue of their Improvement Act. In consequence of the cap of one of the fire-plugs provided under the Act having been broken, a horse placed his foot in the plug-hole and was lamed, and it was held that the waterworks company and not the commissioners were liable for the injury. (2)

Any Local Board of Health may absolutely purchase, and the directors for the time being of any waterworks company or market company may, by and with the authority of three-fifths of the shareholders for the time being in such company who may be present, either personally or by proxy, at some general meeting of the company specially convened for the purpose, sell,

Contracts by water company.
11 & 12 Vict. c. 63, s. 75.
Water supply under pressure.
Ib.
How if waterworks company within the district be able and willing to supply water.
Ib.

Liability for insecure fire-plugs.

Power to directors of waterworks or market company to sell works, etc., to Local Boards.

(1) *Reg. v. West Middlesex Waterworks Company*, 28 L. J. (N. S.) M. C. 135.

(2) *Bayley v. Wolverhampton Waterworks Company*, 30 L. J. (N. S.) Exch. 57; 6 H. & N. 241.

21 & 22 Vict.
c. 98, s. 53.

convey, and transfer unto any Local Board of Health, upon such terms as shall be mutually agreed upon between the company and the Local Board, all the rights, powers, and privileges, and all or any of the lands and premises, works, matters, and things, which at the time of the purchase are the property of the company, but subject to all mortgages, contracts, or liabilities to which the same shall be then subject.

Borough of
Halifax.
14 & 15 Vict.
c. 103, s. 5.

The Town Council of the borough of Halifax, acting in the execution of a Local Act, were owners of certain springs and waterworks for the supply of the township of Halifax with water; but as the Local Board of Health district was not continuous with the township, it became necessary to compensate the township for the use of the springs and waterworks by the borough to which it was considered expedient that the benefit of the springs and works should be extended. Provision was therefore made for their value being ascertained, and in order that they might become the property of the Local Board, the council were empowered to borrow on mortgage of the water rates the necessary funds to purchase them.

Rights of
riparian
proprietors
to water.

The Local Board may sink wells for the purpose of obtaining a supply of water, even though the underground water is diverted from a stream in which it has hitherto flowed, and damage is thereby occasioned to property on the banks of the stream. Therefore the owner of an ancient water-mill on a river has no right of action against an owner of land adjacent who digs a deep well on his land, and thereby diverts the underground waters, not known to be formed into a stream flowing in a defined channel, which otherwise would have percolated into the river, although the landowner does not use the water for purposes connected with his land, but pumps it up and carries it off in pipes to supply persons resident in the neighbourhood, many of whom had no right as owners to the use of the waters at all. This was so held on appeal to the House of Lords from the judgment of the Court of Exchequer Chamber. (1) The same point was decided in a later case where the claim arose under the Waterworks Act, 1847, which enables the undertakers to make drains, &c., and provides that in the exercise of their powers they shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers; but this provision does not give a right to compensation in any case where but for the statute a right of action would not exist. Therefore where a person was possessed of a well and the company by making a drain drew off the water which percolated into the well, and by the same means drew it off by percolation after it had found its way into the well, it was held that as no action could be maintained for

(1) *Chasemore v. Richards*, 29 L. J. (N. S.) Exch. 81; 5 Jur. (N. S.) 873; 33 L. T. Exch. Ch. 350; 2

H. & N. 168. See also *Acton v. Blundell*, 12 Mee. & W. 324.

this injury, so no compensation could be claimed for it under the statute. (1) Riparian proprietors.

When a well is supplied with water which percolates through the earth, and does not flow through any defined channel, although the owner of the well is not entitled to the water until it actually enters his well, the occupier of adjoining property will be restrained from using a cesspool therein in such a manner as to pollute the water coming through his property and supplying the well. (2)

Where a person was the owner of an estate upon which was a pond or lake, fed by natural springs rising on a bed of gravel resting on a bed of clay, extending out into the highway road, and the Metropolitan Board of Works, under the authority of an Act of Parliament, giving rights to compensation under the Lands Clauses Act, made an excavation under the highway, no part of which touched the land of the owner of the estate, but the immediate effect of which, as it cut through the bed of gravel and the bed of clay on which it rested, was to divert the springs and dry up the lake: on a mandamus to assess compensation for the injury it was held (*per totam curiam*) that the case came within the principle of the decision in *Chasemore v. Richards*, and that therefore there would be no right of action had the act been that of an adjoining proprietor, and that there was no right to compensation under sect. 69 of the Lands Clauses Act, 8 Vict. c. 18. Held also (Cockburn, C.J., *dissentiente*) that there was no right to compensation at all. (3)

But it would be different in the case of a riparian proprietor, who can have no larger right than that which he has by nature against those above or below him. Hence the right to have a stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes; but flowing water is *publici juris*, not in the sense that it is a "bonum vacans," to which the first occupant may acquire an exclusive right, but that it is public and common in this sense only, that all may reasonably use it who have a right of access to it; that none can have any property in the water itself, except in the particular portion which he may choose to abstract from the stream and take into his possession, and that during the time of his possession only. (4) By a long series of decisions the rights of riparian proprietors to the use of water flowing in definite channels above ground have been well settled. Each proprietor of the land has a right to the stream flowing in a natural course over his land, to use the same as he pleases, in a manner not inconsistent with a similar right in the proprietors of the land below his, through which the stream also flows;

(1) *New River Company*, apps., *Johnson*, resp., 1 L. T. (N. S.) 295; 6 Jur. (N. S.) 374.

(2) *Womersley v. Church*, 17 L. T. (N. S.) 190.

(3) *Stainton v. Metropolitan Board of Works*, 9 W. R. 492. See ante, p. 98.

(4) See *Mason v. Hill*, 5 B. & Ad. 17.

Riparian
proprietors.

so that, in the absence of prescription or grant, neither proprietor can diminish the quantity or injure the quality of the water, which would otherwise naturally descend. But each proprietor of the adjacent land has a right to the usufruct of the stream which flows through it. (1)

The following is the law on this subject as laid down in the judgment of the Privy Council in the case of *Minor v. Gilmore*. (2) Per Lord Kingsdown: "By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land. For instance, to the reasonable use of the water for his domestic purposes, and this without regard to the effect in the way of any deficiency on proprietors lower down the stream; and further, he has a right to use it for any purpose, or an extraordinary use, provided he does not interfere with the rights of other proprietors above and below the stream. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert it for the purpose of irrigation; but he has no right to interrupt the regular flow of the stream if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury."

So, again, a riparian proprietor has a right, by means of waterwheels and machinery erected by him for that purpose, to pump up water from a natural stream flowing past his land to a reservoir, and to convey it thence by pipes to his dwelling-house upon another estate at a distance from the stream; and he may there apply such water to his domestic and other necessary purposes of utility, provided he take only a reasonable quantity with reference to the size of the stream and the rights of his neighbours; but he has no right to take more water by means of the wheels and machinery than he would have a right to take otherwise (3); and a riparian owner has a right, irrespective of any actual damage sustained by him, to complain of an obstruction to a stream (4); so also one who has a right to water flowing through a goit to his mill. (5)

As regards nuisances to a stream, the defendant, the owner of an ancient paper mill where the paper had been made from rags, introduced a new vegetable fibre and carried on the works upon the same scale for making paper from this new material. For more than twenty years before this change, the refuse arising from the paper manufacture had been discharged into a stream which ran past the plaintiff's house. It was held by Cairns, L.C., on appeal from a decree of Stuart, V.C., that the easement to which the defendant was entitled was to be

(1) *Embrey v. Owen*, 6 Exch. Rep. 369.

(2) 12 Moore, P. C. Ca. 156.

(3) *Norbury (Earl) v. Kitchin*, 7 L. T. (N. S.) 685; 9 Jur. (N. S.) 132.

(4) *Norbury (Earl) v. Kitchin*, 15 L. T. (N. S.) 501.

(5) *Nuttall v. Bracewell*, 4 H. & C. 714.

presumed to be not a right to foul the stream by discharging into it the washings produced by the boiling up of rags, but a right to discharge into it the washings produced by the manufacture of paper in the reasonable and proper course of such manufacture, using any proper materials for the purpose, but not increasing the pollution, and that the onus lay on the plaintiff to prove any increase of pollution. (1)

The unanimous opinion of the Judges on the question of law propounded to them in the case of *Chasemore v. Richards*, by the House of Lords, contains so clear an exposition of the law on the subject of riparian rights to water, as to justify its insertion in *extenso* in the present work.

The following Judges were present, namely:—Wightman, Williams, Martin, J.J.; Crompton, Bramwell, and Watson, B.B.; and their opinion was delivered to the House of Lords by Mr. Justice Wightman in the following terms:—

“My Lords, in this case the Judges agree in opinion. I have, therefore, to deliver their unanimous opinion to your Lordships. It appears by the facts that are found in this case, that the plaintiff is the occupier of an ancient mill on the river Wandle, and that for more than sixty years before the present action he and all the preceding occupiers of the mill used and enjoyed, as of right, the flow of the river for the purpose of working their mill. It also appears that the river Wandle is, and always has been, supplied above the plaintiff’s mill, in part, by the water produced by the rainfall on a district of many thousand acres in extent, comprising the town of Croydon and its vicinity. The water of the rainfall sinks into the ground to various depths, and then flows and percolates through the strata to the river Wandle, part rising to the surface, and part finding its way underground in courses which continually vary. The Local Board of Health of Croydon (represented in this action by the defendant), for the purpose of supplying the town of Croydon with water, and for other sanitary purposes, sunk a well in their own land in the town of Croydon, and about a quarter of a mile from the river Wandle, and pumped up large quantities of water from their well for the supply of the town of Croydon; and by means of the well and the pumping the Local Board of Health did divert, abstract, and intercept underground water, but underground water only, that otherwise would have flowed and found its way into the river Wandle, and so to the plaintiff’s mill; and the quantity so diverted, abstracted, and intercepted was sufficient to be of sensible value towards the working of the plaintiff’s mill.

“The question is, whether the plaintiff can maintain an action against the Local Board of Health for this diversion, abstraction, and interception of the underground water.

“The law respecting the right to water flowing in definite,

(1) *Baxendale v. McMurray*, L.R. 2 Ch. App. 790.

Riparian
proprietors.

visible channels, may be considered as pretty well settled by several modern decisions, and it is very clearly enunciated in the judgment of the Court of Exchequer in the case of *Embrey v. Owen*. (1) But the law, as laid down in those cases, is inapplicable to the case of subterranean water not flowing in any definite channel, nor indeed at all, in the ordinary sense, but percolating or oozing through the soil more or less according to the quantity of rain that may chance to fall.

"The inapplicability of the general law respecting rights to water to such a case has been recognized and observed upon by many judges whose opinions are of the greatest weight and authority.

"In the case of *Rawstone v. Taylor* (2), Baron Parke, in delivering the judgment of the Court, says: 'This is the case of common surface water flowing in no definite channel, though contributing to the supply of the plaintiff's mill. The water having no definite course, and the supply not constant, the plaintiff is not entitled to it. The right to have a stream running in its natural direction does not depend upon a supposed grant, but is *jure naturæ*.'

"In delivering the judgment of the Court of Exchequer in the subsequent case of *Broadbent v. Ramsbottom* (3), Baron Alderson observes, that 'all the water falling from heaven, and shed upon the surface of a hill, at the foot of which a brook runs, must by force of gravity find its way to the bottom, and so to the brook; but this does not prevent the owner of the land on which it falls from dealing with it as he pleases. He cannot do so if the water has arrived at, and is flowing in, some definite channel. There is here no watercourse at all.'

"In the earlier case of *Acton v. Blundell* (4), the Court of Exchequer were of opinion that the owner of the surface might apply subterranean water as he pleased, and that any inconvenience to his neighbour from so doing was *damnum absque injuria*, and gave no ground of action.

"There is no case or authority of which I am aware that can be cited in support of the position contended for by the plaintiff, or in which the right to subterranean percolating water adverse to that of the owner of the soil came in question, except the *Nisi Prius* case of *Balston v. Bensted* (5) and *Dickenson v. The Grand Junction Canal Company*. (6)

"In the first of these cases, Lord Ellenborough is reported to have expressed an opinion that twenty years' enjoyment of the use of water in any manner afforded an exclusive presumption of right. This opinion amounted only to the dictum of an eminent judge, followed by no decision upon the point, for the

(1) 6 Exchequer Reports, 369.

(2) 11 *Ib.* 382.

(3) *Ib.* 615.

(4) 12 M. & W., 349.

(5) 1 Campbell, 463.

(6) 7 Exchequer Reports, 282.

case ended in the withdrawal of a juror, and is directly at Riparian variance with the judgment of the Court of Exchequer in the other case, upon which the plaintiff relies, of *Dickenson v. The Grand Junction Canal Company*, in which the Court held 'that the right to have a stream running in its natural course is not by a presumed grant from long acquiescence on the part of the riparian proprietors above and below, but is *ex jure naturæ*, and an incident of property as much as the right to have the soil itself in its natural state unaltered by the acts of a neighbouring proprietor, who cannot dig so as to deprive it of the support of his land.'

"In the case of *Dickenson v. The Grand Junction Canal Company*, the very question now before your Lordships' House arose, and that case is relied upon by the plaintiff as a decisive authority in his favour. The Court of Exchequer was of opinion that the Company, by digging a well and pumping out the water, and so intercepting and diverting underground and percolating water which would otherwise have gone into a stream which flowed to the plaintiff's mill, and was applied to the working of it, had rendered themselves liable to an action for the infringement of a right at common law. In the same judgment, however, the Court refers to the case of *Acton v. Blundell*, apparently with approbation, and observes 'that the existence and state of underground water is generally unknown before a well is made; and after it is made there is a difficulty in knowing certainly how much, if any, of the water of the well, when the ground was in its natural state, belonged to the owner in right of his property in the soil, and how much belonged to his neighbour;' and then further observes, 'that these practical uncertainties make it very reasonable not to apply the rules which regulate the enjoyment of streams and waters above ground to subterranean waters.' But the Court, without at all adverting to this distinction which it has adopted, treats the case of underground percolating water as governed by the same rules as would obtain in the case of visible streams and watercourses above ground; and no remark or comment is made or reason assigned by the Court for arriving at a conclusion which not only does not seem warranted by the premises previously adopted, but is in effect hardly consistent with them. The plaintiff in that case was held to have a cause of action, independently of any infringement of a right at common law by reason of the breach of an agreement between the parties and of an Act of Parliament; and a decision upon the right at common law seems not to have been necessary for determining the suit between the parties. These considerations greatly weaken the effect of the case of *Dickenson v. The Grand Junction Canal Company*, as an authority against the defendant upon the point now in question, but it is an authority in his favour to show that a right to water is not by a presumed grant from long acquiescence, but, if it exists at all, is *jure naturæ*, and

Riparian
proprietors.

that the rules of law that regulate the rights of parties to the use of water are hardly, or rather not at all, applicable to the case of waters percolating underground.

"In such a case as the present, is any right derived from the use of the water of the river Wandle for upwards of twenty years for working the plaintiff's mill? Any such right against another founded upon length of enjoyment is supposed to have originated in some grant which is presumed from the owner of what is sometimes called the servient tenement. But what grant can be presumed in the case of percolating waters, depending upon the quantity of rain falling or the natural moisture of the soil, and in the absence of any visible means of knowing to what extent, if at all, the enjoyment of the plaintiff's mill would be effected by any water percolating in and out of the defendant's or any other land? The presumption of a grant only arises where the person against whom it is to be raised might have prevented the exercise of the subject of the presumed grant; but how could he prevent or stop the percolation of water? The Court of Exchequer, indeed, in the case of *Dickenson v. The Grand Junction Canal Company*, expressly repudiates the notion that such a right as that in question can be founded on a presumed grant, but declares that with respect to running water it is *jure naturæ*. If so, *à fortiori*, the right, if it exists at all, in the case of subterranean percolating water, is *jure naturæ*, and not by presumed grant, and the circumstance of the mill being ancient would in that case make no difference.

"The question then is, whether the plaintiff has such a right as he claims *jure naturæ* to prevent the defendant sinking a well in his own ground at a distance from the mill, and so absorbing the water percolating in and into his own ground beneath the surface, if such absorption has the effect of diminishing the quantity of water which would otherwise find its way into the river Wandle, and by such diminution affects the working of the plaintiff's mill.

"It is impossible to reconcile such a right with the natural and ordinary rights of landowners, or to fix any reasonable limits to the exercise of such a right.

"Such a right as that contended for by the plaintiff would interfere with, if not prevent, the draining of land by the owner. Suppose, as it was put at the bar in argument, a man sunk a well upon his own land, and the amount of percolating water which found its way into it had no sensible effect upon the quantity of water in the river which ran to the plaintiff's mill, no action would be maintainable; but if many landowners sunk wells upon their own lands, and thereby absorbed so much of the percolating water, by the united effects of all the wells, as would sensibly and injuriously diminish the quantity of water in the river though no one well alone would have that effect, could an action be maintained against any one of them,

and if any, which, for it is clear that no action could be maintained against them jointly? Riparian proprietors.

"In the course of the argument one of your Lordships (Lord Brougham) adverted to the French artesian well at the Abattoir de Grenelle, which was said to draw part of its supplies from a distance of forty miles, but underground, and as far as is known, from percolating water. In the present case the water which finds its way into the defendant's well is drained from and percolates through an extensive district, but it is impossible to say how much from any part. If the rain which has fallen may not be intercepted whilst it is merely percolating through the soil, no man could safely collect the rain water as it fell into a pond; nor would he have a right to intercept its fall before it reached the ground, by extensive roofing, from which it might be conveyed to tanks, to the sensible diminution of water which had, before the erection of such impediments, reached the ground and flowed to the plaintiff's mill. In the present case the defendant's well is only a quarter of a mile from the river Wandle; but the question would have been the same if the distance had been ten or twenty or more miles, provided the effect had been to prevent underground percolating water from finding its way into the river, and increasing its quantity, to the detriment of the plaintiff's mill. Such a right as that claimed by the plaintiff is so indefinite and unlimited that, unsupported as it is by any weight of authority, we do not think that it can be well founded, or that the present action is maintainable; and we therefore answer your Lordships' question in the negative."

With regard to the rights of riparian proprietors the following extracts from the rulings of the judges in *Nuttall v. Bracewell* (1) may be added.

Per Martin, B.: It is competent to the owners of adjoining closes abutting on a stream to take water therefrom through a goit from the close of one to the close of the other, returning the water to the stream in the close of the latter. The right to a flow of water through a goit being an incorporeal hereditament, and the subject of property and of grant, cannot be created so as to bind the original grantor and his heirs except by deed; yet actual possession and enjoyment of it under a parol agreement, though conferring no title as against the original grantor and his heirs, gives a right of action against a wrong-doer.

Per Bramwell, B.: As a general rule a man may grant estates and rights of enjoyment of his property, and the grantees may maintain an action against those who disturb them. A riparian proprietor subject to the rights of those opposite and down the stream, may divert the water where it flows by his land, and he may grant the right or mode of enjoyment to

(1) 15 L. T. (N. S.) 313; 12 Jur. (N. S.) 989.

Riparian
proprietors.

another person, and the burden of proof is on those who may say he may not. (1)

Per Channell, B. : The rights of a riparian proprietor with respect to the stream are limited only by those of persons in a similar and analogous position with respect to the stream as himself; and if, therefore, he grants to a non-riparian a right to abstract water from the stream, the grantee may sue only the grantor for any interference with him. But if two adjoining riparian proprietors agree to divert the stream so that it shall run in two channels instead of one, the water passing again into the old stream below their land and flowing down to the lower proprietors as before, the case is different; a goit is to all intents and purposes a new stream, and any person having land upon it would have the right of a riparian proprietor to use the water in any way not interfering with others. There is no reason why the law applicable to ordinary running streams should not be applicable to such a stream, for it is a natural stream or flow of water, though flowing in an artificial channel; and that an artificial stream may be on the same footing as a natural one, as regards the rights of riparian proprietors, was held in *Sutcliffe v. Booth*. (2)

Further, with regard to riparian rights, in *Bickett v. Morris* (3) it was held that riparian proprietors have a common interest in the water of a running stream, and a separate property in the alveus or channel thereof, *usque ad medium filum fluminis*; but no proprietor may so use his property in the alveus as to affect the interest of *ex adverso* proprietors in the stream; and in order to entitle a riparian proprietor to relief against building on the alveus, it is not necessary for him to prove that damage to him has been, or is likely to be, caused thereby. In such case the onus of shewing that no damage will arise lies on the person making the encroachment. Anything done in alveo which produces no sensible effect on the stream is, however, allowable. Per Lord Chelmsford, L.C. : A riparian proprietor may build a bulwark on his bank *ripæ muniendi causâ*, but he must so build as to cause no actual injury to the opposite proprietor; in this case, however, mere apprehension of damage would not be sufficient ground for relief. Per Lord Westbury : The interest of a riparian proprietor in the stream extends not only to the prevention of a diversion or diminution thereof, but to the prevention of any such interference with its course as might possibly be attended with damage at a future period to another proprietor. The general rule is, that even though immediate damage cannot be described, or actual loss predicted, an obstruction to the current of a stream constitutes an injury of which the Courts will take notice as an encroachment which adjacent proprietors have a right to have removed.

(1) Distinguishing *Hill v. Tupper*,
8 L. T. (N. S.) 792; 32 L. J. Ex.
217; 2 H. & C. 121.

(2) 32 L. J. Q. B. 136.

(3) 12 Jur. (N. S.) 803; L. R. 1
H. L., Sc. 47; 14 L. T. 835.

An encroachment on the alveus of a running stream may be complained of without the necessity of proving that damage has been sustained, or is likely to be sustained; but where, upon a balance of testimony, it appears that the quantity of water sent on to another's works will not, in all probability, be substantially diminished in quantity or quality, the Court will not proceed mandatory by injunction, but will leave the plaintiff to his remedy at law, if any. (1)

A person against whom an injunction is prayed to be restrained from diverting a watercourse, has a right to have the alleged right of the party who seeks to divert the watercourse established by means of an action at law; but the Court will not grant such an injunction in the meantime, where the balance of convenience or inconvenience in the attendant circumstances would be against the defendant's right to do the thing sought to be restrained. (2)

With regard to water rights it may be further observed that a landowner has a right to appropriate surface water which flows over his land in no definite channel, although the water is thereby prevented from reaching a watercourse which it previously supplied. (3) And again, an owner of land has an unqualified right to drain it for agricultural purposes, in order to get rid of mere surface water, the supply of the water being casual, and its flow following no regular or definite course; and a neighbouring proprietor cannot complain that he is thereby deprived of such waters which otherwise would have come to his land. (4)

If upon the report of the surveyor it appear to the Local Board that any house is without a proper supply of water, and that a proper supply can be furnished at a rate not exceeding twopence per week, the Local Board is to give notice in writing to the occupier, requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose. If the notice be not complied with, the Local Board may then do such works and obtain such supply accordingly, and make and levy water-rates upon the premises not exceeding in the whole the rate of twopence per week, as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water-rates. The expenses incurred by the Board in doing the necessary works are to be private improvement expenses, and to be recoverable as such.

These powers extend to any house within the district to which a supply of water can be provided at an expense not exceeding the water-rate authorized by the Public Health Act,

(1) *Edleston v. Crossley and Sons (Limited)*, 18 L. T. (N. S.) 15.

(2) *William v. Heath*, 1 L. T. (N. S.) 267.

(3) *Broadbent v. Ramsbotham*,

11 Exch. Rep. 602; 25 L. J. (N. S.) Exch. 115.

(4) *Rawstron v. Taylor*, 11 Exch. Rep. 369; 25 L. J. (N. S.) Exch. 33.

water supply.
21 & 22 Vict.
c. 98, s. 51.

1848, or any local Act in force in the district, and the notices are to be served on owners of houses so supplied instead of occupiers, and the expenses incurred are recoverable from such owners.

Recovery of expenses of water supply.
29 & 30 Vict.
c. 90, s. 50.
When Local Boards may make agreements for terms of water supply.
24 & 25 Vict.
c. 61, s. 20.

All expenses incurred by a Local Board in giving a supply of water to premises under the 11 & 12 Vict. c. 63, s. 76, or 21 & 22 Vict. c. 98, s. 51, and recoverable from the owners of the premises supplied, may be recovered in a summary manner.

In districts where no water companies are established by Act of Parliament, all Local Boards may make agreements for the supply of water to persons on such terms as may be agreed upon between the Local Board and the persons receiving such supply, and shall have the same powers for recovering water-rents accruing under such agreements as they have for the recovery of water rates by the law in force for the time being.

The levying and enforcing water-rates forms the subject of a subsequent chapter of this work.

Water for public baths, or manufacturing purposes.
11 & 12 Vict.
c. 63, s. 77.
"Domestic use," what.

The Local Board may also supply water from any water-works purchased or constructed by them to any public baths or wash-houses, or for trading or manufacturing purposes, upon such terms and conditions as may be agreed upon.

By a provision of a local Act a company were empowered to furnish a supply of water "for domestic use" to the owners and occupiers of houses at a certain rent. The appellant occupied a private dwelling-house, together with a coach-house and stable, in which he kept for his own private use a carriage and horse. It was held that water used by him for watering the horse and washing the carriage was for "domestic use," within the meaning of the above-mentioned provision. (1)

By the Waterworks Clauses Act, 1863, 26 & 27 Vict. c. 93, s. 12, it is enacted that, "a supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose." This, however, will of course not apply unless the Act be incorporated with the provisions of the particular water company's Act.

Public cisterns for gratuitous use.
Ib. s. 78.

The Local Board may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water other works equally convenient; and also construct any number of new cisterns, pumps, wells, conduits, and works

(1) *Bushy v. Chesterfield Waterworks and Gas-Light Company*, 1

E. B. & E. 176; 27 L. J. (N. S.) M. C. 174; 4 Jur. (N. S.) 757.

for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit, or supported out of any poor or borough rates. Public cisterns for gratuitous use.

Further, with regard to the provision by the local authority of a district of wells and pumps for the public use of the inhabitants, see 11 & 12 Vict. c. 63, s. 50, and 23 & 24 Vict. c. 77, s. 7, *post*. 11 & 12 Vict. c. 63, s. 78.

A Local Board of Health being proprietors of water-works may supply a public fountain gratuitously for a limited purpose, and a person taking the water for another purpose is liable to a penalty under the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, s. 59, which enacts, that "every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, water-course, or conduit belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding £10. (1)

Although a fountain erected on a highway may be a public nuisance, the water with which it is gratuitously supplied remains the property of the person supplying it, and cannot be taken for any other purpose than that for which it was supplied, and therefore a Local Board may limit the supply of such water. (1) In the particular case in which this was decided, an inhabitant of the town had presented to the town an ornamental fountain, with a trough or basin, which was set upon one of the public streets, and the Local Board supplied it with water on market days for the use of cattle in the market, and for horses, if yoked, when passing to and fro; and the respondent who kept horses, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink.

All existing public cisterns, pumps, wells, conduits, and other waterworks used for the gratuitous supply of water to the inhabitants within the limits of the district are to vest in and to be continued, maintained, and supplied with water, or the Board are to substitute other works for them equally convenient. The Board may also construct any number of new cisterns, pumps, conduits, and other works for the gratuitous supply of water to persons who choose to carry the same away, not for sale, but for their own private use, and may supply with water any public baths or wash-houses. Public cisterns, etc., vested in Local Board. 21 & 22 Vict. c. 98, s. 45. 10 & 11 Vict. c. 34, s. 121.

The Board may further contract for any period not exceeding three years at one time with the owners of any waterworks or any other person for such supply of water as they may think necessary, the price to be paid for which is to be settled by arbitration in case of dispute. Contracts for supply of water. 10 & 11 Vict. c. 34, ss. 122, 123.

In order to secure an efficient supply of water in cases of fire, the Local Board are to cause fire-plugs and all necessary In case of fire. Ib. s. 124.

(1) *Hildreth v. Adamson*, 2 L. T. (N. S.) 359; 8 C. B. (N. S.) 587; 30 L. J. (N. S.) M. C. 204.

Fire plugs.
10 & 11 Vict.
c. 34, s. 124.

works, machinery, and assistance to be provided and maintained; and for this purpose they may enter into any agreement with any water company or other person. The situation of the fire-plugs is to be indicated by marks on the neighbouring houses or walls.

By sect. 42 of the Waterworks Clauses Act, all the pipes to which the fire-plugs are affixed are to be kept at high pressure, the company being liable to a penalty for non-performance; but if the Special Local Act of the company, incorporating the Waterworks Clauses Act, have varied or repealed the general Act in this respect, the company will not be bound to keep the water on at high pressure. (1)

Penalty for
injuring
waterworks,
diverting
streams, or
wasting water.
11 & 12 Vict.
c. 63, s. 79.

Whosoever wilfully or carelessly breaks, injures, or opens any lock, cock, waste-pipe, or waterworks belonging to or under the management or control of the Local Board, or constructed, continued, or maintained under the Public Health Act, in any parish or place in which there is no Local Board of Health, or unlawfully flushes, draws off, diverts, or takes water from any waterworks belonging to or under the management or control of the Local Board, or constructed, continued, or maintained in any parish or place as above mentioned, or from any water or streams by which such waterworks are supplied, or wilfully or negligently wastes or causes to be wasted any water with which he is supplied by the Local Board, is for every such offence liable to forfeit a sum not exceeding £5, and a further penalty of 20s. for each day whilst the offence is continued after written notice, to be paid to the Local Board, or, in the case of a parish or place in which there is no Local Board of Health, to the churchwardens and overseers of the poor, in aid of the poor-rate of the parish or place. The owners or occupiers of premises through or by which any streams may flow are not, however, to be prevented from using such streams as heretofore they were entitled to use them.

Penalties on
persons for
causing water
in reservoirs
to be fouled.
Ib. s. 80.

Whosoever bathes in any stream, reservoir, conduit, aqueduct, or other waterworks belonging to or under the management or control of the Local Board, or in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained under the Public Health Act in any parish or place in which there is no Local Board of Health, or washes, cleanses, throws, or causes to enter therein any animal, rubbish, filth, stuff, or thing of any kind whatsoever, or causes, permits, or suffers to run or be brought therein the water of any sink, sewer, drain, engine or boiler, or other filthy, unwholesome, or improper water, or does anything whatsoever whereby the water belonging to the Local Board, or under their management or control, or whereby the water of or contained in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained in any parish or place not under a Local

(1) *Purnell v. Wolverhampton Waterworks Company*, 4 L. T. (N. S.) 513.

Board of Health is fouled, for every offence is liable to forfeit a sum not exceeding £5, and a further sum of 20s. for each day whilst the offence is continued after written notice. The penalties are to be paid to the Local Board, or, in the case of a parish or place in which there is no Local Board of Health, to the churchwardens and overseers of the poor, in aid of the poor rate.

Proprietors of gasworks, or persons engaged or employed in the manufacture or supply of gas, causing or suffering to be brought or to flow into any stream, reservoir, conduit, aqueduct, or waterworks belonging to or under the management or control of the Local Board, or into any drain or pipe communicating therewith, any washing or other substance produced in the manufacture or supply of gas, or wilfully doing any act connected with the manufacture or supply of gas whereby the water in any such stream, etc., is fouled, are liable to forfeit to the Local Board for every offence the sum of £200, and, after the expiration of twenty-four hours' notice in writing from the Board, a further sum of £20 for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled, to be recovered, with full costs of suit, by action of debt. If any water supplied by, belonging to, or under the management or control of the Local Board, be fouled in any manner by the gas of any such proprietor or person engaged or employed in the manufacture or supply of gas, he is liable to forfeit to the Local Board for every such offence a sum not exceeding £20, and a further sum not exceeding £10 for every day whilst the offence is continued after the expiration of twenty-four hours' notice in writing from the Local Board. For the purpose of ascertaining whether water is fouled by the gas of any such proprietor or person, the Local Board may lay open and examine any pipes, conduits, and works from which the gas is supposed to escape; but before beginning to do so, twenty-four hours' notice in writing must be given to the person to whom the pipes, etc., belong, or under whose management or control they are, of the time at which the examination is intended to be made. If upon examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, etc., examined, the expenses of the examination are to be paid by the person to whom the pipes, etc., belong, or under whose management or control they may be, and are recoverable from him in the summary manner provided by the Act. If, however, it appear that the water has not been fouled, then the expenses, and all damages occasioned by the examination, are to be paid by the Local Board out of the general district rates, and are recoverable from them in a summary manner.

Proprietors of gasworks, etc., fouling water. 11 & 12 Vict. c. 63, s. 80.

Penalty on proprietors of gasworks causing water in reservoirs to be fouled. Ib.

Examination of pipes, etc. Ib.

Expenses. Ib. 29 & 30 Vict. c. 90, s. 54.

The following has an important bearing on the foregoing provision of the 11 & 12 Vict. c. 63. A gas company's Act provided "that if the company shall at any time cause or suffer

Liability of
gas company
for conse-
quential
damage.

to be conveyed, or to flow into any stream, reservoir, aqueduct, pond, or place for water within the limits of the Act, or into any drain, sewer, or ditch communicating therewith, any washing, substance, or thing which shall be produced in the making or supplying gas, or shall do any act to the water contained in such stream, etc., whereby the water therein shall be fouled or corrupted, then the company shall forfeit for every such offence the sum of £200." This was held to make the company liable for any injury, although not attributable to their negligence, as they were bound to insure the public from any inconvenience, and the decision was confirmed by the Court of Exchequer Chamber in Error, from the Court of Exchequer. It was also held that a well was a place for water within the meaning of the Act. (1)

Wells.

Fouling water
by gas com-
pany.

The following will probably not have much general application, but the fact may be noted nevertheless. By a Local Improvement Act a penalty of £200 is imposed upon any gas or other company for suffering any impure matter to flow into any stream, etc., to be sued for by any common informer. By s. 21 of the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), a like penalty is imposed for the same offence, such penalty, by s. 22, "to be recovered by the person into whose water such substance shall be conveyed, or whose water shall be fouled by any such act;" and this latter provision, it was held (confirming the decision of the Court below), was *pro tanto* a repeal of the provision in the local Act. (2)

Fouling water
by manu-
facturer.

Where a manufacturer discharged arsenic and other injurious matters from his works into a stream, which he might have avoided doing by certain expedients, it was held that he could not defend himself in an action arising therefrom, by showing that his trade was a lawful trade, carried on in a proper manner. (3)

Further on this point, see Chapter 15 on offensive trades, *post*.

Action for
fouling water.

It may be questionable whether if a stranger foul the water of an artificial stream which a third party has been licensed to use, such third party may maintain an action against the stranger for the damage he may have occasioned. Yet if the third party, by the permission of the owner of the stream, has caused the water from it to flow into his own pipes or cisterns on his own premises, he can then maintain such action, if the stranger had no right to foul the water, and the fouled water has caused damage. It will be no answer to the action in such case that

(1) *Hipkins v. Birmingham and Staffordshire Gas-Light Company*, 29 L. J. (N. S.) Exch. 169; 1 L. T. (N. S.) 303; 5 H. & N. 74; 6 Jur. (N. S.) 173. In the Exchequer Chamber, 30 L. J. (N. S.) Exch. 60; 7 Jur. (N. S.) 213.

(2) *Parry v. Croydon Commercial Gas and Coke Company*, 9 L. T. (N. S.) 694; 10 Jur. (N. S.) 172; 15 C. B. (N. S.) 568.

(3) *Stockport Waterworks Company v. Potter*, 7 Jur. (N. S.) 880; 31 L. J. (N. S.) Exch. 9; 7 H. & N. 160.

the actual injury to the plaintiff has been caused by his use of the fouled water, for the principle that a party cannot recover for an injury to which he has himself contributed does not apply where the act of the defendant has been wrongful and wilful, and the act of the plaintiff which contributed to the actual damage has been something he was lawfully entitled to do; as, if a person be permitted by the owners of a canal to insert in it a pipe, conveying the water to a cistern on his premises, whence it was drawn into his boilers to work his steam-engines, and the defendant fouled the water in the canal, whereby, the water being still used by the plaintiff, his boilers became injured. In such case the plaintiff was held entitled to maintain his action for injury. (1)

The foregoing judgment was arrested in the Exchequer Chamber, but the Judges were divided as to the sufficiency of the second plea of the defendant, namely, that the waters of the canal ought not to have run and flowed and been without the disturbance and pollution in the declaration mentioned. Williams, Crowder, and Willes, JJ., holding that the verdict upon the issue joined in that plea ought to be for the plaintiff; and Wightman, Erle, and Crompton, JJ., that the verdict on that issue ought to be for the defendant. However, the Court ultimately said that they were of opinion that the verdict for the plaintiff upon the issue joined in the second plea ought to stand, and that the judgment ought to be arrested. (2)

With regard to water supply in the district of Tunbridge Wells it is necessary to direct attention to the 30 & 31 Vict. c. 83, which repeals sect. 40 of the Tunbridge Wells Water Act, 1865, and provides for the purchase of the interest in the Tunbridge Wells Water Company in their undertaking, and the regulation of a constant supply of water within the district.

(1) *Whaley v. Laing*, 2 H & N. 476; 26 L. J. (N. S.) Exch. 327.

(2) *Laing v. Whaley*, 3 H & N. 675, 901; 27 L. J. (N. S.) Exch. 422.

CHAPTER X.

PUBLIC BATHS AND WASH-HOUSES AND PUBLIC BATHING.

§ 1. ADOPTION OF ACTS IN BOROUGHES.

Adoption of
Act in
boroughs.
9 & 10 Vict.
c. 74, ss. 1, 2.

THE Act to encourage the establishment of public baths and wash-houses, with which the amending Act 10 & 11 Vict. c. 61 is incorporated, may be adopted for any incorporated borough, city, port, cinque port, or town corporate in England which is regulated under 5 & 6 Wm. IV. c. 76.

In boroughs.
Ib. s. 3.

The Council of any such borough may, if they think fit, determine that the Act shall be adopted for such borough, and then and in such case such of the provisions of the Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and the Act shall be carried into execution in the borough in accordance with such provisions and the laws for the time being in force relating to municipal corporations.

Expenses of
carrying Act
into execution
in boroughs.
Ib. s. 4.

The expenses of carrying the Act into execution in any borough shall be chargeable upon and paid out of the borough fund, and for that purpose the Council may levy with and as part of the borough rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying the Act into execution were an expense necessarily incurred in carrying into effect the provisions of the 5 & 6 Wm. IV. c. 76. The income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of the Act, to be called "the public baths and wash-houses account."

Income.
Ib.

§ 2. ADOPTION OF ACTS IN LOCAL BOARD OF HEALTH DISTRICTS.

Local Board
in certain
cases may

Local Boards acting in execution of the Local Government Act, 1858, may adopt the Act to encourage the establishment of public baths and wash-houses, and any Act amending the

same, for districts in which those Acts are not already in force, and when they have adopted the Acts they shall have all the powers, duties, and rights of Commissioners under the Acts.

In any district where a vestry adopts the provisions of the Act 9 & 10 Vict. c. 74, to encourage the establishment of public baths and wash-houses, the Local Board may, at the option of the vestry, be the Commissioners for the execution of that Act, and thereupon are to have all the powers, duties, rights, and obligations of Commissioners under the Act.

The expenses incurred by the Local Board in carrying into execution the powers so given to them, are to be defrayed out of general district rates, and all receipts by them by reason of the exercise of such powers are to be carried to the district fund account.

§ 3. POWERS, DUTIES, AND RIGHTS OF (COMMISSIONERS) LOCAL BOARD.

The following are the powers, duties, rights, and obligations of Commissioners appointed under the Acts; but some of them seem scarcely applicable to Local Boards.

The Commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

The Commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner by writing under his hand, to summon, with at least forty-eight hours' notice, the Commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

At all meetings of the Commissioners any number not less than one-third of the whole number when more than three Commissioners shall have been appointed, and when only three Commissioners shall have been appointed then any number not less than two Commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the Commissioners.

The Commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of the Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

The "clerk" so appointed shall mean, as regards an incorporated borough, the town clerk of such borough.

All orders and proceedings of the Commissioners shall be entered in books to be kept by them for that purpose, and shall

adopt Baths and Wash-houses Acts. 29 & 30 Vict. c. 90, s. 43.
Local Board to be the Commissioners. 21 & 22 Vict. c. 98, s. 47.
Expenses. Ib. and 29 & 30 Vict. c. 90, s. 43.
Meetings of the Commissioners. 9 & 10 Vict. c. 74, s. 9.
Special meetings of Commissioners. Ib. s. 10.
Quorum at meetings of Commissioners. Ib. s. 11.
Commissioners may appoint and remove officers, etc. Ib. s. 12.

of Commis-
sioners.
9 & 10 Vict.
c. 74, s. 13.

be signed by the Commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any Court of law or equity whatsoever.

Commis-
sioners to
keep accounts,
which shall be
open to in-
spection.
Ib. s. 14.

The Commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of the Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the Commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding £5.

Penalty for
refusing to
allow in-
spection.
Ib.

Audit of
accounts.
Ib. s. 15.

The vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the Commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the Commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

Acts of Com-
missioners of
public baths,
etc., to be
valid, not-
withstanding
informalities.

All acts and proceedings of any person in possession of the office of commissioner, and acting in good faith as such commissioner, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity.

10 & 11 Vict.
c. 61, s. 3.

Penalty for
council, com-
missioners, or
officers, taking
fees beyond
salaries, or
being inter-
ested in
contracts.
9 & 10 Vict.
c. 74, s. 39.

If any clerk or other officer, or any servant who shall be in anywise employed by any Council or Commissioners in pursuance of the Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of the Act, or on any account whatsoever relative to putting the Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the Council or Commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the Council or Commissioners for or on account of anything done or forborne or to be

done or forborne in pursuance of the Act, or on any account whatsoever relative to the putting of the Act into execution, or if any person during the time he holds the office of member of the Council or Commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of the Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under the Act, and shall for every such offence also forfeit the sum of £50.

Such part of any penalty recovered under the Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof. Application of penalties. 9 & 10 Vict. c. 74, s. 40.

Every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the Council or Commissioners shall have the like power of appeal to the General Quarter Sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with the Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty. Appeal against bye-laws, orders, etc. Ib. s. 30.

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, or place, where the matter requiring the cognizance of justices shall arise. Ib. s. 2.

§ 4. PROVISION OF PUBLIC BATHS AND WASH-HOUSES.

For carrying the Act into execution in any borough, the Council with the approval of the Commissioners of Her Majesty's Treasury, and the Commissioners, with the sanction of the vestry, and also with the approval of the Commissioners of Her Majesty's Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly. Power to raise money for purposes of Act. Ib. s. 21.

The Exchequer Bill Commissioners may from time to time make to the council of any borough, or commissioners of any parish respectively, for the purposes of the Act, any loan on security of the borough fund, or the rates for the relief of the poor of the parish, as the case may be. The Public Works Loan Commissioners may advance money for the purposes of this Act. Ib. s. 22.

In any borough the Council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of the Act in the borough any lands vested in the mayor, aldermen, and burgesses; and in any such parish the Commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Commissioners for England and Wales, may from time to time appropriate for Acquisition of lands for purposes of Act. Ib. s. 24.

Acquisition
of land for
purposes of
Act.

9 & 10 Vict.
c. 74, s. 24.

the purposes of the Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the Commissioners, with the approval of the vestry, and in any such borough the Council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of the Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the Commissioners in the case of a parish.

Ib. s. 2.

“Lands” shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure.

8 Vict. c. 16
incorporated
with Act.
Ib. s. 23.

The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money by any company on mortgage, with respect to the accountability of the officers of the company, with respect to the making of bye-laws, subject to the provision hereafter to be mentioned, with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of the Act, are respectively incorporated with the Act. The expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the Council, and as regards a parish to the Commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to the Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the Commissioners; and so much of such provisions as are applicable to the “secretary of the company” shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privileges of shareholders.

Incorporation
of 8 Vict. c. 18.
Council, etc.,
not to take
lands, etc.

10 & 11 Vict.
c. 61, s. 4.

Erection of
public baths
and wash-
houses and
open bathing
places.

9 & 10 Vict.
c. 74, s. 25.

The Lands Clauses Consolidation Act, 1845, shall be incorporated with the Acts, but the Council and Commissioners respectively shall not purchase or take any lands otherwise than by agreement.

The Council and Commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths or wash-houses, and as to such wash-houses either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

The Council and Commissioners respectively may from time

to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of the Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose. No contract above the value or sum of £100 shall, however, be entered into by the Council or the Commissioners, for the purposes of the Act, unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the Council or Commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the Council or Commissioners to contract with the person offering the lowest price.

Councils and Commissioners may enter into contracts for the purposes of this Act. 9 & 10 Vict. c. 74, s. 26.

No contract above £100 to be entered into without notice. Ib.

The Council of any borough, and the Commissioners, with the approval of the vestry of any parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any borough or parish, and appropriate the same to the purposes of the Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any borough or parish by private subscriptions or otherwise may, with the consent of the Council of any borough, or with the consent of the Commissioners, and approval of the vestry of any parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the Council or Commissioners respectively, or make over to them the management of such baths and wash-houses. In all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of the Act as fully as if they had been built or provided by the Council or Commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the Commissioners in the case of a parish.

Council or Commissioners may purchase existing baths, etc. Ib. s. 27.

Any commissioners of waterworks, trustees of waterworks,

Power to
water and
gas companies
to supply
water and
gas to baths,
etc.

9 & 10 Vict.
c. 74, s. 28.

Sale and ex-
change of
lands.

Ib. s. 31.

water companies, canal companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gas works respectively, may in their discretion grant and furnish supplies of water or gas for public baths and wash-houses and open bathing places either without charge or on such other favourable terms as they shall think fit.

The Council, with the approval of the Commissioners of Her Majesty's Treasury, and the Commissioners appointed under the Act, with the approval of the vestry, and of the Commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen and burgesses, or in the Commissioners respectively for the purposes of the Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the Commissioners, may convey the lands so sold or exchanged accordingly.

Sale of baths,
etc.

Ib. s. 32.

Whenever any public baths or wash-houses, or open bathing places which shall have been for seven years or upwards established under the authority of the Act shall be determined by the Council or by the vestry, in accordance with a previous recommendation of the Commissioners, to be unnecessary or too expensive to be kept up, the Council or Commissioners, with the approval of the Commissioners of Her Majesty's Treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the Commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the Council or Commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish.

Councillors
and Commis-
sioners not to
be personally
liable.

Ib. s. 29.

Nothing in the Act contained shall render any member of the Council of any borough, or any Commissioner, personally, or of any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the Council or Commissioners respectively in pursuance of the Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of the Act.

§ 5. MANAGEMENT OF PUBLIC BATHS AND WASH-HOUSES.

The general management, regulation, and control of the public baths and wash-houses and open bathing places established under the Act shall, subject to the provisions of the Act, be as to any borough vested in and exercised by the Council, and as to any parish vested in and exercised by the Commissioners.

Management to be vested in Councils and Parish Commissioners.

9 & 10 Vict.

c. 74, s. 33.

Council, etc.,

may make bye-laws for regulating the use of baths and wash-houses, etc., and charges thereat.

Ib. s. 34.

The bye-laws which the Council and Commissioners respectively may from time to time make, alter, repeal, and enforce, shall include such bye-laws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the Council and Commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any bye-law made by them respectively; and such bye-laws shall make sufficient provision for the several purposes respectively expressed in the following schedule :—

Bye-laws to be made in all cases.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the Council or Commissioners.

Ib. sch. (A.)

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the Council or Commissioners.

In parishes. For regulating the procedure of the Commissioners.

No bye-law made under the authority of the Act shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State.

Bye-laws to be approved by the Secretary of State.

A printed copy or sufficient abstract of the bye-laws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the bye-laws relating to the use of the wash-houses shall be put up

9 & 10 Vict. c. 74, s. 34.

Copies or abstracts of bye-laws to be hung up in

every bath room, etc.
9 & 10 Vict.
c. 74, s. 35.
Proportion of
baths for the
labouring
classes.
Ib. s. 36.

Proportion of
washing
accommoda-
tion for
labouring
classes.
10 & 11 Vict.
c. 61, s. 5.
As to re-
covery of
charges at
wash-houses.
9 & 10 Vict.
c. 74, s. 38.

Power to
make charge
for use of
baths, etc., not
exceeding
those in the
schedule.
10 & 11 Vict.
c. 61, s. 7.
Ib. sch.

in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every wash-house.

The number of baths for the labouring classes in any building or buildings under the management of the same Council or Commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings.

The number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same Council or Commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes if more than one, in the same building or buildings.

For the recovery of the charges at wash-houses the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

The Council and the Commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the Acts as they think fit, not exceeding the charges mentioned in the following schedule:—

Charges for the Baths and Wash-houses and open Bathing Places.

1. Baths for the Labouring Classes.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old:

Cold bath, or cold shower bath, any sum not exceeding 1*d.*

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 2*d.*

For several children, not above eight years old, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding 2*d.*

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 4*d.*

2. Baths of any higher Class.

Such charges as the Council and the Commissioners respectively think fit, not exceeding in any case three times the

charges above mentioned for the several kinds of baths for the labouring classes.

Charges for
use of baths
and wash-
houses.

3. *Wash-houses for the Labouring Classes.*

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

For one hour only in any one day, any sum not exceeding 1*d.*

For two hours together, in any one day, any sum not exceeding 3*d.*

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the Council and the Commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the Council and the Commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. *Wash-houses of any higher Class.*

Such charges as the Council and the Commissioners respectively think fit.

5. *Open Bathing Places.*

Where several persons bathe in the same water, for one person $\frac{1}{2}$ *d.*

As bearing on the liabilities of the Local Board or Commissioners in respect of injuries caused to persons by defective machinery, the following case will show how necessary it is for the officers in charge of the wash-houses to see that the machinery is kept at all times in proper order, and properly fenced where necessary. The corporation of a town caused a wash-house to be erected, with a wringing machine, under the Baths and Wash-houses Act, 9 & 10 Vict. c. 74, which vests such houses in the corporation, the actual management being in the Council, the members of which are not to be personally liable. The machine was originally intended to be worked by hand, and being worked by steam a projecting rod was needlessly retained, which went round with great rapidity, and had no protection. The persons who used the wash-house paid for the use of it, and a woman using the machine, without negli-

Liability for
injuries
caused by
negligence.

gence on her part, was caught by the rod when revolving, and thereby received an injury. Under these circumstances it was held that the corporation were liable to an action for the injury so received. (1)

Saving life
from drown-
ing at
Scarborough.
23 & 24 Vict.
c. 44, s. 4.

The following provision enabling the Local Board at Scarborough to provide life-boats, &c., for the prevention of drowning may here be introduced. Such Board may purchase, provide, and maintain life-boats, life-buoys, apparatus, matters, and things for the prevention of drowning, or for the recovery or search for the bodies of drowned persons, and the restoring to animation persons apparently drowned, and employ and remunerate persons in charge of such apparatus, or taking part in the services above enumerated.

Public
bathing.
21 & 22 Vict.
c. 98, s. 44.
10 & 11 Vict.
c. 89, s. 69.

Where any part of the sea shore or strand of any river used as a public bathing place is within the district, the Local Board may make bye-laws for fixing the stands for bathing machines; the limits within which persons of each sex shall bathe; for preventing indecent exposure of the persons bathing; the using of the machines and the charges to be made for them; and the distances at which boats let to hire shall be kept from persons bathing. With regard to the right of placing bathing machines on parts of the sea beach which are private property, the following is to be noted:—Before bathing machines came into use, certain parts of the sea shore at Hastings had been used from time immemorial for the purpose of bathing. In 1855 bye-laws were made under the Public Health Act, 1848, prohibiting persons from bathing from the shore, except from bathing machines, the owners of which were obliged to obtain a licence from the Local Board of Health for the district for permission to ply for hire of such machines; but the Court held that such licence did not confer a right on the proprietors of bathing machines to place them on the shore without the permission of the owner of the shore. (2)

The Towns Police Clauses Act containing the provisions as to public bathing, which Act is incorporated with the 21 & 22 Vict. c. 98, will be found in the Appendix to this work.

Places which
have adopted
Baths and
Wash-houses
Act.

It appears by a return presented to Parliament (No. 383, Session 1865), that eight parishes in the metropolis and twenty-five cities and boroughs have adopted the Baths and Wash-houses Act, and that there were one hundred and sixty-seven cities and boroughs which had not adopted the Act.

(1) *Cowley v. Sunderland (Mayor, &c. of)* 6 H. & C. 565; 4 L. T. (N. S.) 120; 30 L. J. (N. S.) Exch. 127.

(2) *Mace v. Philcox*, 9 L. T. (N. S.) 766; 15 C. B. (N. S.) 600; 33 L. J. (N. S.) C. P. 124; 10 Jur. (N. S.) 680.

CHAPTER XI.

COMMON LODGING-HOUSES.

It is not lawful to keep any common lodging-house unless it be registered; and the Local Board of Health are to cause a register to be kept of such houses, to make bye-laws for fixing the number of lodgers who may be received into each house so registered, for promoting cleanliness and ventilation therein, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made.

Common
lodging-
houses to be
registered.
11 & 12 Vict.
c. 63, s. 66.
Bye-laws.
Ib.

The following suggested Regulations for common lodging-houses under the Common Lodging-Houses Act, 1851, have been issued by the Secretary of State:—

Regulations
for common
lodging-
houses.

No. 1.—No keeper of a common lodging-house shall receive in such house, or in any room thereof, a greater number of lodgers or other persons than shall be fixed by the local authority, on the report of their Inspector of common lodging-houses, and expressed in a ticket to be signed by such officer, which ticket shall be according to the form contained in the schedule to these Regulations annexed, and marked B.; and the keeper of such lodging-house shall hang up in a conspicuous part of each room into which lodgers are received a like ticket, stating the number of lodgers allowed to be received, and shall keep the same at all times visible and legible.

An adequate supply of the said tickets may be had upon application at the office.

No. 2.—The keeper of such lodging-house shall reduce the number of lodgers, upon receiving notice to that effect from the local authority, such notice stating therein the special cause of the same being given, and the period, not exceeding one month, during which it shall continue in force.

No. 3.—Two children under 8 years of age to be counted as one adult lodger.

No. 4.—Rooms used as kitchen or scullery for the use of the lodgers shall not be occupied as sleeping apartments.

No. 5.—Rooms in the basement or below the level of the ground shall not be used as sleeping apartments.

No. 6.—Persons of opposite sexes shall not occupy the same sleeping apartment, except married persons, or parents and their children under 14, or children under 10 years of age.

No. 7.—The keeper of such lodging-house shall cause the windows of every sleeping room in such lodging-house to be kept open to the full width thereof from nine to eleven o'clock

Regulations
for common
lodging-
houses.

in the morning, and from two till four in the afternoon of every day, unless prevented by tempestuous weather, or by the illness of any inmate in such room; and during the time the windows are open as aforesaid he shall cause the bed-clothes of every bed in such room to be turned down and exposed to the air; but in those rooms occupied by persons who are obliged to work during night and sleep in the day, the windows shall be kept open from two till four o'clock in the afternoon.

No. 8.—The keeper of such lodging-house shall cause the floors of all the rooms, passages, and stairs in such lodging-house to be thoroughly swept once at least in each day, and thoroughly washed once in each week, and shall cause the walls and ceilings of every room to be thoroughly cleansed and well and sufficiently lime-washed, twice (at least) in every year during the months of April and October; and the blankets, rugs, or covers used in such lodging-house shall be thoroughly cleansed at least four times every year, that is to say, at least once some time during the first week of each of the several months of March, June, September, and December.

No. 9.—The keeper of such lodging-house shall cause every room in such lodging-house to be ventilated to the satisfaction of the Inspector of common lodging-houses.

In case of fever or any other infectious or contagious disorder occurring in any such lodging-house, the keeper of such lodging-house shall forthwith give notice thereof to the Inspector of common lodging-houses in which the house is situate, that he may inspect the same, and direct any disinfecting process which he may deem necessary and effectual; and the keeper of such lodging-house shall cause the blankets and bed-clothes used by any person affected by such disorder to be thoroughly cleansed, and the bedding to be fumigated immediately after the removal of the person affected by such disorder, in such a manner as may from time to time be ordered by the Inspector; and when the district in which any such lodging-house is situate is visited or threatened by any epidemic, endemic, or contagious disease, the lodging-house keeper shall make such reduction of the number of lodgers in each room as the local authority shall direct.

No. 10.—Every such lodging-house shall be furnished with a dust-bin of sufficient size to contain the dust, ashes, &c., that accumulate in the intervals of its being cleared away, which shall not exceed two weeks.

No. 11.—A water-closet or privy shall be provided for every such lodging-house having a yard or other facilities for erection thereof; and where such facilities do not exist, or where the closet or privy is used in common by the lodgers of two or more houses, the privy or closet must be provided in some place conveniently contiguous, to the satisfaction of the Inspector; and for every twenty lodgers to be accommodated, a separate closet or privy shall be provided.

No. 12.—The drains, the closets, and sinks shall be trapped

so as to prevent the effluvia coming up from the sewers or cess-pools; the sink in the yard shall be so placed as to take all waste water through the drain from the closets. Regulations for common lodging-houses,

No. 13.—The water-closet, seat, floor, and walls shall be kept free from filth and clean in all other respects.

No. 14.—The yards and areas of every such lodging-house shall be properly paved, so as to run dry and effectually take off all waste water.

No. 15.—Every such lodging-house shall have a proper drain communicating with a common sewer where such sewer is within 100 yards of the premises.

No. 16.—The keeper of such lodging-house shall provide such accommodation for cooking and washing, and such a supply of water for the use of the lodgers, as shall be satisfactory to the Inspector.

No. 17.—Each room occupied as a sleeping apartment shall be furnished with bedsteads and sufficient bedding for the number of lodgers authorized to be received in such room.

SCHEDULE, FORM B.

TICKET No. .

No. of the Room for which this Ticket is intended.

Lodging-House

Registered to accommodate Lodgers.

In Room No. 1.	In Room No. 2.	In Room No. 3.	In Room No. 4.	In Room No. 5.	TOTAL

Copy of the Bye-Laws to follow.

The person keeping any such lodging-house is to give access to it when required by any person who produces the written authority of the Local Board in that behalf, for the purpose of inspecting it, or for introducing or using in it any disinfecting process, and the expenses thereby incurred by the Local Board are recoverable in a summary manner from the person keeping the lodging-house in which the disinfecting process has been used or introduced. Access to common lodging-houses. 11 & 12 Vict. c. 63, s. 66. 29 & 30 Vict. c. 90, s. 54.

The "written authority" of the Local Board will be expressed in the manner pointed out by the 11 & 12 Vict. c. 63, s. 149, or the 21 & 22 Vict. c. 98, s. 61.

Whosoever receives lodgers in any unregistered common

Penalty on
neglect.
11 & 12 Vict.
c. 63, s. 66.
29 & 30 Vict.
c. 90, s. 54.

lodging-house, or refuses to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon, any person authorized by the Local Board, for every offence is liable to a penalty not exceeding 40s., to be recovered in the manner pointed out in sect. 129 of the 11 & 12 Vict. c. 63.

What is a
common
lodging-
house.

The Act does not give any definition of the class of houses intended to be referred to by the somewhat vague term, "common lodging-house." The same expression is used in the 14 & 15 Vict. c. 28, and Mr. Danby P. Fry, in his edition of the Lodging-Houses Acts, 1851, observes that the statute speaks throughout of "common lodging-houses," but nowhere defines the class of houses intended to be designated by that term. Whether, he says, it includes all lodging-houses of whatever description on the one hand; or contemplates, on the other, any distinction between lodging-houses that are "common," and those that are not; and if so, by what characteristic features the two classes are to be discriminated, are questions affecting fundamentally the operation of the Act, which unfortunately the Act itself does not enable us to answer. Mr. Fry, however, refers to a notification issued by the General Board of Health in 1851, in which they intimated their opinion that the term "common lodging-houses," in the construction of the Act, is to be understood as "meaning the houses now in use, and practically known under that name."

The law officers of the Crown have interpreted the Act as extending to "that class of lodging-houses in which persons of the poorer class are received for short periods, and although strangers to one another are allowed to inhabit one common room." In reply to a query put to them by the late General Board of Health—whether lodging-houses otherwise coming within the definition, but let for a week or longer period, would from the latter circumstance be excluded from the operation of the Act—they say, "We are of opinion that the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question;" and they proceed: "a serious difficulty arises where the owner *bonâ fide* lets different parts of the house to different individuals, and these lessees take in lodgers of such a description as would in an ordinary case constitute the house a common lodging-house. The question which here arises is, whether each apartment so used is to be considered a common lodging-house, of which the lessee is the keeper? * * * Considering, therefore, that the apartments thus let and occupied are especially within the mischief intended to be remedied by the Act, we think that an attempt should be made to treat them as common lodging-houses, and to enforce the provisions of the Act with respect to them against the tenants who thus receive lodgers."

The Common Lodging-Houses Acts shall be executed within and for all and any part of any place not being within the Me-

Metropolitan Police District, but being now or hereafter the district of a Local Board of Health, by the Local Board of Health for the district :

By whom the Act is to be executed.
14 & 15 Vict.
c. 28, s. 3.

Within and for all and any part of any other place not being within the Metropolitan Police District, and not being the district of a Local Board of Health, but being now or hereafter an incorporated borough regulated under the Act for the regulation of municipal corporations, or any Act for the amendment thereof, or any charter granted in pursuance of any such Act, by the mayor, aldermen, and burgesses of the borough acting by the council of the borough :

Within and for all and any part of any other place not being within the Metropolitan Police District, and not being the district of a Local Board of Health, and not being such an incorporated borough, but being now or hereafter the place within the limits of an Improvement Act, by the commissioners, trustees, or other body, by whatever name known, for executing the Improvement Act.

The several powers and duties assigned by the Act to any local authority shall, in so far as they are consistent with the laws under which the Oxford commissioners act, be exercised by those commissioners. Within the borough of Cambridge, or the parts within the jurisdiction of the Cambridge commissioners, the several powers and duties shall, in so far as they are consistent with the laws under which the Cambridge commissioners act, be exercised by those commissioners.

Local authorities in Oxford and Cambridge.
16 & 17 Vict.
c. 41, s. 10.

The expenses of and incident to the executing of the Act shall be borne and paid—With respect to the district of a Local Board of Health, as part of the expenses of executing the Acts for the time being in force relating to the Local Board of Health, and as charged upon and payable out of the moneys carried, under the Public Health Act, 1848, to the district fund account of the Local Board of Health :

Expenses of executing the Act.
14 & 15 Vict.
c. 28, s. 4.

With respect to an incorporated borough, as part of the expenses of carrying into execution within the borough the provisions of the Act for the regulation of municipal corporations, and as charged upon and payable out of the borough fund of the borough :

With respect to a place within the limits of an Improvement Act, as part of the general expenses of executing that Act, and as charged upon and payable out of the moneys from time to time applicable for those expenses :

And the moneys from time to time required for the payment of the expenses of and incident to the execution of the Act shall be assessed, levied, raised, recovered, and paid accordingly.

The expression in the Act "the local authority" means, with respect to the purposes and execution of the Act with respect to any place, the body or person by the Act authorized to execute with respect to the place the several provisions of the Act.

Meaning of the term "the local authority."
Ib, s. 5.

Notice of this Act to be given to the keepers of common lodging-houses.
14 & 15 Vict. c. 28, s. 6.

The local authority may give to the keeper of every common lodging-house, within the jurisdiction under the Act of the local authority, notice in writing of the Act, and shall give such notice by leaving the same for such keeper at the house, and shall by such notice require the keeper to register the house as by the Act provided. The notice may be in the following form, or to the like effect :—

Form of notice.

Take Notice, that on the [] day of [] an Act called "The Common Lodging-Houses Act, 1851," was passed, and that before the [] day of [] you, being the keeper of a common lodging-house within [here state the place over which the jurisdiction of the local authority giving the notice extends], must have your common lodging-house registered, and that the register is to be kept at [here state where the register is to be kept], and that if you do not have your common lodging-house so registered you will be liable to a penalty not exceeding £5 for every lodger whom you receive in your common lodging-house while it is not so registered; and that on your applying to [here give the name and address of the person to keep the register] he will register your common lodging-house free of all charge to you. Dated, [etc.]

Registers of common lodging-houses to be kept.

Ib. s. 7.

The local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging-houses within the jurisdiction of the local authority, and the situation of every such house, and the number of lodgers authorized according to the Act to be received therein.

All common lodging-houses to be registered before being used, and to be kept only by registered keepers.

16 & 17 Vict. c. 41, s. 3.

By the Common Lodging-Houses Act, 1853, a person shall not keep a common lodging-house or receive a lodger therein until the house has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and has been registered as provided by the 14 & 15 Vict. c. 28; and a person shall not keep a common lodging-house unless his name as the keeper thereof be entered in the register kept under the 14 & 15 Vict. c. 28, s. 7: provided, that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

Keepers to produce certificate of character.
Ib. s. 4.

The local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value of six pounds or upwards.

Evidence of register.
Ib. s. 5.

A copy of an entry made in a register kept under the Act, certified by the person having the charge of the register to be a true copy, shall be received in all Courts and before all justices and on all occasions whatsoever as evidence, and be sufficient proof of all things therein registered, without production of the register or of any document, Act, or thing on which the entry is founded; and every person applying at a reasonable

time shall be furnished gratis by the person having such charge with a certified copy of any such entry.

One month after the giving of such notice to register, the keeper of any common lodging-house or any other person shall not receive any lodger in such house until the same has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and has been registered.

Lodgers not to be received in common lodging-houses until registered.

14 & 15 Vict. c. 28, s. 8.

The local authority may from time to time make regulations respecting common lodging-houses within its jurisdiction for all or any of the purposes respecting the same for which the Local Board of Health are by the Public Health Act, 1848 (see the 11 & 12 Vict. c. 63, s. 66), authorized to make bye-laws, and for the well-ordering of such houses, and for the separation of the sexes therein: provided, that the regulations made under the Act by the local authority shall not be in force until they have been confirmed by one of Her Majesty's principal Secretaries of State.

Power to local authority to make regulations respecting common lodging-houses.

Ib. s. 9.

As to these bye-laws, see *ante*, p. 243.

The local authority shall have the same power of imposing penalties on offenders against the said regulations, subject to the same restrictions, as the Local Board with respect to offenders against such bye-laws (see the 11 & 12 Vict. c. 63, ss. 115 and 116, and ss. 129 to 140), and such penalties shall be recoverable in the same way as is provided with respect to the penalties imposed on offenders against such bye-laws. A copy of the regulations, purporting to be signed by the Secretary of State, and also to be signed by the local authority (or to be sealed with the seal of the same, provided it have a seal), shall be receivable in evidence of such regulations, and of the duly making and confirming thereof.

Penalties for offences committed against regulations. Ib. s. 10.

The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof to the local authority, or some officer of the local authority, and also to the Poor-law medical officer and the Poor-law relieving officer of the union or parish in which the common-lodging-house stands.

Keepers of common lodging-houses to give notice of fever, etc., therein.

Ib. s. 11.

When a person in a common lodging-house is ill of fever or any infectious or contagious disease, the local authority may cause such person to be removed to an hospital or infirmary, with the consent of the authorities thereof, and on the certificate of the medical officer of the parish, place, or district that the disease is infectious or contagious, and that the patient may be safely removed, and may, so far as the local authority think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may, if the local authority think fit, award to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, and such compensation shall be paid to such owners by the proper officer

Removal of sick persons from common lodging-houses to hospitals, etc. 16 & 17 Vict. c. 41, s. 7.

of the parish or union in which the common lodging-house is situate, out of the rates applicable to the relief of the poor of such parish, the amount of such compensation being first certified in writing upon a list of such articles.

By the word "proper officer" is probably meant the relieving officer; but the expression is by no means clear.

Inspection of
common
lodging-
houses.

14 & 15 Vict.
c. 28, s. 12.

The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof.

Power to
order reports
from keepers
of common
lodging-
houses kept
for beggars
and vagrants.
16 & 17 Vict.
c. 41, s. 8.

The keeper of a common lodging-house in which beggars or vagrants are received to lodge, or other person having the care or management thereof, shall from time to time, if required by any order of the local authority served on such keeper or person, report to the local authority, or to such person or persons as the local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

Cleansing of
common
lodging-
houses.

14 & 15 Vict.
c. 28, s. 13.

The keeper of a common lodging-house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools, and drains thereof, to the satisfaction of, and so often as shall be required by, or in accordance with any regulation or bye-law of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year.

Supply of
water to
common
lodging-
houses.

16 & 17 Vict.
c. 41, s. 6.

Where it appears to the local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may, by notice in writing, require the owner or keeper of the common lodging-house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove the common lodging-house from the register until it be complied with.

Complaints
certified under
Nuisances
Removal Act.
Ib. s. 9.

The town council, trustees, commissioners, guardians, and other officers and Boards specified in the 1st section of the Nuisances Removal and Diseases Prevention Act, 1848, shall, on the receipt of a certificate of any police constable or of any officer appointed for the inspection of common lodging-houses by the local authority, stating the existence in or about any common lodging-house of any of the causes of complaint specified in that section, take all such proceedings as by that section are required to be taken by the town council, trustees, commissioners, guardians, and other officers and Boards specified

therein on a notice signed by two inhabitant householders, and in like manner as nearly as may be as if such notice had been given; and the local authority shall have the like powers, and shall take all such proceedings, on receipt of any such certificate of the existence of any such cause of complaint as the town council, trustees, commissioners, guardians, and other officers or Boards have and are empowered and required to take under the provisions of that Act.

Complaints
certified under
Nuisances
Removal Act.
16 & 17 Vict.
c. 41, s. 9.

With reference to the above provision, see, however, 18 & 19 Vict. c. 121, s. 10, *post*.

If the keeper of a common lodging-house, or any other person having or acting in the care or management thereof, offend against any of the provisions of the Act, or any of the bye-laws or regulations made in pursuance of the Act, or if any person in any common lodging-house be confined to his bed for forty-eight hours by fever or any infectious or contagious disease, without the keeper of such house giving notice thereof as required by the Act, every person so offending shall for every such offence be liable to a penalty not exceeding £5, and to a further penalty not exceeding 40s. for every day during which the offence continues: provided, that the Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of the Act.

Penalty for
offences
against the
Act.
14 & 15 Vict.
c. 28, s. 14.

The provisions of the Common Lodging-Houses Acts having been constantly evaded by the inmates of the house pretending that they were members of the same family, it is now provided, that in any proceedings under the Common Lodging-Houses Act, 1851, if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it.

Evidence of
family in
case of over-
crowded
houses.
29 & 30 Vict.
c. 90, s. 41.

The 14th section of the 14 & 15 Vict. c. 2, extends to offences against any of the provisions of 16 & 17 Vict. c. 41, so as to render the offenders liable to the penalties therein expressed, and any person convicted of any offence against the Acts, or either of them, may, in default of payment of the penalty imposed, be imprisoned for any term not exceeding three months in the manner provided by law in that behalf.

16 & 17 Vict.
c. 41, s. 11.

Where a keeper of a common lodging-house, or a person having or acting in the care or management of a common lodging-house, is convicted of a third offence against the Acts, or either of them, the justices before whom the conviction for such third offence takes place may, if they think fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the justices think fit, keep or have or act in the care or management of a common lodging-house without the previous licence in writing of the local authority, which licence the local authority may withhold or may grant on such terms and conditions as they think fit.

Conviction for
third offence,
Ib. s. 12.

The clauses and provisions of the Railways Clauses Conso-

Recovery of penalties.
14 & 15 Vict.
c. 28, s. 15.

General powers of local authority, etc.
Ib. s. 16.

Regulations as to lodging-houses.
29 & 30 Vict.
c. 90, s. 35.

Validation Act, 1845, "with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices," are for the purposes and execution of the Act incorporated therewith.

The local authority, and all justices, constables, and others, shall respectively have full jurisdiction, powers, authorities, and indemnities for executing the several provisions of the Act; and the restrictions of the Public Health Act, 1848 (*ante*, p. 245), as to the hours within which common lodging-houses may be entered by persons authorized by a Local Board of Health, shall not apply to the Common Lodging-Houses Act, 1851.

It is further provided by the Sanitary Act, 1866, with regard to lodging-houses not within the provisions of the Common Lodging-Houses Act, 1851, or any Act amending the same, that:—On application to one of Her Majesty's principal Secretaries of State by the nuisance authority of any municipal borough, or of any place under the Local Government Act, 1858, or any Local Improvement Act, or of any city or town containing, according to the census for the time being in force, a population of not less than five thousand inhabitants, the Secretary of State may, as he may think fit, by notice to be published in the *London Gazette* declare the following enactment to be in force in the district of such nuisance authority, and from and after the publication of such notice the nuisance authority shall be empowered to make regulations for the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
2. For the registration of houses thus let or occupied in lodgings:
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state:
4. For enforcing therein the provision of privy accommodation and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases:
5. For the cleansing and lime-whiting at stated times of such premises.

The nuisance authority may provide for the enforcement of the above regulations by penalties not exceeding 40s. for any one offence, with an additional penalty not exceeding 20s. for every day during which a default in obeying such regulations may continue; but such regulations shall not be of any validity unless and until they shall have been confirmed by the Secretary of State.

How when two convic-

Where two convictions against the provisions of any Act relating to the overcrowding of the house shall have taken

place within the period of three months, whether the persons so convicted were or were not the same, any two justices may direct the closing of such premises for such time as they may deem necessary.

tions have occurred within three months.

29 & 30 Vict. c. 90, s. 36.

The following Regulations, in pursuance of the Sanitary Act, 1866, were adopted by the Board of Works for the Poplar District, and may serve as a guide for the authorities of other districts in framing regulations under the Act:—

1. Whenever the Board shall deem it necessary to put these Regulations in operation in respect to any house let in lodgings, or occupied by members of more than one family, they shall give notice to the owner thereof of their intention to do so, specifying the day from which these Regulations shall be deemed to be in force, such notice to be signed by the clerk of the Board, and left on, or affixed to, the premises, the subject of such notice. Registration.

2. A register shall be kept at the offices of the Board of all houses to which these regulations shall from time to time be made to apply, and such register shall specify the following points:—

The name and address of the owner of the house.

The name of the person letting the rooms to, or receiving the rents of rooms from the tenants of the rooms.

The cubical measurement of each room.

The number of persons allowed to sleep in each room, when occupied only as a sleeping room, or when occupied both as a sleeping and a day room.

The rooms in the house allowed to be occupied as sleeping rooms.

3. The person paying or liable to pay parochial rates for such house, or having paid them at the last collection, or who shall receive the rents either on his account or as agent to the owner, or as clerk or servant of such agent, shall be deemed to be the owner for the purposes of these regulations, and so long as his name stands on the register as owner or receiver of rents, such register to be at all times received as proof of such ownership or receiving the rents.

4. The notice of the intention to place any house upon the register shall be accompanied by two copies of the regulations in force in the district at the time, and by tickets in duplicate specifying the address of the house, the name and address of the owner, rooms permitted to be used as sleeping rooms, and the number of persons allowed to sleep in each room, according as it is used, for a day room and a sleeping room, or as a sleeping room only, which ticket, with one copy of the regulations, he shall keep affixed in some conspicuous place in the interior of the house, renewing the same whenever torn down or defaced, and he shall produce one of such duplicate tickets whenever required to do so by the Board, or any officer thereof appointed to inspect such houses, and no greater number of persons shall be accommodated in any room than shall be specified upon such

ticket. Each ticket shall be signed by the Medical Officer of Health, and countersigned by the Clerk to the Board.

5. No room, the ceiling of which is on a level with or below the level of the footpath or roadway immediately adjoining, and no room used as a kitchen or scullery, and no room not lighted and ventilated directly from the exterior, and no room on the roof of the house not furnished with an open fireplace or flue, shall be permitted to be occupied as a sleeping room, nor shall any underground room be permitted to be so occupied, unless it be specially certified by the Medical Officer of Health as in his opinion fit to be so occupied without danger to the health of the occupants.

Number of
lodgers.

6. In the case of other rooms, the number of persons who may occupy a room for sleeping in, shall be determined by the cubical contents of the room, in manner as follows:—If the room be used only as a sleeping room, there shall not be more than one person to every three hundred cubical feet of air contained in such room. If the room be used both as a sleeping room and a day room, then there shall be not more than one person to every four hundred cubical feet of air contained in such room.

7. Persons of different sexes shall not occupy the same sleeping room, except one married couple, or parents with their children apparently under ten years of age, or any children under that age.

Ventilation.

8. The owner of every registered house shall cause every room and all the passages of such house to be ventilated to the satisfaction of the Medical Officer of Health, and the Board shall have power to cause the windows, window sashes, and chimney flues, to be constructed or reconstructed and altered for this purpose as they shall think fit, and may serve a notice upon the owner to make such alterations; and in the event of the notice not being complied with, may make such alterations themselves, charging the expense upon the owner, and recovering the same in the same manner as penalties imposed under these regulations.

Washing
accommoda-
tion.

9. The owner of every registered house shall provide a fit place and efficient accommodation for washing to any tenant or occupier in the house, at such times and under such regulations as he may deem fit for the preservation of good order.

Privy accom-
modation and
drainage.

10. A water-closet, with a sufficient supply of water so laid on as effectually to flush the same, shall be provided for every such house having a yard or other facilities for the erection thereof, and where such facilities do not exist, or where the closet is used in common by the lodgers of two or more houses, a closet similarly supplied with water must be provided in some other place contiguous, to the satisfaction of the Medical Officer of Health, and a separate closet shall be provided for such a number of lodgers or occupiers as the Board shall from time to time direct. The water-closet, seat, floor, walls, ceiling, and

door shall be kept free from filth, and clean in every other respect, and there shall be a door to every such closet or privy.

11. Every such house shall have an ample supply of water Water supply. laid on to it in such a manner, and in such quantity, as shall be satisfactory to the Medical Officer of Health. The cistern or butt shall be properly covered and otherwise placed and arranged so as to preserve the water from contamination by dust or deleterious effluvia, and cleansed thoroughly once in every month.

12. The yards and areas shall have proper surface drainage, Yards and areas. and, if required, the owner shall, within a specified time, flag or pave them, or any part thereof, with such materials and in such manner as the Medical Officer of Health shall direct, and shall repave or repair them as he may be required from time to time. Every house shall also be provided with a proper covered dust bin, of sufficient size to contain the dust, ashes, and ordinary house refuse that accumulate in the intervals of its being carried away, which shall not exceed one week. In case of a public dust bin having been provided for several houses in common, the Board shall have power to increase the number of dust bins, at the expense of the owners of the houses, as they may deem necessary. All the drains, closets, and sinks shall be effectually trapped, so as to prevent effluvia coming up from the drains.

13. The owner of every registered house shall cause the Cleanliness. walls and ceilings of every room, and of the staircase and passages, and the yards of such house, to be well and sufficiently lime-whited, and the painted work washed with soap and water, and the house otherwise thoroughly cleansed, once in each year, or at any other time if required by the Medical Officer of Health; and the roof of the house to be kept water-tight, and the flooring boards, walls, and ceilings to be kept in a proper state of repair and free from vermin, and shall cause the floors of all rooms, passages, and stairs of such house, together with the yards attached thereto, to be kept at all times clean swept, and washed as often as necessary. No dogs, swine, rabbits, pigeons, or other animals or birds, or meat, fruit, or vegetables, shall be kept in the sleeping apartments of any such house, or in the yard thereof, which shall be deemed to be likely to cause a nuisance in the opinion of the Medical Officer of Health.

14. The Medical Officer of Health, or servant of the Board Powers of acting under his directions, shall be admitted upon the pre- entry. mises without delay at any hour between the hours of nine o'clock in the morning and ten at night, and on giving twelve hours' notice on the premises of his intention to visit at night at any hour between ten o'clock at night and nine o'clock in the morning, and shall be admitted to all the rooms or to any room without delay, in order to see whether the regulations in force are being complied with.

15. The landlord or occupier of every registered house shall,

In case of
fever, etc.

when a person in such house is ill of small-pox, fever, or any other dangerous infectious disease, give immediate notice in writing to the Medical Officer of Health at the offices of the Board, and shall carry out, without delay, in respect thereof any measures for disinfection that he may direct.

Complaints.

16. The owner or occupier of any registered house shall attend any meeting of the Board, or Sanitary Committee thereof, to which he shall be summoned by letter or notice left at least three clear days beforehand, at the house referred to, to answer any complaint made against him or either of them, in respect to neglect of these regulations, and shall forthwith carry out such order as he may receive from the Board, or Sanitary Committee, or Medical Officer of Health, made with a view to bring his house into conformity therewith.

Penalties.

17. A copy of these regulations shall be left for the owner of the premises affected, by the officer appointed by the Board, as soon as his house is registered, and the infringement of any regulation shall render the offender liable to penalties not exceeding 40s. for any one offence, with an additional penalty not exceeding 20s. for every day during which a default in obeying such regulations may continue.

The penalties shall be recovered in the same manner as directed by the 54th section of the Sanitary Act, 1866.

CHAPTER XII.

LABOURING CLASSES' LODGING-HOUSES.

§ 1. THEIR ESTABLISHMENT.

THE LABOURING CLASSES LODGING-HOUSES ACT, 1851, may be adopted for any incorporated borough under the 5 & 6 Will. IV. c. 76, and also for any place being the district of any Local Board of Health, and also for any place being the district within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving such place. Places which may adopt the Act. 14 & 15 Vict. c. 34, s. 2.

The Act may also be adopted for parishes containing a population of not less than 10,000, but it is not necessary in this work to refer further to this portion of the Act.

In the Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,— Interpretation of terms. Ib. s. 3.

“Borough” shall mean city, borough, port, cinque port, or town corporate:

“District” shall mean any place being the district of such a Local Board of Health, and shall also mean any place being the district within the limits of such an Improvement Act:

“Board” shall mean, as regards the district of a Local Board of Health, such Local Board of Health for the time being in office and acting as such Local Board of Health; and as regards the district within the limits of such an Improvement Act, the commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office and acting in the execution of such Act:

“Clerk” shall mean, as regards an incorporated borough, the town-clerk of such borough, and, as regards a district, the clerk of the Board of such district:

“Justice” shall mean justice of the peace for the county, riding, division, liberty, borough, district, parish, or place where the matter requiring the cognizance of justices shall arise:

“Improvement rates” shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such Improvement Act shall be applicable for the general purposes of such Act:

“Land” shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine :

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

Adoption of
Act for
boroughs.
14 & 15 Vict.
c. 34, s. 4.

That the Council of any such borough as aforesaid may, if they think fit, determine that the Act shall be adopted for such borough, and then and in such case such of the provisions of the Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and the Act shall be carried into execution in such borough, in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough.

Expenses of
carrying Act
into execution
in a borough.
Ib. s. 5.

The expenses of carrying the Act into execution in any such borough in which the Council shall have resolved to adopt the Act for their borough, shall be chargeable upon and paid out of the borough fund, and for that purpose the Council may levy with and as part of the borough rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly, as if the expense of carrying the Act into execution were an expense necessarily incurred in carrying into effect the provisions of the 5 & 6 Will. IV. c. 76. The income arising from the lodging-houses in any borough shall be paid to the credit of the borough fund thereof; and the Council shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of the Act, to be called "The Lodging-Houses Account."

Adoption of
Act by Local
Boards of
Health.
Ib. s. 6.

The Board of any such district, being the district of a Local Board of Health, may, if they think fit, determine that the Act shall be adopted for such district, and then and in such case such of the provisions of the Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and the Act shall be carried into execution in such district, in accordance with such provisions and the laws for the time being in force relating to such Board.

Postponement
of proceedings
for adoption of
Act by Local
Boards.
Ib. s. 7.

Provided that the Board shall give not less than twenty-eight days' nor more than forty-two days' public notice of their intention to take into consideration the propriety of adopting the Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the Board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to a general district rate made by the Board, and requesting the Board to postpone such consideration until after the then next yearly day for the election of members of the Board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the Board think fit.

The expenses of carrying the Act into execution in any such district, being the district of a Local Board of Health in which the Board shall have resolved to adopt the Act for their district, shall be chargeable upon and paid out of the moneys from time to time carried to the credit of the district fund account of such district, and for that purpose the Board may levy with and as part of the general district rate of such district, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the general rate of such district, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying the Act into execution were an expense necessarily incurred in carrying into effect the provisions of the Public Health Act, 1848. The income arising from the lodging-houses in any such district shall be paid to the credit of the district fund account thereof; and the Board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of the Act, to be called "The Lodging-Houses Account."

Expenses of carrying Act into execution by Local Board of Health.
14 & 15 Vict. c. 34, s. 8.

The Board of any such district, being the place within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving of such place, may, if they think fit, determine that the Act shall be adopted for such district, and then and in such case such of the provisions of the Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and the Act shall be carried into execution in such district in accordance with such provisions and the laws for the time being in force relating to such Board.

Adoption of Act by Improvement Board.
Ib. s. 9.

Provided that the Board shall give not less than twenty-eight days' nor more than forty-two days' public notice of their intention to take into consideration the propriety of adopting the Act, and of the time and place for holding the meeting at which they will take it into consideration. If there be presented to the Board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to an improvement rate made by the Board, and requesting the Board to postpone such consideration until after the then next yearly or other day for the election or appointment of members of the Board, then such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the Board think fit.

Postponement of proceedings for adoption of Act by Improvement Commissioners.
Ib. s. 10.

Provided also, that in any case in which the major part in number of the members of the Board of any such district are elected or appointed in any manner other than by or with the concurrence of the persons liable to be rated to improvement rates made by the Board, the Board shall not determine that the Act shall be adopted for the district, except with the sanction of the major part in value of the persons so liable present

If majority of Board not elected by ratepayers, consent of ratepayers to be obtained.
Ib. s. 11.

at a meeting specially convened for the purpose by the Board, by not less than twenty-eight days' nor more than forty-two days' public notice of the intention of holding such meeting, and of the time and place for holding the same; and such meeting shall be held at such convenient place within the district, and at such convenient time, as the Board think fit; and they shall regulate the procedure thereat.

Expenses of
carrying Act
into execution
by Improve-
ment Commis-
sioners.
14 & 15 Vict.
c. 34, s. 12.

The expenses of carrying the Act into execution in any such district, being the place within the limits of any such Improvement Act in which the Board shall have resolved to adopt the Act for their district, shall be chargeable upon and paid out of the improvement rate of such district, and for that purpose the Board may levy with and as part of such improvement rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as such improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expenses of carrying the Act into execution were an expense necessarily incurred in carrying into effect the general provisions of such Improvement Act. The income arising from the lodging-houses shall be paid to the credit of the improvement rate; and the Board shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of the Act, to be called "The Lodging-Houses Account."

Auditing
accounts of
Improvement
Commis-
sioners.
Ib. s. 13.

In every case in which any such Improvement Act contains provisions for the auditing of accounts thereunder, the accounts of the Board with respect to the Act shall be audited in accordance with those provisions; and in every case in which any such Improvement Act does not contain any such provisions, the accounts of the Board with respect to the Act shall be audited yearly by the Poor Law auditor within whose district the district of the Board lies. The Board shall produce to him their accounts, with sufficient vouchers for all moneys received and paid, and he shall examine such accounts and vouchers, and report thereon to the Board, and every such report shall be open at all reasonable times without charge to the inspection of every person liable to be rated to an improvement rate made by the Board.

Mr. D. P. Fry, in his edition of this Act, very properly points out that it does not appear that the Poor Law auditor will have any power to disallow or surcharge items in these accounts, similar to the power which he possesses in regard to the accounts of unions and parishes. He is to examine, and report; and that comprises the whole of his functions in the matter. It is not stated what notice he is to give of his audits. No provision is made in the Act for the payment of any remuneration to him for this service.

For carrying the Act into execution in any borough or district respectively, the Council, with the approval of the Com-

missioners of Her Majesty's Treasury (1), and the Board, with the approval of the Commissioners of Her Majesty's Treasury (1), may from time to time borrow, at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the general district rates, or of the improvement rates, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

The Commissioners for carrying into execution the 9 & 10 Vict. c. 80, may from time to time make to the Council of any such borough, or to any Board, respectively, for the purposes of the Act, any loan, under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of the borough fund, or the general district rates, or the improvement rates.

Power to borrow money for the purposes of the Act.
14 & 15 Vict. c. 34, s. 31.
The Public Works Loan Commissioners may advance money.
Ib. s. 32.

The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereafter mentioned, and the provisions of the same Act with respect to the recovery of damages not specially provided for and penalties, so far as such provisions may respectively be applicable to the purposes of the 14 & 15 Vict. c. 34, shall be respectively incorporated with that Act; and the expressions in such provisions applicable to the company and the directors shall apply, as regards a borough, to the Council. All deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall, in the application of such provisions to the Act, be deemed to be required or directed to be made or executed, as regards a borough, under the common seal of the mayor, aldermen, and burgesses; and so much of such provisions as are applicable to the secretary of the company shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough, the burgesses shall have the privileges of shareholders.

Incorporation of 8 Vict. c. 16.
Ib. s. 33.

The Lands Clauses Consolidation Act, 1845, shall be incorporated with the Act: provided always, that the Council and the Board, respectively, shall not purchase or take any lands otherwise than by agreement.

Incorporation of 8 Vict. c. 18.
Ib. s. 34.

In any borough the Council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of the Act in the borough any lands vested in the mayor, aldermen, and burgesses. In any district the Board (1) may from time to time appropriate for the purposes of the Act in the district any lands vested in the Board or at the disposal of the Board. In any borough the Council, and in any district the Board, (1) may from time to

In boroughs the Council may appropriate lands vested in the mayor, etc.
Ib. s. 35.
Or contract for purchase of the same.
Ib.

(1) See 21 & 22 Vict. c. 98, s. 8, *ante*, p. 2.

time contract for the purchasing or renting of any lands necessary for the purposes of the Act; and the property therein shall be vested in the mayor, aldermen, etc., in the case of a borough, or in the Board in the case of a district.

Erection of
lodging-
houses.
14 & 15 Vict.
c. 34, s. 36.

The Council and Board, respectively, may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be, respectively, erect any buildings suitable for lodging-houses for the working classes, and convert any buildings into lodging-houses for the labouring classes, and may from time to time alter, enlarge, repair, and improve the same, respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and
Commis-
sioners may
enter into
contracts.
Ib. s. 37.

The Council and Board, respectively, may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving such lodging-houses, and for supplying the same respectively with water, and for lighting the same respectively, and fitting-up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purpose of the Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance. All such contracts, or two copies thereof, shall be entered in the books to be kept for that purpose: provided always, that a contract above the value or sum of £100 shall not be entered into by the Council or the Board for the purposes of the Act unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the borough or district shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the Council or Board at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the Council or Board to accept any of the proposals so offered.

Purchase of
existing
lodging-
houses.
Ib. s. 38.

The Council of any borough, and the Board of any district, may, if they shall think fit, contract for the purchase or lease of any lodging-house for the labouring classes already or hereafter to be built and provided in any borough or district, and appropriate the same to the purposes of the Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any lodging-houses for the labouring classes which have been already or may hereafter be provided in any such borough or district, by private subscriptions or otherwise, may, with the consent of the Council of any borough, or with the consent of the Board of any district, and with the consent of a majority of the committee or other persons by

whom they were appointed trustees, sell or lease the said lodging-houses to the Council or Board, respectively, or make over to them the management of such lodging-houses. In all such cases the lodging-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of the Act, as fully as if they had been built or provided by the Council or Board, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the Board in the case of a district.

Purchase of existing lodging-houses.
14 & 15 Vict. c. 34, s. 38.

Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons, having the management of any waterworks, reservoirs, wells, springs, and streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for such lodging-houses, either without charge or on such other favourable terms as they shall think fit.

Supply of water and gas to lodging-houses.
Ib. s. 39.

No member of the Council of any borough, or any member of any Board, personally, or any of their lands, goods, chattels, moneys, (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the Council or Board respectively in pursuance of the Act,) shall be liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of the Act.

Councillors, etc., not personally liable.
Ib. s. 40.

Every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the Council or Board shall have the like power of appeal to the General Quarter Sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with the Act, he might have, if feeling aggrieved by any determination of any justice with respect to any penalty.

Appeal against Orders of Councils, etc.
Ib. s. 41.

The Council, with the approval of the Commissioners of Her Majesty's Treasury, and the Board, (1) respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the Board, respectively, for the purposes of the Act, and apply the proceeds, or a sufficient part thereof, in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, (1) exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the Board, may convey the lands so sold or exchanged accordingly.

Sale and exchange of lands.
Ib. s. 42.

Whenever any lodging-houses which shall have been for seven years or upwards established under the authority of the Act shall be determined by the Council, or by the Board, to be unnecessary or too expensive to be kept up, the Council, with

When lodging-houses may be sold.
Ib. s. 43.

the approval of the Commissioners of Her Majesty's Treasury, or the Board, (1) may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the Board, shall convey the same accordingly, and the purchase-money shall be paid to such person as the Council or Board shall appoint, and his receipt shall be a sufficient discharge for the same. The net proceeds of such sale shall be applied in the first instance in or towards payment or satisfaction of all the debts, liabilities, and engagements whatsoever, with respect to the purposes of the Act, of the Council, or the Board, and the surplus, if any, of such net proceeds paid to the credit of the borough fund, or of the general district rate, or of the improvement rate.

Management
how vested
in Council
14 & 15 Vict.
c. 34, s. 45.

The general management, regulation, and control of the lodging-houses established under the Act shall, subject to the provisions of the Act, be, as to any borough, vested in and exercised by the Council, and as to any district vested in and exercised by the Board.

Bye-laws for
regulating
lodging-
houses.
Ib. s. 46.

The bye-laws which the Council and Board respectively may from time to time make, alter, repeal, and enforce, shall include such bye-laws for the management, use, and regulation of the lodging-house, and of the tenants or occupiers thereof, and for determining from time to time the charges for the tenancy or occupation of the lodging-houses, as the Council and Board respectively shall think fit, and they respectively may appoint any penalty not exceeding £5 for any and every breach, whether by their officer or servants or by other persons, of any bye-law made by them respectively, and such bye-laws shall make sufficient provision for the several purposes respectively expressed in the following schedule to the Act:—

1. *Bye-laws to be made in all cases.*

For securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the Council, or Board, or Commissioners.

For securing the due separation at night of men and boys above eight years from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the Council, or Board, or Commissioners.

2. *Bye-laws to be made in boroughs, districts, and parishes wholly or partially within the districts of Local Boards of Health.*

For carrying out the regulations of the Local Boards of Health.

Provided always, that a bye-law made under the authority of the Act shall not be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State.

(1) See 21 & 22 Vict. c. 98, s. 8, *ante*, p. 2.

A printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging-houses shall be put up and at all times kept in every room therein.

Bye-laws to be hung up in every room in lodging-houses.

The Council and the Board, respectively, may from time to time make such reasonable charges for the tenancy or occupation of the lodging-houses provided under the Act as they shall think fit.

14 & 15 Vict. c. 34, s. 47. Charges for occupation. Ib. s. 48.

Any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging-house or any part of such lodging-house, receives any relief, other than relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

Tenants of lodging-houses receiving parochial relief. Ib. s. 49.

Every lodging-house established under the Act which shall be within the district of a Local Board of Health shall at all times be open to the inspection of such Board, and the officers thereof from time to time authorised by such Board to make such inspection.

Lodging houses to be open to inspection of Local Boards of Health. Ib. s. 50.

If any clerk or other officer, or any servant who shall be in anywise employed by any Council or Board in pursuance of the Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne, or to be done or forborne, in pursuance of the Act, or on any account whatsoever relative to putting the Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the Council or Board, or shall in anywise be concerned or interested in any bargain or contract made by the Council or Board for or on account of anything done or forborne, or to be done or forborne, in pursuance of the Act, or on any account whatsoever relative to the putting of the Act into execution, or if any person during the time he holds the office of member of the Council, or member of the Board, shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of the Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under the Act, and shall for every such offence also forfeit not exceeding the sum of £50.

Penalty on taking fees beyond salaries, or being interested in contracts. Ib. s. 51.

Such part of any penalty, recovered under the Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and, as regards a district, of the general district rate thereof or the improvement rate thereof.

Application of penalties. Ib. s. 52.

§ 2. ADVANCES OF PUBLIC MONEY TOWARDS THE ERECTION OF LABOURING CLASSES' DWELLING-HOUSES.

Acts
incorporated.
29 Vict.
c. 28, ss. 1, 2.

The Labouring Classes' Dwelling-Houses Act, 1866, is incorporated with and is to be taken as part of the Labouring Classes' Lodging-Houses Act, 1851, and both Acts are to be read and construed together as if they were one Act.

Application
of 24 & 25
Vict. c. 80.
29 Vict.
c. 28, s. 3.

All the clauses, powers, authorities, provisoes, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in and conferred and imposed by the 24 & 25 Vict. c. 80 (as to which see *post*, Appendix D.), and the Acts therein referred to, or any of them, so far as the same can be made applicable and are not varied by this Act, shall be taken to extend to this Act, and to everything to be done in pursuance of this Act, and as if the same were therein repeated and set forth.

Authorities
and persons
to whom
loans may
be made.
Ib. s. 4.

For the purpose hereinafter mentioned, the Public Works Loan Commissioners, as defined by the 24 & 25 Vict. c. 80, may out of the funds for the time being at their disposal from time to time advance on loan to any such local or other authority as hereafter mentioned, namely,

Any Council, Board, or Commissioners authorised to carry into execution the Labouring Classes Lodging-Houses Act, 1851;

Any local or other authority invested with powers of town or local government and rating under any public general or any local Act, by whatever name such local or other authority may be called;

Any local authority, acting under the Nuisances Removal Act, 1855, or any Act or Acts amending the same.

It will be seen, however, *ante*, p. 257, that local authorities under the last-mentioned Act are not local authorities under 14 & 15 Vict. c. 34. Any such local or other authority may from time to time borrow from the Public Works Loan Commissioners such money as may be required for the purpose of the Act, subject and according to the following provisions:—

Objects of
loans.
Ib.

1. Such advance on loan shall be made for the purpose of assisting in the purchase of land and buildings, or in the erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes, and in providing all conveniences which may be deemed proper in connection with such dwellings:

2. Any such advance may be made whether the local or other authority or body receiving the same has or has not power to borrow on mortgage or otherwise, independently of the Act:

3. No sum shall be advanced without the approval of the

Commissioners of Her Majesty's Treasury of the borrowing thereof, signified by some writing under the hand of one of their secretaries or assistant secretaries :

4. It shall be lawful for these Commissioners to make such rules and regulations as they shall from time to time think proper with respect to applications for advances under the Act, and the terms and conditions upon which such advances are to be made, and to issue such instructions and forms as they may think proper for the guidance of and observance by persons applying for or receiving loans, or executing works, or rendering accounts of moneys expended under the Act; or regarding the class of dwellings towards the providing of which such loans may be made, and the adaptation thereof to the purposes intended, and as to the mode of providing for their maintenance, repair, and insurance (see the rules and regulations of the Treasury, *post*, p. 269) : Rules and regulations. 29 Vict. c. 28, s. 4.
5. The period for the repayment of the sums advanced shall not exceed forty years : Currency of loans. Ib.
6. The repayment of the money advanced, with interest thereon at such rate as shall be agreed upon, but not at a less rate than £4 per centum per annum, shall be secured as follows; namely, in the case of an advance to any such local or other authority as before mentioned, either by a mortgage solely of the rates leviable by such authority, or by such other mortgage as hereinafter mentioned, or by both; and in any other case by a mortgage of the estate or interest of any such local or other authority, or of any such body as aforesaid, in the land or dwellings for the purposes of which the advance is made; and any such mortgage as aforesaid may be taken either alone or together with any other security which may be agreed upon; but it shall not be incumbent on the Public Works Loan Commissioners to require any other security :

The above words "lands or dwellings for the purposes of which the advance is made," shall be construed to include any land, buildings, or premises held together with, and for the same estate and interest as the lands, buildings, or premises upon which the money advanced is to be expended under the provisions of the Act. 30 Vict. c. 28, s. 1.

7. No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance : 29 Vict. c. 28, s. 4.

Currency of
loans.
29 Vict.
c. 28, s. 4.

8. The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time:

9. For the purposes of the Act every such local or other authority or body as aforesaid is authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under the Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

Incorporation
of 8 Vict. c. 18
with Act.
Ib. s. 5.

The Lands Clauses Consolidation Act, 1845, and any Act amending the same, except the clauses with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the Act, and for the purposes of that Act the 29 Vict. c. 28, shall be deemed the special Act; and any such local or other authority or body as aforesaid exercising the powers of the Act shall be deemed the promoters of the undertaking.

Incorporation
of 10 & 11
Vict. c. 16
with Act.
Ib. s. 6.

The clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the Commissioners, except so far as the same may be inconsistent with the provisions of the 24 & 25 Vict. c. 80, or of any of the Acts therein recited, are incorporated with 29 Vict. c. 28; and in the construction of that Act and of the incorporated clauses, the Act shall be deemed the special Act; and the local or other authority, or the body to whom the loan is made, shall be deemed to be the Commissioners.

Special powers
of mortgagees.
Ib. s. 7.

Every mortgage under the Act shall confer on the mortgagee thereunder for the time being all the rights, powers, and privileges conferred on mortgagees by Part II. of the 23 & 24 Vict. c. 145, intituled "An Act to give to Trustees, Mortgagees, and Others certain Powers now commonly inserted in Settlements, Mortgages, and Wills;" and any such mortgage may confer on the mortgagee such further powers of sale and other powers, and may also contain all such covenants and provisions, as may be agreed upon; and nothing contained in the 29 Vict. c. 28, or in any clauses incorporated in the "Labouring Classes' Lodging-Houses Act, 1851," or in the 29 Vict. c. 28, shall be deemed to limit or prevent the enforcement of any rights or remedies which, at law or in equity or by statute, may be otherwise incidental to any such mortgage,

either under the Acts relating to the Public Works Loan Commissioners, or otherwise.

All rules and regulations made by the Lords Commissioners of the Treasury under the provisions of this Act shall be laid before Parliament.

Rules to be
laid before
Parliament.
29 Vict.
c. 28, s. 9.

The following rules and regulations with reference to loans to be made towards the erection of dwellings for the labouring classes, under the 29 Vict. c. 28, have been made by the Lords Commissioners of Her Majesty's Treasury, and presented to Parliament (No. 478, Session 1866; No. 382, Session 1867):—

1. *As regards Applications..*

All applications shall be made to the Public Works Loan Commissioners by letter addressed to their secretary, generally setting forth description and nature of the company or authority proposing to obtain an advance.

Plans of the ground proposed to be taken, and of the houses, if any, upon it, should accompany the application, as well as plans and specifications of the proposed buildings, calculated to show that the dwellings are suitable for the labouring classes, and that they possess all proper and necessary conveniences in connection with such dwellings, together with an estimate of the cost and a statement showing how it is proposed to raise the difference between the loan and the estimate.

An assurance should be appended, given on the part of the applicant, that the houses are *bonâ fide* intended as dwellings for the labouring classes.

Parties to whom loans may be advanced will be required to enter into covenants to repair and insure, for user (as far as practicable) by persons belonging to the labouring classes, and to submit to such bye-laws as shall be approved by the Commissioners of the Treasury, and to such inspection of the dwelling-houses from time to time, both as regards repair and conformity to bye-laws, as the Commissioners of the Treasury may direct, and such other covenants as the Commissioners may deem necessary.

The Public Works Loan Commissioners shall submit the plans, specifications, and estimates to the Board of Works for their opinion, and report as to their suitability and sufficiency for occupation by persons of the labouring classes.

2. *As regards Treasury Sanction.*

1. All applications for the sanction of a loan as required under section 4 of 29 Vict. c. 28 (3), shall be made to the Treasury through the Public Works Loan Commissioners, and shall be accompanied by the report of the Board of Works, and by a certificate or statement by the Public Works Loan Commissioners that the party applying for the advance has satisfied them that the security is adequate, and that sufficient means exist for carrying out the undertaking.

2. On being satisfied on these points, the Treasury sanction will be given, subject to the sufficiency of the title being established for the satisfaction of the Public Works Loan Commissioners.

3. *As regards Expenditure and Applications for Instalments of Advances.*

1. The application shall be to the Public Works Loan Commissioners, and in such form as they shall approve.

2. It shall contain a detailed statement or certificate of the expenditure actually incurred, and a certificate of the state of the works, and such works shall be subject to the inspection and report of an officer of the Department of Works.

GEORGE WARD HUNT.

Treasury Chambers, 4th August, 1866.

Charge of
£250,000 on
Consolidated
Fund for
purposes of
Act.
29 & 30 Vict.
c. 72, s. 4.

For the purposes of advances or loans under the Labouring Classes' Dwellings Act, 1866, the Commissioners of Her Majesty's Treasury for the time being are empowered by warrant under the hands of any two or more of them, from time to time to cause to be issued out of the Consolidated Fund, or out of the growing produce thereof, to the account of the Commissioners for the time being for the Reduction of the National Debt, a sum or sums of money not exceeding £250,000, such moneys to be applied under the Labouring Classes' Dwellings Act, 1866.

By 30 Vict. c. 32, s. 1, the Commissioners are further empowered to charge £300,000 per annum upon the Consolidated Fund by issues not exceeding £75,000 per quarter during the three years next ensuing the 30th June, 1867, for the purposes of the Labouring Classes' Dwelling-Houses Act, 1866, and other Acts therein mentioned.

COPY of BYE-LAWS sanctioned by the Treasury, 14th February, 1867.

Separate water-closet accommodation to be provided for each tenement, or else, where water-closet accommodation is to be used in common by the occupants of two or more tenements, separate accommodation must be provided for each sex. Such accommodation may be either water-closet, earth-closet, or privy.

Each tenement to have a dust-bin, or the use of a dust-bin common to several buildings.

Each tenement to be well lighted by external windows made to open.

Each tenement to have ready access to water.

Where several tenements in one building, proper ventilation to be provided for the passages, staircases, &c.

The drains to be well constructed.

Parties to whom moneys to be advanced to enter into covenants with the Public Works Loan Commissioners:—That where there are several tenements in one building, they—

(a) Will cause the passages, staircases, &c., to be kept clean.

(b) Will cause the water-closets, &c., to be kept in good order.

(c) Will cause the dust-bins to be emptied at intervals of seven days.

(d) Will take precautions against any interruption in the supply of water.

(e) Will keep the windows in good order and repair, and the chimneys swept.

(f) Will keep the drains in proper order.

(g) Will allow inspection by Commissioners of Works, to see that the above covenants are observed.

Treasury Chambers, }
14 February 1867. }

(Signed)

Approved.
GEORGE WARD HUNT.

SMALLEST NUMBER of Separate Rooms in any one TENEMENT for the Erection of which Money has been authorised to be advanced by the Public Works Loan Commissioners under the "Labouring Classes Dwelling-Houses Act of 1866 (29 Vict. c. 28)."

Two.

NUMBER of Cubic Feet in each Room of the several Classes of TENEMENTS
for which Money has been authorised to be Advanced.

	One room of cubic feet.	One room of cubic feet.	One room of cubic feet.	One room of cubic feet.	One Room of cubic feet.
Class I. of two rooms .	715	1,219			
Ditto . .	816	994			
Ditto . .	995	1,020			
Class II. of four rooms .	960	960	960	960	
Class III. of five rooms .	372	675	1,056	1,056	1,232
Ditto. . .	446	459	459	781	1,468

JOHN MANNERS,

Office of Works, &c. }
17 June 1867. }

First Commissioner of Her Majesty's
Works and Public Buildings.

CHAPTER XIII.

ARTIZANS' AND LABOURERS' DWELLINGS.

THE Act to provide better dwellings for artizans and labourers (31 & 32 Vict. c. 130), applies to the whole of the United Kingdom; but only so much of it as relates to England is dealt with in this place.

§ 1. PRELIMINARY.

Citation of Act.
31 & 32 Vict.
c. 130, s. 1.
Application of Act.
Ib. s. 2.

In citing the Act it shall be sufficient to use the words, "The Artizans' and Labourers' Dwellings Act, 1868."

The Act does not apply to any place, the population whereof does not, according to the census for the time being in force, amount to the number of ten thousand persons.

The following table shows the places, the local authorities, local rates out of which the expenses are to be paid, and the officer who is to be the clerk of the local authority of each district:—

31 & 32 Vict.
c. 130.
Sch. I.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The City of London and the Liberties thereof.	Commissioners of Sewers of the City of London.	The Consolidated Rate.	The Clerk to the Commissioners.
The Metropolis.	The Vestries and District Boards under the Act 18 & 19 Vict. c. 120, within their respective parishes and districts.	Rate to be levied for defraying the expenses of the Act 18 & 19 Vict. c. 120.	Clerk of the Vestries or District Boards.
Boroughs not within the jurisdiction of such Local Board as aforesaid.	The Mayor, Aldermen, and Burgesses, acting by the Council.	The Borough Fund or other property applicable to the purposes of a Borough Rate or the Borough Rate.	The Town Clerk.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority,	31 & 32 Vict. c. 130. Sch. 1.
Any town not included in the above descriptions, and under the jurisdiction of Commissioners, Trustees, or other persons entrusted by any Local Act with powers of improving, cleansing, or paving any town.	The Commissioners, Trustees, or other persons entrusted by the Local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such Commissioners, Trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.	The Clerk of the Commissioners or Trustees, or other persons or other officer performing the duties of clerk.	
Places within the jurisdiction of Local Boards, constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The Local Board	General District Rate.	Clerk of the Local Board or other officer performing duties of clerk.	

The following words and expressions have in the Act the following meanings, unless excluded by the subject or context; (that is to say,) Interpretation of terms. 31 & 32 Vict. c. 130, s. 3.

The word "street" includes any court, alley, street, square, or row of houses: "Street and square."

The word "premises" means any dwelling-house or inhabited building, and the site thereof, with the yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith: "Premises."

The expression "owner," in addition to the definition given by the Lands Clauses Act, (1) shall include all lessees or mortgagees of any premises required to be dealt with under the Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired: "Owner."

"Person" shall include a body of persons, corporate or unincorporate: "Person."

"Quarter Session" shall include general sessions: "Quarter Sessions."
 "Officer of Health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any Act of Parliament: "Officer of Health."

(1) *E.g.*, any person or corporation who, under the provisions of the Lands Clauses Act, or the special

Act, would be enabled to sell and convey lands to the promoters of the undertaking. (8 Vict. c. 18, s. 3.)

Interpretation
of terms.
31 & 32 Vict.
c. 130, s. 3.
"Local
Officer," &c.

In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority, local court, magistrate, or officer having jurisdiction in that place within which are situate the premises or other subject matter, or any part thereof, to which such reference applies:

"Borough"
in England.

"Borough" in England shall mean any place for the time being subject to the Act passed in the session holden in the fifth and sixth years of the reign of King William IV., cap. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

§ 2. APPOINTMENT OF OFFICER OF HEALTH.

Appointment
of officers of
health and
payment of
salaries.
Ib. s. 4.

If in any place to which the Act applies there is no officer of health within the meaning of the Act, the local authority, with the approval of one of Her Majesty's principal Secretaries of State, shall forthwith appoint such an officer for such period as shall be necessary, shall assign him his duties, and pay him such salary or emolument out of the local rate as they, with such approval as aforesaid, shall think fit. The local authority, with the like approval, may from time to time remove any officer appointed under this section, and in manner aforesaid appoint another officer in his place.

§ 3. REPORT OF OFFICER OF HEALTH ON PREMISES.

Report of
officer of
health.
Ib. s. 5.

If in any place to which the Act applies the officer of health find that any premises therein are in a condition or state dangerous to health so as to be unfit for human habitation, he shall report the same in manner hereinafter provided to the local authority.

Report to be
delivered to
clerk of
local autho-
rity, who
shall refer the
same to a
surveyor, &c.
Ib. s. 6.

Every such report shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof, and if such evil is occasioned by defects in any premises, whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished.

§ 4. REPORT OF HOUSEHOLDERS ON PREMISES.

If and whenever any four or more householders living in or near to any street, by writing under their hands, represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

On representation by householders that disease exists in any house, officer of health to inspect and report.

31 & 32 Vict. c. 130, s. 12.

In the event of the local authority declining or neglecting, for the space of three calendar months after receiving such report, to take any proceedings to put the Act in force, the householders who signed such representation may address a memorial to the Secretary of State stating the circumstances, and asking that an inquiry be made, and upon receipt of such memorial the said Secretary of State may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

If local authority neglect to enforce Act, Secretary of State may compel it to proceed.
Ib. s. 13.

§ 5. PROCEDURE AFTER RECEIVING REPORT.

Upon receipt of the report of the surveyor and engineer, the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall cause to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Copies of reports to be given to owner who may object to the same.
Ib. s. 7.

The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge; and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority any objection which he may entertain to the

Local authority to prepare plan and specification of required works.

Ib.
Clerk of local authority to give notice to owner of plan, &c., of required works having been prepared.
Ib. s. 8.

said plan, specification, and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan, specification, and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

§ 6. APPEAL AGAINST ORDER OF LOCAL AUTHORITY.

Persons
aggrieved by
order of local
authority may
appeal against
the same.
31 & 32 Vict.
c. 130, s. 9.

Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the Court of Quarter Sessions held next after the making of the order, but the appellant shall not be heard in support of the appeal unless, within one calendar month after the making of the order appealed against, he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said Court, and to abide the order of and pay such costs as may be awarded by the Court or any adjournment thereof. The Court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the Court in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided,—

First, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the Court shall, at the request of either party, state the facts specially for the determination, in England, of Her Majesty's Court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of certiorari, into the said Court of Queen's Bench:

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal, and a statement in writing of the ground thereof, to the person or persons, or to the parish or district (*sic*), alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district (*sic*), may appear before the Court, and be heard against his or their alleged liability.

Owner may appeal where decision of local authority is against him.
31 & 32 Vict. c. 130, s. 10.

If the local authority shall decide in favour of the objection of the owner of the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

Where local authority decide in favour of owner, reports and notices to be sent to parties liable.
Ib. s. 11.

Within three calendar months after the service on the owner of the order by the clerk of the local authority, or, in case of appeal, within one calendar month after the order of Quarter Sessions, or, in the event of a further appeal, within one calendar month after the order of the Court of final appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall so signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Owner to signify to clerk of local authority whether he is willing to execute specified works.
Ib. s. 14.

The local authority may appear before any judge, justices, or borough magistrates, by their clerk, and any company or body corporate may appear before the said magistrate or magistrates by any member of their Board of Management.

Appearance of local authority.
Ib. s. 37.

Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: As to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the City of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall.

Jurisdiction of certain magistrates.
Ib. s. 41.

§ 7. SERVICE OF NOTICES ON OWNERS.

Service of notice on owner whose name and residence are known.
31 & 32 Vict. c. 130, s. 15.

Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by the Act required to be served on him to the owner, or for him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Service of notice on owner whose name or residence is not known.
Ib. s. 16.

Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Notices to be signed by the local authority.
Ib. s. 17.

Every notice required to be given by the clerk of the local authority by the Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

§ 8. EXECUTION OF WORKS.

Local authority to require owners to execute works as in specification.
Ib. s. 18.

The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall, within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as the case may seem to them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification.

Proceedings of local authority in case owners neglect.
Ib.

Provision in case local authority themselves execute the works.

Where the local authority themselves execute the works, they may apply to the Court of Quarter Sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs, charges, and expenses

that have been incurred by such authority, in or about the execution of such works, including the costs of obtaining the order; and the Court of Quarter Sessions, when satisfied of the amount so expended, shall make an order accordingly, charging on the premises the amount of such costs, charges, and expenses, together with interest at the rate of £4 per cent. per annum, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at £4 per centum, and having priority over all other estates, incumbrances, and interests whatsoever, and the local authority shall, for the purpose of obtaining satisfaction of the moneys so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by Part. II. of the 23 & 24 Vict. c. 145.

§ 9. DEMOLITION OF PREMISES.

If the requirements of the order involve the total demolition and not the improvement of the premises specified therein, the owner shall, within three months after service of the order, proceed to take down and remove the premises; and if such owner fail therein, then the local authority shall proceed to take down and remove the same; and the local authority shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of moneys, if any, to the owner.

How when
demolition
of premises
required.
Ib. s. 20.

If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house, building, or erection, as the case may require; and in the event of non-compliance with such order, the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section.

Owner instead
of effecting
improvements
may take
down pre-
mises.
Ib. s. 23.

§ 10. DETERMINATION OF TENANCIES.

Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local

Determination
of tenancies.
Ib. s. 21.

authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.

Remedies of owner for breach of covenant, &c., not to be prejudiced.
31 & 32 Vict. c. 130, s. 22.

Provided always, that nothing in the Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of the Act, such entry or taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

§ 11. APPLICATIONS TO JUSTICES.

Application to justices where more than one owner of premises included in order, and any one owner neglects to comply with order.
Ib. s. 24.

When there are two or more owners of any premises, and it appears to any two justices in Petty Sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their satisfaction to bring the premises into conformity with such order, to make an order empowering the applicant forthwith to take possession of the premises, and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on non-compliance by such last-mentioned applicant with his undertaking it shall be lawful for the justices to make a like order in favour of any other owner.

§ 12. CHARGING ORDER ON PREMISES.

Grant of annuity to owner on completion of works.
Ib. s. 25.

Where any owner has completed any works required to be executed by a local authority in pursuance of the Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expenditure incurred by him in executing such works, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority, when satisfied that the owner has duly executed such works, shall make a charging order accordingly.

Ib.

The annuity charged shall be a sum of £6 for every £100 of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under the Act shall be made according to the following form, or as near thereto as the circumstances of the case will admit:—

The Artizans' and Labourers' Dwellings Act, 1868.

31 & 32 Vict.
c. 130.
Sch. II.

County of
Parish of
No.

Charging Order.

The [insert description of local authority] being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of pounds, payable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

SCHEDULE.

[Insert description of premises charged.]

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner. 31 & 32 Vict. c. 130, s. 15.

Every annuity created by a charging order under the Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorizing advances of public money; and when more annuities than one are chargeable under the Act on any premises, such annuities shall, as between themselves, take order according to their respective dates. Incidence of charge. Ib. s. 26.

Every annuity charged on any premises by a charging order under the Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof. Charges recoverable as rent-charges in lieu of tithes. Ib. s. 27.

An order made in pursuance of the Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices, acts, and proceedings by the Act directed with reference to or consequent on the obtaining such order, or the making such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto. Order to be evidence of compliance with Act. Ib. s. 28.

Every charging order made in pursuance of the Act relating to premises in Middlesex or Yorkshire shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of Registry of charging order on premises in Middlesex

and York-
shire.
31 & 32 Vict.
c. 130, s. 29.

the Act; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of 10s. for filing and recording the same.

Assignment
of charge.
Ib. s. 30.

The proprietor of any charge may, by deed under seal, stamped with the same *ad valorem* stamp as if it were an assignment of a charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person; and on such assignment being executed the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any assignment of a charging order may be in the following form, or in any other convenient form:—

Form of Assignment of Charge.

To be endorsed on Charging Order.

Dated the _____ day of _____
I, the within-named _____ in
pursuance of the Artizans' and Labourers' Dwellings Act, 1868, and in
consideration of _____ pounds this day paid to me, hereby
assign to _____ the within-mentioned charge.
(Signed)

§ 13. EXPENSES OF LOCAL AUTHORITY.

Expenses of
local autho-
rity.
Ib. s. 31.

All expenses incurred by the local authority in pursuance of the Act shall be defrayed by them out of a special local rate, not exceeding 2d. in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

31 & 32 Vict.
c. 180.
Sch. I.

The special local rate so to be levied is the general district rate levied under 11 & 12 Vict. c. 63, s. 87, *post*.

§ 14. BORROWING POWERS.

Public Works
Loan Com-
missioners
may advance
moneys to
local
authority.
Ib. s. 32.

The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853 (16 & 17 Vict. c. 40, Appendix, *post*), may, if they think fit, lend to any local authority, and any local authority may borrow from the said Commissioners, such sums as the said authority may require for the purposes of the Act, but the amount of every loan shall be sanctioned by the Lords Commissioners of the Treasury.

§ 15. SERVICE OF NOTICES, &c.

Any summons, notice, writ, or other proceeding at law or in equity, or otherwise, in relation to carrying into effect the objects and purposes of the Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Such clerk is the clerk of the Local Board, or other officer performing duties of clerk (11 & 12 Vict. c. 63, s. 37).

Any notice, demand, or other written document served by the local authority for the purposes of the Act shall be signed by the clerk of the local authority.

Service of notice on the local authority.
31 & 32 Vict. c. 130, s. 33.

31 & 32 Vict. c. 130.
Sch. I.
Notices to be signed by clerk.
Ib. s. 34.

§ 16. PENALTIES.

Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by the Act required or authorized to do, every person so offending shall for every such offence forfeit not exceeding £20.

If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers, agents, servants, or workmen, from carrying into effect with respect to the premises any of the provisions of the Act, after notice of the intention so to do has been given to the occupier, or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or, as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority, and their officers, agents, servants, and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of the Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding £20: Provided that during any such failure by the occupier the owner, unless assenting thereto, shall not be liable to the forfeiture.

Penalties under the Act may be recovered before two justices in manner directed by 11 & 12 Vict. c. 43 (see Glen's Jervis's Acts, 3rd edit.).

Penalty for obstructing officer of health, &c. in execution of Act.
Ib. s. 35.
Penalty for preventing execution of Act.
Ib. s. 36.

Recovery of penalties.
Ib. s. 38.

CHAPTER XIV.

ESTABLISHMENT OF MARKETS.

Power of
Local Board
to establish
markets.
21 & 22 Vict.
c. 98, s. 50.

THE LOCAL BOARD shall in non-corporate districts, with the consent of the owners and ratepayers of the district, expressed by resolution in the manner provided for with respect to resolutions for the adoption of the Local Government Act (see *ante*, p. 12) and in non-corporate districts, shall, with the consent of two-thirds of the Local Board, have the power to do the following things, or any of them, within their district:—

(1.) To provide a market-place, and construct a market-house and other conveniences, for the purpose of holding markets; to provide houses and places for weighing carts; to make convenient approaches to such market; to provide all such matters and things as may be necessary for the convenient use of such market; to purchase or take on lease land, and public or private rights in markets, and tolls, for any of the foregoing purposes; to take stallages, rents, and tolls in respect of the use by any person of such market-house.

Ib.

But no market or slaughter-house so established is to interfere with any rights, powers, or privileges enjoyed within the district by any person, chartered joint stock or incorporated company, without his or their consent.

Scarborough
fish-market.

With regard to the establishment of a fish-market and conveniences for the fish trade at Scarborough, see *post*, page 293.

Purchase of
lands.

With regard to the purchase of lands for any of the foregoing purposes, see the chapter of this work entitled Purchase of Lands, *post*.

Change of
site of market.

It has been held that where the members of a corporation elect to proceed under the Local Government Act, instead of asserting their common law right as a corporation, they will be bound to proceed according to the provisions of such Act. Thus, although there may be a clear right at law to change the site of a market in the corporation of a borough, if the corporation proceeds under the Act to change such site, and transfer and regulate the market, they must not exceed the powers conferred upon them by the Act, although less extensive than their rights at common law. The Court of Chancery will, however, require the right of stallage to be decided at law before granting an injunction to restrain a corporation from interfering with such rights of stallage, where the right has not been admitted by the corporation. (1)

(1) *Ellis v. Bridgnorth*, 4 L. T. (N. S.) 112.

On this latter point:—

From time immemorial and until the action was brought, a market was held in the high street of the borough of Bridgnorth; the plaintiff in the action was the owner and occupier of a house in the high street, and he and others had from time immemorial erected stalls opposite their respective houses and exposed goods for sale, free of stallage. The defendants in the action were the Lords of the Manor and owners of the market, and they removed the market to another place under the Local Government Act, and so injured the plaintiff. On a special case stated for the opinion of the Court, setting out the facts, it was held that there was sufficient connection between the enjoyment of the house of the plaintiff and the enjoyment of the stall, to satisfy the rule of law that no right can be annexed to a house on land which is unconnected with the enjoyment or occupation thereof; (1) and that whatever was the origin of the plaintiff's right, he was entitled to compensation for the injury sustained by the removal of the market. (2)

Change of
site of market.

(2.) For the purpose of enabling any Local Board to establish markets, in manner as before mentioned, or to regulate markets already established in any corporate borough before the constitution of a Local Board therein, the provisions of the Markets and Fairs Clauses Act, 1847, are incorporated with the Local Government Act, in so far as they relate to markets.

Provisions of
10 & 11 Vict.
c. 14, as to
markets, etc.,
incorporated.
21 & 22 Vict.
c. 98, s. 50.

1st. *With respect to the holding of the market or fair, and the protection thereof:*

Before the market or fair shall be opened for public use, the Local Board shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the district, and by printed handbills posted on some conspicuous place within those limits.

Before the
market or fair
shall be
opened,
notice to be
given.

After the market-place is opened for public use, every person other than a licensed hawker who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling-place or shop, any article in respect of which tolls are authorized to be taken in a market, shall for every such offence be liable to a penalty not exceeding 40s. *Semble*, "prescribed limits" mean the boundaries of the district and not the limits of the market. (3)

10 & 11 Vict.
c. 14, s. 12.
Sales else-
where than
in markets
prohibited
under a
penalty not
exceeding 40s.
1b. s. 13.

A vessel moored to a wharf on a canal within the limits of a Local Market Act was held not to be a "shop," within the exception, "any shop attached to and being part of any dwelling-house" in which goods subject to tolls might be sold without incurring the penalty provided by the Act. (4)

(1) *Ackroyd v. Smith and Bailey v. Stephens*, 12 C. B. (N. S.) 91; 6 L. T. (N. S.) 356.

273; 8 L. T. (N. S.) 668.

(2) *Ellis v. Bridgnorth*, 9 Jur. (N. S.) 1078; 32 L. J. (N. S.) C. P.

(3) *Casswell v. Cook*, 31 L. J. (N. S.) M. C. 185; 11 C. B. (N. S.) 637.

(4) *Wiltshire, app., Baker, resp.*, 11 C. B. (N. S.) 237.

Certain sales elsewhere than in market not within prohibition of s. 13 of 10 & 11 Vict. c. 14.

But to bring a shop within the exemption it need not be attached to any part of the dwelling-house of the person who sells the goods. It was also held in the same case that a sale by auction in a shop attached to and being part of a dwelling-house is privileged. (1)

The sale of an article liable to toll within a town is not a sale within this section if the sale be without, although the delivery be within the limits of the Act. Therefore, a defendant, who contracted to kill and deliver within the limits of the Act a certain number of pigs, for the sale of which within the limits a toll was payable under the special Act, was not liable to a conviction under this section. (2) So a sale in a shop attached to any dwelling-house is within the exemption, and protects the seller from the penalty, although the dwelling-house is not his, and although the sale be a sale by auction. But a vessel in a canal is not a dwelling-house or shop attached to a part of a dwelling-house within the exemption. (3)

So evidence of the sale of an article, by sample, in a shop near to the corn-market, of corn on a market day, is not *per se* evidence of an infringement of the market. (4)

In the following case a place where goods were sold was held not to be a shop within the meaning of 10 & 11 Vict. c. 14, s. 13. The appellant exposed laces, tapes, buttons, and combs for sale in a structure within a borough, but not within the limits of the market as fixed by the bye-laws. The main supports of the structure consisted of poles or pieces of wood (formerly used as a stall in the market-place) let into the ground in a public-house yard. The structure consisted of the upright posts fixed in the ground, of cross pieces of wood, on which the counter-boards were supported, and a wooden roof projecting a considerable distance beyond the counter-boards on each side, so as to shelter the sellers on one side and the buyers on the other. The sellers were protected behind by a wooden frame-work. The stall was fitted with a door which might be locked and a window-frame, and it had shelves. The structure was of a slight character and not weather-proof. It was let by the week, and was not rated to the local taxes. (5)

Market days. 10 & 11 Vict. c. 14, s. 14.

After the market-place or place for fairs is opened for public use the Local Board shall hold markets and fairs therein on the prescribed days (if any), and on such other days as they shall appoint from time to time by any bye-law.

Penalty for selling or exposing for

Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding £5 for every such offence; any in-

(1) *Wiltshire*, app., *Willett*, resp., 11 C. B. (N. S.) 240.

(2) *Bourne v. Lowndes*, 31 L. T. 114.

(3) *Wiltshire v. Willett*, 31 L. J. (N. S.) M. C. 8; *Wiltshire v. Baker*, ib.

(4) *Brecon v. Edwards*, 8 Jur. (N. S.) 461.

(5) *Pope v. Whalley*, 11 L. T. (N. S.) 769; 34 L. J. (N. S.) M. C. 76; 11 Jur. (N. S.) 444; 6 B. & S. 303.

spector of provisions appointed by the Local Board may seize such unwholesome meat or provisions and carry the same before a justice, and thereupon such proceedings shall be had as are directed by the 10 & 11 Vict. c. 14, to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice. Every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding £5 for every such offence.

sale unwholesome meat, etc.
 10 & 11 Vict. c. 14, s. 15.
 Penalty on obstructing inspector.
 Ib.

Every person who shall assault or obstruct any person appointed by the Local Board to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding 40s.

Penalty for obstructing market or fair keeper.
 Ib. s. 16.

2nd. *With respect to weighing goods and carts :*

The Local Board shall provide sufficient and proper weighing-houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures, according to the standard weights and measures for the time being for weighing such commodities, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Weights and measures for weighing commodities sold at markets and fairs to be provided.
 Ib. s. 21.

Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the Local Board; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured, shall be liable to a penalty not exceeding 40s.

Articles to be weighed if requested by the buyer.
 Ib. s. 22.
 Penalty for refusal.
 Ib.

Every person appointed by the Local Board to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required, shall be liable to a penalty not exceeding 40s.

Penalty on persons appointed refusing to weigh.
 Ib. s. 23.

The Local Board shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without their loading, as may be required.

Local Board to keep proper machines for weighing carts laden with goods.
 Ib. s. 24.

The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing-machines, and shall permit the same to be weighed. If such cart be weighed with its load thereupon, the driver shall, if required, take such cart, after its load has been discharged, to the weighing-machine nearest to such place of discharge, and permit it to be reweighed without such load. If any such driver shall, for such purposes, be required to take

Carts to be weighed at one of the machines erected by the Local Board.
 Ib. s. 25.

such cart a greater distance than half a mile, including the going to and returning from the weighing-machine, the owner of the cart shall be paid for every horse which shall be used in drawing such cart, twopence for the first half mile, and a like sum for every additional half mile; and such payment shall be made by the person requiring the cart to be weighed before the driver shall be obliged to take it for the purpose of having it weighed.

Penalty on drivers for refusing to take carts to be weighed, etc.

10 & 11 Vict. c. 14, s. 26.

Penalties on drivers of carts, etc., committing frauds in weighing.
Ib. s. 27.

The driver of any cart who shall not, upon being so requested, and having such payment made or tendered, take the cart to the weighing-machine, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring the cart to be weighed a sum not exceeding 20s.

Every driver of any cart weighed at any weighing-machine so provided who shall commit any of the following offences shall be liable to a penalty not exceeding £5 for each offence; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof:

If he alter any ticket denoting the weight of any such cart, or the loading of the same:

If he make or use, or be privy to making or using any ticket falsely stating the weight of any such cart or the loading thereof:

If he, after the weighing of any such cart, with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket:

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof:

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on buyers or sellers for committing frauds in weighing.
Ib. s. 26.

If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed, shall do anything to the cart or its loading whereby the true weight thereof respectively shall be altered before the weighing, he shall for every such offence be liable to a penalty not exceeding £5.

Penalties for frauds committed by the weighing-machine keeper.

The person for the time being appointed to keep any such weighing-machine shall be liable to a penalty not exceeding £5 in any of the following cases; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed:

If he do not fairly weigh every such cart, with or without loading as the case may be : Penalties for frauds committed by the weighing-machine keeper. 10 & 11 Vict. c. 14, s. 29.

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required :

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof :

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively :

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, shall for every offence be liable to a penalty not exceeding £5.

3rd. *With respect to the stallages, rents, and tolls :*

Unless it be otherwise provided, the Local Board shall not demand or receive any stallage, rent, or toll until the market-place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use ; and any such justices shall sign such certificate on proof being adduced to them that the market-place or place for a fair or slaughter-house is so completed and fit for public use.

The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the Local Board or the collector, or other person authorized by the Board to receive the same. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorized by the Local Board to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market-place, and before the cattle are put into any pen, or tied up in such market-place. If the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed. The Local Board may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair or for the slaughter-houses, or for weighing and measuring, provided that

Penalty on other parties committing frauds as to weighing. Ib. s. 30.

Tolls, etc., not to be demanded until market or fair completed. Ib. s. 31.

Certificate of two justices to be evidence that market or fair is completed. Ib. s. 32.

Stallages, etc., when to be paid. Ib. s. 33.

Tolls to be paid to persons authorized before the same are weighed, etc. Ib. s. 34.

Tolls in respect of cattle-market, when due. Ib. s. 35.

Stallages, tolls, etc., may be varied from time to time.

10 & 11 Vict.
c. 14, s. 36.

Penalty on
taking un-
authorized
tolls.

Ib. s. 37.
Recovery of
tolls by dis-
tress, etc.
Ib. s. 38.

Disputes
respecting
tolls, how to
be settled.
Ib. s. 39.

Penalty for
obstructing
collector of
rents, etc.
Ib. s. 40.

List of tolls,
etc., to be set
up and placed
in conspicuous
places.
Ib. s. 41.

21 & 22 Vict.
c. 98, s. 50.

Bye-laws
may be made
for all or any
of the pur-
poses herein
named.
10 & 11 Vict.
c. 14, s. 42.

the stallages, rents, and tolls in no case exceed the amounts authorized by the special Act.

Every person who shall demand or receive a greater toll than that authorized to be taken, shall for every such offence be liable to a penalty not exceeding 40s.

If any person liable to the payment of any stallage, rent, or toll do not pay the same when demanded, the Local Board or their lessee, or any person authorized by the Board or their lessee to collect the same, may levy the same by distress of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any Court having competent jurisdiction. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined by a justice, and such justice shall, on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; in default of payment, on demand, of the money which shall be so awarded, and of the costs, the same shall be forthwith levied by distress, and the justice shall issue his warrant accordingly.

Every person who shall assault or obstruct any person authorized to collect any such stallage, rent, or toll, shall for every such offence be liable to a penalty not exceeding 40s.

The Local Board or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls, from time to time payable, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing-house and slaughter-house provided by the Board, to which each such list shall relate; and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: if the list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of the list, in the same manner as if the list had continued in the state required by this Act.

All tolls leviable by the Local Board in pursuance of the foregoing provisions are, however, to be approved by one of Her Majesty's principal Secretaries of State.

4th. *With respect to the bye-laws:*

The Local Board may from time to time make such bye-laws as they think fit for all or any of the following purposes; (that is to say,)

For regulating the use of the market-place and fair, and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

- For fixing the days, and the hours during each day, on which the market or fair shall be held : Bye-laws with respect to markets, etc. 10 & 11 Vict. c. 14, s. 42.
- For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein :
- For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the district :
- For regulating the use of the weighing-machine provided by the Local Board, and for preventing the use of false or defective weights, scales, or measures :
- For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.

The Board may, from time to time, as they shall think fit, repeal or alter any such bye-laws : provided that such bye-laws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, or of any Act incorporated therewith ; and such bye-laws shall be reduced to writing under the common seal of the Board, and, if affecting other persons than the officers and servants of the Board, shall be printed and published as herein provided. Bye-laws may be repealed or altered from time to time. 1b.

The Local Board, by the bye-laws so to be made by them, may impose such reasonable penalties as they shall think fit, not exceeding £5 for each breach of such bye-laws ; provided that every such bye-law shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid. Bye-laws may be enforced by imposition of penalties. 1b. s. 43.

A local Act prohibited the sale of goods on the public highways of a town under a penalty, but provided that no person should be liable to such penalty for selling goods in such parts of the town as had been theretofore used for that purpose at the time of the usual fairs and markets. A Local Board of Health having been established for the town by 16 & 17 Vict. c. 24, which repealed portions of the local Act, but left the provisions of that Act unrepealed as regards the above matters, and incorporated them therewith, and also the powers of regulating the market given by the Markets and Fairs Clauses Act, 1847. The Local Board, acting under these provisions, made a bye-law that no meat should be sold in a particular part of the market held in the town ; and on a case stated for the opinion of the Court of Common Pleas, under 20 & 21 Vict. c. 43, it was held that the bye-law was valid and a reasonable regulation of the market, and that for a breach of it a penalty might be enforced, notwithstanding the provision of exemption incorporated from the local Act. (1) Bye-laws with respect to markets, etc.

(1) *Savage v. Brook*, 33 L. J. 264 ; 10 Jur. (N. S.) 587 ; 9 L. T. (N. S.) M. C. 42 ; 15 C. B. (N. S.) (N. S.) 334.

Where a bye-law of a market imposed a penalty on all persons who left carts in the market-place for a longer time than was necessary for loading or unloading, and an innkeeper, by direction of a carter who put up at his inn, left the cart in the market-place for an hour, carts having for many years been so left while the owners attended market, it was held that the innkeeper was liable to be convicted if he put the cart in the market-place. (1)

No bye-laws to come into operation until allowed in the manner prescribed and approved by Secretary of State.
10 & 11 Vict. c. 14, s. 44.

Notice of allowance of bye-laws to be given in one or more newspapers, etc.
Ib. s. 45.

A copy of proposed bye-laws to be open for inspection.
Ib. s. 46.

Publication of bye-laws.
Ib. s. 47.

No such bye-laws (except such as may relate solely to the officers or servants of the Board) shall come into operation until the same shall be allowed in the manner prescribed by the special Act, or, if no manner be prescribed, until the same shall be allowed by the justices at Quarter Sessions, and in either case approved under the hand of one of Her Majesty's principal Secretaries of State; and it shall be incumbent on the justices at Quarter Sessions, on the request of the Board, to examine into the bye-laws which may be tendered to them for that purpose, and to allow of or disallow the same as to them may seem meet. Further, as regards the confirmation of bye-laws by the Secretary of State, see the chapter on bye-laws, *post*. No such bye-law shall be allowed unless notice of the intention to apply for an allowance of the same shall have been given in one or more newspapers of the county in which the market or fair shall be situated, or, if there be no newspaper in such county, in one or more newspapers of the adjoining county, one month at least before the hearing of such application; any party aggrieved by any such bye-law, on giving notice of the nature of his objection to the Board ten days before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney or agent, be heard thereon, but not so as to allow more than one party to be heard upon the same matter of objection. For one month at least before any such application for allowance of any bye-law, a copy of such proposed bye-laws shall be kept at the principal office of the Board, and shall be put up in some conspicuous place in the market-place or fair, and all persons at all reasonable times may inspect such copy without fee or reward, and the Board shall furnish every person who shall apply for the same with a copy thereof, or any part thereof, on payment of sixpence for every hundred words so to be copied. The said bye-laws shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk of the Board shall give a printed copy thereof to every person applying for the same without charge, and a copy thereof shall be painted or placed on boards, and put up in some conspicuous part of the principal office of the Board, and also in some conspicuous place in the market-place or fair, and such boards, with the bye-laws thereon, shall be renewed from time to time as occasion shall require, and shall

(1) *De Caux v. Powley*, 28 J. P. 806.

be open to inspection without fee or reward. In case the clerk shall not permit the same to be inspected at all reasonable times, he shall for every such offence be liable to a penalty not exceeding £5. All bye-laws so made and confirmed, when published and put up, shall be binding upon and be observed by all parties, and shall be a sufficient warrant for all persons acting under the same. The production of a written or printed copy of the bye-laws requiring confirmation by the Court of Quarter Session, authenticated by the signature of the judge or of the chairman of the Court or the sheriff who shall have approved of the same, and requiring approval under the hand of one of Her Majesty's principal Secretaries of State, and a written or printed copy of the bye-laws not requiring such confirmation or approval, authenticated by the common seal of the Board, shall be evidence of the existence and making of such bye-laws in all cases of prosecution under the same, without proof of the signature of such judge, chairman, or such Secretary of State, or the common seal of the Board. With respect to the proof of the publication of any such bye-laws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by the Act directed, and in case of its afterwards being displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of such bye-laws, or was not duly put up or continued as directed by the Act.

Penalty on clerk for neglect.
10 & 11 Vict.
c. 14, s. 47.
Bye-laws to be binding on all parties.
Ib. s. 48.

Proof of publication of bye-laws,
Ib. s. 49.

The following provision regarding the fish trade at Scarborough is contained in the 23 & 24 Vict. c. 44, s. 3. For the better accommodation of dealers and other persons employed in the fish trade at Scarborough, and for the prevention of nuisances arising from the carrying on of such trade, the Local Board shall have power to purchase or take upon lease, sell or exempt, any lands or premises, and to provide and erect thereon fish stages, staithes, stands, areas, sheds, warehouses, piers, jetties, wharves, buildings, and other conveniences for the purposes of landing, selling, packing, salting, sorting, or otherwise dealing with fish, and to form and make all necessary railways, tramways, roads, and approaches thereto, such powers and purposes shall be deemed to be, in all respects, powers and purposes of the Public Health Act, 1848, and the Local Government Act, 1858.

Fish trade at Scarborough.
23 & 24 Vict.
c. 44, s. 3.

CHAPTER XV.

SLAUGHTER-HOUSES.

Local Board
may provide
slaughter-
houses.
11 & 12 Vict.
c. 63, s. 62.

THE LOCAL BOARD may provide premises for the purpose of being used as slaughter-houses, or knackers' yards, or places to be used for slaughtering cattle, horses, or animals of any description for sale. Nothing in the Act is, however, to prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by Local Acts of Parliament passed before the 31st August, 1848, for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough, or place.

Licensing
slaughter-
houses and
knackers'
yards.
21 & 22 Vict.
c. 98, s. 45.
10 & 11 Vict.
c. 34, s. 125.
Ib. s. 126.
Penalty.
Ib.

The Local Board may license such slaughter-houses and knackers' yards as they may think proper, for slaughtering cattle within the district; and no place, not used as such before the application of the Act to the district, and continued to be used as such, shall be used or occupied as a slaughter-house or knackers' yard until a licence for its erection or use has been obtained: offenders in this respect are liable to a penalty not exceeding £5, and a like penalty for every day after conviction upon which the offence is continued.

The Local Board, it will be observed, are to give their licence to such slaughter-houses and knackers' yards as they may think proper; therefore if they should think the house or yard is in an undesirable locality they may refuse the licence.

Grant of
licence to
slaughter-
house.

The following illustrates what would be held to be the grant of a licence. The Manchester Police Act empowers the Town Council of the borough to grant licences for the erection of slaughter-houses. A person having applied for a licence, the Markets Committee inspected the site, and recommended the grant of a licence. The committee then passed a resolution to grant the licence, and communicated the same to the applicant, and the resolution was confirmed by the Town Council. An information having been laid against the applicant for the licence for using a slaughter-house without a licence, contrary to the Police Act, it was held that though it was usual afterwards to grant a formal licence in a certain printed form, still the grant of a licence was complete on the confirmation of the resolution and communication thereof to the applicant, and operated as a licence. (1)

Private
premises.

To slaughter cattle on the private premises of an inhabitant of a town, under a local Act which followed closely the language of the Markets and Fairs Clauses Act, was held to be no offence within the clause of the Act unless the cattle were slaughtered for sale as human food; (2) and in another case it was held that a

(1) *Howarth v. Manchester*, 6 L. T. (N. S.) 683.

(2) *Elias v. Nightingale*, 27 L. J. (N. S.) M. C. 151; 4 Jur. (N. S.) 166.

conviction for "using" an unlicensed slaughter-house, under 10 & 11 Vict. c. 34, sect. 126, cannot be sustained against a person who merely pays the owner of the premises for being allowed to kill animals there. (1)

A stable which formed an original portion of premises licensed as a slaughter-house for pigs, which stable was afterwards converted into another slaughtering-shed, and used for slaughtering bullocks and sheep therein, was held to be covered by the original licence, and not to require a fresh licence. (2)

Within three months after the application of the Act, all existing slaughter-houses and knackers' yards are to be registered by the owner or occupier at the office of the Local Board, in a book to be kept for that purpose, and persons failing in this respect are under like penalties to those above stated.

Regulation
of slaughter-
houses.
10 & 11 Vict.
c. 34, s. 127.

Bye-laws (which may impose pecuniary penalties on persons breaking them, not exceeding £5 for each offence, and for a continuing nuisance, 10s. per day), regulations for the licensing, registering, and inspection of slaughter-houses and knackers' yards, and preventing cruelty therein; for keeping them in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, are from time to time to be made by the Local Board. Suggestions for framing these bye-laws have been issued by the Local Government Act Office, and may be procured from Messrs. Knight & Co., the publishers of this work.

Bye-laws and
regulations.
Ib. s. 128.

The justices before whom any person is convicted of killing or dressing cattle, contrary to the provisions of the Act, or of the non-observance of any bye-law or regulation of the Local Board, in addition to the penalty, may suspend the licence for any period not exceeding two months; or, in the case of the owner of any registered slaughter-house or knackers' yard, may forbid, for any period not exceeding two months, the slaughtering of cattle therein. For a second or other subsequent like offence, in addition to the penalty, the justices may revoke the licence, or absolutely forbid the slaughtering of cattle in the particular house or yard. In such an event, the Local Board may refuse to grant any licence whatever to the person whose licence has been revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Suspension
or revocation
of licence.
Ib. s. 129.

Persons slaughtering cattle in any particular slaughter-house or knackers' yard after the licence is suspended or revoked, or such slaughtering is forbidden, are liable to a penalty not exceeding £5 for each offence, and a further penalty of £5 per day on which the offence is committed after the conviction for the first offence.

Penalty.
Ib. s. 130.

The inspector of nuisances, the officer of health, or any other

(1) *Reg. v. Heyworth*, 14 L. T. (N. S.) 600; 30 J. P. 428.

(2) *Brighton v. Stenning*, 15 L. T. (N. S.) 567.

Inspection
of slaughter-
houses and
butchers'
shops.

10 & 11 Vict.
c. 34, s. 129.

Seizure of
food unfit for
the food of
man.

Ib.

Penalty,

Ib.

Regulations
of continental
cities as to
slaughtering
cattle.

officer appointed by the Local Board for the purpose, may at all reasonable times, with or without assistants, enter into and inspect any building within the district kept or used for the sale of butchers' meat, or for slaughtering cattle, and examine any cattle or carcase deposited there; and if he find any which appears unfit for the food of man, he may seize and carry it before a justice, who is forthwith to order it to be further inspected and examined by competent persons. If the carcase then be found to be unfit for the food of man, the justice is to order it to be immediately destroyed or otherwise disposed of in such a way as to prevent it being exposed for sale or used for the food of man. The person to whom the carcase belongs, or in whose possession it may be found, is liable to a penalty not exceeding £10 for every animal, carcase, or part of a carcase so found. Persons obstructing or hindering the inspection, or the seizure and carrying away of the animal or carcase, or part thereof, are liable to a penalty not exceeding £5 for each offence. Other provisions on the matters above referred to will be found in the Nuisances Removal Act, which forms the subject of another division of this work.

Further, with regard to slaughter-houses, see the preceding chapter on the establishment by Local Boards of public markets.

The following summary of the regulations in force in several of the principal cities on the continent is taken from the Appendix to the Report of the Select Committee on the Cattle Diseases Prevention and Cattle Importation Bills, Session 1864:

1. That all markets are under strict supervision.
2. That cattle sent to the public markets, and to the public slaughter-houses, are carefully examined by the inspectors or officers appointed for that purpose.
3. That diseased cattle are carefully kept from healthy cattle, and are either destroyed or disposed of in such way as to prevent their communicating disease to other cattle, or being sold for human food.
4. That in all large cities the slaughtering of animals is either conducted in public slaughter-houses, or is so regulated as to insure the condemnation of diseased meat.
5. That to guard the public against the mischief which arises from the use or consumption of unwholesome meat, the animals destined for food are examined, not only before they are killed, but also afterwards.

The same paper gives in detail the regulations in force on this subject in different continental cities; but to insert them in this work would occupy too much space. The above summary, however, may prove useful to local authorities as suggestive of the points to which they should direct their attention, and they show that the importance of the subject is fully appreciated in continental cities by the authorities of those cities; though unfortunately it has not hitherto received that attention from local authorities in this country which its importance demands.

CHAPTER XVI.

INSPECTION OF PLACES FOR SALE OF BUTCHERS' MEAT.

THE inspector of nuisances may at all reasonable times, with or without assistants, enter into and inspect any shop, building, stall, or place kept or used for the sale of butchers' meat, poultry, or fish, or as a slaughter-house, and examine any animal, carcase, meat, poultry, game, flesh, or fish, which may be therein; and in case any animal, carcase, meat, poultry, game, flesh, or fish appear to the inspector to be intended for the food of man, and to be unfit for such food, it may be seized; and if it appear to a justice, upon the evidence of a competent person, that any such is unfit for the food of man, he shall order it to be destroyed, or to be disposed of so as to prevent its being exposed for sale or used for such food. The person to whom such animal, carcase, meat, poultry, game, flesh, or fish (seized and destroyed, or ordered to be disposed of so as to prevent its being exposed for sale or used for the food of man) belongs, or in whose custody it is found, is liable to a penalty not exceeding £10 for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game so found (that is so found and destroyed, or ordered to be disposed of as before stated), which may be recovered before two justices in the manner provided by the Act with respect to penalties the recovery whereof is not expressly provided for.

Power to
inspector of
nuisances to
enter places
used for sale
of butchers'
meat, etc.
11 & 12 Vict.
c. 63, s. 63.

Penalty.
Ib.

The penalty is incurred in respect of *each* piece of meat seized and destroyed, etc.; therefore where three defendants were convicted under sect. 63 of the 11 & 12 Vict. c. 63, by four separate convictions, for exposing for sale four pieces of butchers' meat being unfit for the food of man, and a penalty of 20s., with a certain sum for costs, was inflicted in each case upon each defendant, the Court held that as the convictions were good upon their face they could not inquire into the evidence adduced before the convicting justices. (1)

By sect. 210 of 10 & 11 Vict. c. 34, the Railway Clauses Act, 8 Vict. c. 20, is incorporated with the Towns Improvement Act, 1847, so as to take away the right to *certiorari*; and a conviction under 11 & 12 Vict. c. 63, s. 63, can be removed by *certiorari* only where there is excess or refusal of jurisdiction on the part of the justices. (2)

(1) *Reg. v. Hartley*, in re *Over Darwen*, 26 J. P. 438; S. C. in re *Hartley and Others*, 31 L. J. (M. C.) 232.

(2) *Reg. v. Staffordshire JJ.*, 16 L. T. (N. S.) 430.

CHAPTER XVII.

OFFENSIVE TRADES.

Offensive
trades newly
established to
be subject to
regulations of
Local Board
of Health.
11 & 12 Vict.
c. 63, s. 64.

Bye-laws.
Ib.

THE business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture is not to be newly established in any building or place, after the Public Health Act is applied to the district, without the consent of the Local Board; and offenders in this respect are liable for each offence to a penalty of £50, and a further penalty of 40s. for each day during which the offence is continued. The Local Board are also empowered from time to time to make bye-laws with respect to any such businesses newly established as they may think necessary and proper, in order to prevent or diminish any noxious or injurious effects of such businesses.

What is the newly establishing a business within the above prohibition is illustrated by the following case:—A company, established under a local Act, erected a market in the district before the Public Health Act, 1848, was adopted, no part of the market had been previously used as a slaughter-house; but in November, 1865, the company erected slaughter-houses, and the slaughtering of cattle was commenced in them, in March, 1866, the course of business being that the company permitted owners of cattle, by their own servants, to slaughter them on the company's premises, the owners using the tackle in the building, and paying 2s. for each beast slaughtered. The company having been convicted under the 11 & 12 Vict. c. 63, s. 64, it was held, that they "had offended against the enactment," as they, and they only, had newly established the business of a slaughterer of cattle, and no one else under the circumstances could have been convicted of the offence. (1)

Burning
bricks.

With regard to offensive trades, formerly it was held that although the carrying on a lawful trade may annoy another person, yet an action would not lie for the reasonable use of a lawful trade in a convenient place; and therefore that an action would not lie for burning bricks for the purpose of building houses on the land on which the burning is carried on, though the doing so causes noxious vapours to the injury of another; (2)

(1) *Liverpool New Cattle Market Company, apprs., Hodson, resp.*, 36 L. J. (M. C.) 30; L. R. 2 Q. B. 131; 8 B. & S. 184; 15 L. T. (N. S.) 354.

(2) *Hole v. Barlow*, 4 C. B. 334; 27 L. J. (N. S.) C. P. 207; 4 Jur. (N. S.) 1019.

but this decision was overruled, and it is now settled law that an action lies for a nuisance to the house or land of a person whenever, taking all the circumstances into consideration, including the nature and extent of the owner's enjoyment before the act complained of, the annoyance is sufficiently great to amount to a nuisance according to the ordinary rule of law; and this whatever the locality may be where the act complained of is done. (1)

In an action against a smelting company for injuring trees and shrubs by noxious vapours, the judge at the trial directed the jury to find for the plaintiff, if the evidence satisfied them that real, sensible injury had been done to the enjoyment or value of the property by such vapours; and the jury having found for the plaintiff, on appeal from the Exchequer Chamber, (2) affirming the judgment of the Queen's Bench, (3) to the House of Lords, it was held that the judge had rightly directed the jury, and that the defendants were liable for sensible injury done to the plaintiff's property, notwithstanding that their business was an ordinary business, carried on in a proper manner, and in a neighbourhood more or less devoted to manufacturing purposes. (4)

Brickmaking is not necessarily such a noxious or offensive business, trade or manufacture, as is contemplated by sect. 64 of the 11 & 12 Vict. c. 63; (5) and the question whether brick burning is a nuisance must depend upon circumstances, and no general rule as to distance can be laid down. (6)

Per Wood, V.C., whatever might have been the case formerly, when there was considerable conflict of opinion as to whether the smoke and vapour arising from brick burning were to be considered as prejudicial to health and comfort, it was now clearly settled that the fumes of a brick-kiln, if they reached dwelling-houses, were a nuisance to the inhabitants, which this Court would restrain without requiring any scientific evidence upon the subject. (7)

Where a person purchased a piece of land, about an acre in extent, situated at a distance of less than 100 yards from the house and pleasure grounds of another person, and commenced burning bricks made out of the clay taken from the grounds so purchased, it was held that the owner of the house and grounds was entitled to an injunction to restrain such person from continuing to burn the bricks. (8)

Again, a person who had contracted to supply large quan-

(1) *Bamford v. Turnley*, 3 B. & S. 62; 9 Jur. (N. S.) 377; 6 L. T. (N. S.) 721; 31 L. J. (N. S.) Q. B. 286. (N. S.) 479; 32 L. J. (N. S.) M. 135; 7 L. T. (N. S.) 744; 9 C. (N. S.) 972.

(2) 4 B. & S. 616.

(3) *Ibid.* 408.

(4) *St. Helen's Smelting Company (Limited) v. Tipping*, 11 Jur. (N. S.) 785.

(5) *Wanstead v. Hill*, 13 C. B.

(6) *Cleve v. Mahany*, 25 J. P. 819.

(7) *Evans v. Smith*, Trinity Term, 1867.

(8) *Walter v. Selfe*, 20 L. J. (N. S.) Ch. 433.

Burning
bricks.

tities of bricks for the erection of fortifications at Portsdown Hill, obtained a lease of a great extent of land containing brick earth, upon which he erected numerous brick-kilns within 340 yards of a mansion, and close to the boundary of the property of the owner of the mansion, and proceeded with the burning of the bricks, which the owner alleged was an annoyance to her, and that it destroyed her property—Stuart, V.C., distinguishing the case from *Hole v. Barlow*, (1) where the defendant was burning bricks upon his own land, and there was nothing to show that if he did not burn them on his own land in the place he was burning them he could not have burnt them at all, granted an injunction to restrain the nuisance, and directed that the contractor should not burn any bricks within a distance of 653 yards from the house of the owner of the adjoining property—observing that where a man is injuring his neighbour to a very material extent, in a way not absolutely necessary and unavoidable in order to the enjoyment of his own fair private right, the Court is always disposed to interfere, and that in such a case the balance of convenience must be attended to. (2)

A nuisance against which the Court will grant an injunction must be a material injury to property or to the comfort of the existence of those who dwell in the neighbourhood. Where, therefore one took lands adjoining the residence, lake, and grounds of another, and made preparations for burning bricks upon them, and commenced burning one clamp at a distance of 1447 feet from the residence, and 422 feet from the lake, upon the margin of which was a cottage, occupied by a person in the other's employment, and such other obtained an ex parte injunction upon which the fire was at once extinguished, and nothing further was ever done, though it was admittedly the intention to burn bricks, Rolt, L.J. held (reversing the decision of Stuart, V.C.) that the actual facts did not amount to a nuisance, that as to future injury there was not sufficient, having regard to the proximity of the clamp, nor to the estimated degree of damage, nor upon the circumstances generally, to warrant the injunction. Further, that there is nothing to compel the Court to take judicial notice that a brick clamp at a distance of 140 yards from another person's property is a nuisance, and that such case must depend on its own circumstances; and *semble*, that in such cases the recovery of a verdict at law does not necessarily entitle the plaintiff to an injunction; but the fact that there is legally and technically a nuisance must be considered together with the amount of damage and the duration of the nuisance complained of. (3)

In a later case, brick burning was held to be a nuisance to

(1) 4 C. B. (N. S.) 334.

(2) *Beardmore v. Tredwell*, 9 Jur. (N. S.) 272; 31 L. J. (N. S.) Ch. 892; 7 L. T. (N. S.) 207.

(3) *Luscombe v. Steer*, 17 L. T. (N. S.) 229.

persons living within the limit affected by it, and 240 yards was Burning also held not to be an extreme limit. The Court, therefore, bricks. granted an injunction to abate such a nuisance. (1)

Where a nuisance had been of long standing, and the exercise of it had been interrupted for a space of twenty years, it was held that where there had been a cesser of the right for this period, such nuisance might be complained of by bill. (2)

In another case, where a person who carried on a manufacture in itself lawful, but which required the greatest precaution to prevent accidents, used due precaution, but occasionally, by accidents happening at very long intervals, caused to his neighbouring manufacturers injuries not irreparable, but such as could be compensated by damages, the Court refused to grant an injunction. (3)

In an action for a nuisance caused by the defendant burning bricks on his own land near the house and land of the plaintiff, it is no misdirection for the judge to refuse to leave to the jury the question whether the bricks had been burnt in a convenient place for that purpose; such form of question having been decided by the Court of Exchequer Chamber in *Bamford v. Turnley* to be a misdirection; but *semble*, per Erle, C.J., it would be a misdirection if the judge told the jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to take into their consideration any evidence showing that the act complained of was one of ownership on the part of the defendant which was clearly lawful, if it did not cause actionable discomfort to a neighbour, and that it was done with full attention to prevent discomfort in respect of time and place and manner and degree. (4)

The erection of a tobacco mill near to the house of another Tobacco mill. has been held to be a nuisance and actionable. (5)

In an action brought at the assizes in the Western Circuit, Fellmonger. for a nuisance caused by the erection of buildings for the purpose of carrying on the business of a fellmonger in the town of Collumpton, Channell, B., in summing up the case to the jury with reference to the case of *Hole v. Barlow*, said that it had certainly very materially modified the law of nuisances as hitherto understood; but that he should hold the decision to be law until it was otherwise determined. He therefore asked the jury to say, in accordance with the old law, first, whether the plaintiff was sensibly hindered in the reasonable enjoyment of his property by reason of the smells alleged to proceed from the defendant's premises; and he told them that it need not be a smell injurious to health, nor was it necessary that it should annoy the dwelling-house—it was enough that it fouled the air

(1) *Roberts v. Clarke*, 18 L. T. (N. S.) 49.

(2) *Ibid.*

(3) *Cooke v. Forbes*, 17 L. T. (N. S.) 371; 37 L. J. Ch. 178; Law Rep. 5 Eq. 166.

(4) *Cavey v. Leadbitter*, 9 Jur. (N. S.) 798; 32 L. J. (N. S.) C. P. 104; 13 C. B. (N. S.) 470. See also, with regard to this case, 3 F. & F. 14.

(5) 2 Selw. N. P. 1105.

in the grounds and in the garden; secondly, is the business carried on by the defendant a lawful and proper business; thirdly, is it carried on in a proper manner; fourthly, is it carried on in a proper place. To these several questions the jury returned that the plaintiff was so hindered in the enjoyment of his property; secondly, that it was a lawful and proper business; thirdly, that it was conducted in a proper manner; fourthly, but that it was not in a proper place. A verdict was therefore taken for the plaintiff with 40s. damages. (1)

Lawful trade.

Where a manufacturer discharged arsenic and other injurious matters from his works into a stream, which he might have avoided doing by certain expedients, it was held that he could not defend himself in an action arising therefrom by showing that his trade was a lawful trade carried on in a proper manner. Where, to an action for carrying on a trade in such a manner as to cause injury to the plaintiff, the defendant relies for a defence upon the fact of the trade being carried on in a reasonable and proper manner, the onus of proving that it is so carried on is on the defendant, and not on the plaintiff of showing that it is not so carried on. (2)

Furnaces for making animal charcoal.

An indictment charged the committing a nuisance by keeping up furnaces for making animal charcoal. It appeared that the defendants used such furnaces for the manufacture of animal charcoal on their premises in Whitechapel. The controversy was whether, in the mode in which they conducted the manufacture, it was a nuisance. In the course of the examination and cross-examination it appeared that the manufacture had been conducted for some years before the time of the indictment in the same manner as it was afterwards. The evidence of the witnesses for the prosecution went to show that the manufacture always had been a nuisance; whilst the cross-examination went to show that no complaints had been made. A witness was then called to prove a conviction of the defendants. The witness produced the minutes of what passed before the justices, by which it appeared that in 1855 the defendants were convicted under the 16 & 17 Vict. c. 128, s. 1, in a penalty of £3, and 3s. costs, which the defendants paid. The conviction had not been drawn up; but as that could be done at any time, the defendant's counsel consented to its being taken as if drawn up, and objected that the conviction was not admissible in this issue. The evidence was, however, received, and a verdict taken for the Crown—whereupon a rule nisi was obtained for a new trial on the ground of the improper reception of the evidence. On an indictment for a nuisance in carrying on an offensive trade, a conviction of the defendant before justices for an offence against the 16 & 17 Vict. c. 128, s. 1, committed at the same place, and in the course of the same trade, but anterior

Previous conviction.

(1) *Pinckney v. Ewens*, 4 L. T. (N. S.) 741.

(2) *Stockport Waterworks Com-*

pany v. Potter, 7 Jur. (N. S.) 880; 31 L. J. (N. S.) Exch. 9; 7 H. & N. 160.

to the period comprised in the indictment, was received in evidence, but the whole Court held that it was improperly received, the offence of which the defendant was convicted not necessarily being a nuisance; and, by Lord Campbell, C.J., and Coleridge, J. (Wightman, J., not concurring), even if it had been a conviction for an offence precisely similar to that charged against the defendant, except that it was anterior in time, it would not have been admissible. (1)

It has been long settled that it is a common nuisance to make acid spirit of sulphur, and thereby impregnate the air with noisome stinks, and the person so causing the nuisance may be indicted at common law. (2)

It has been decided that the owner of works carried on for his benefit by his agents and servants is liable to an indictment for a nuisance resulting from the mode of carrying on the business, although such nuisance was committed in opposition to his orders, and without his knowledge, the proceedings by indictment in such case being criminal in form only. (3)

As regards having recourse to the Court of Chancery to restrain a nuisance, it may be remarked that that Court in exercising the increased powers conferred upon it by modern legislation in respect of legal rights, will have regard to the principles upon which it formerly acted, and will not therefore entertain a suit where the plaintiff has had ample opportunity of trying his right at law, and no action has been brought. Where therefore a person had lain by and allowed expenditure to be incurred, and a trade which might be a nuisance in point of law to be established and carried on for a considerable time without asking for the interference of the Court or bringing an action, it was held that he was precluded by acquiescence from obtaining relief in equity, though the trade had been gradually increasing. (4)

Previous conviction.

Recourse to Court of Chancery to restrain nuisance.

(1) *Reg. v. Fairie*, 8 E. & B. 486.

(2) *Rex v. White and Ward*, 1 Burr. 333.

(3) *Reg. v. Stephens*, 12 Jur. (N. S.) 961; Law Rep. 1 Q. B. 702.

(4) *Swaine v. Great Northern*

Railway Company, 9 Jur. (N. S.) 1196; 9 L. T. (N. S.) 571. Affirmed on appeal by the Lords Justices, ib. 10 Jur. (N. S.) 191; 9 L. T. (N. S.) 745; 33 L. J. (N. S.) Ch. 399.

CHAPTER XVIII.

PREVENTION OF SMOKE.

Fireplaces of
factories, etc.,
to consume
their own
smoke.

21 & 22 Vict.
c. 98, s. 45.
10 & 11 Vict.
c. 34, s. 108.

Penalty.
Ib.

Locomotive
steam-engine.

Steam-
engines.

EVERY fireplace or furnace newly constructed in the district, in order to be used in the working of steam-engines, or in any mill, factory, dyehouse, brewery, bakehouse, gas-works, or in any manufactory (although a steam-engine be not used therein), must be so constructed as to consume its own smoke. Every existing fireplace or furnace used for any of these purposes, not so constructed, must within two years after the application of the Act to the district be so altered in its construction as to consume its own smoke.

If any such fireplace or furnace not so constructed within the district be used, or be used so negligently as not to consume the smoke arising therefrom, the person offending is liable to a penalty of 40s. for every day during any part of which the fireplace or furnace is so used, after one month's notice in writing shall have been given to the owner or occupier of the furnace or fireplace by the Local Board to remedy or discontinue the use of it.

The Sanitary Act, 1866, also contains provisions with regard to the prevention of nuisances arising from smoke, which will be found treated of in the fourth part of this work.

With reference to the foregoing provisions the following cases may be cited. By sect. 114 of the 8 Vict. c. 20, "every locomotive steam-engine to be used on a railway shall be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed the company shall forfeit £5 for every day during which such engine shall be used on the railway." Where, under this statute, justices convicted a railway company on the ground that one of their engines did not, in fact, consume its own smoke, the Court remitted the case to the justices, with their opinion that if the engine was constructed on the principle required by the statute, and the not consuming its own smoke was occasioned by the negligence of the servants of the company, the company were not liable. (1) Again, where by 19 & 20 Vict. c. 107, s. 1, "all steam vessels plying to and fro between London Bridge and any place on the river Thames to the westward of the Nore Light," are liable to penalties for not consuming their own smoke, it was held that a steam vessel not

(1) *Manchester, Sheffield, and Lincolnshire Railway Company, v. Wood*, 6 Jur. (N. S.) 70; 29 L. J. (N. S.) M. C. 29.

carrying passengers, but employed in towing ships for hire to and from the various docks on the Thames, for the most part between London Bridge and the Nore Light, but occasionally going eastward of the Nore Light as far as the Downs, was within the statute when towing a ship from Limehouse to Blackwall. (1)

The nuisance arising from smoke alone, unaccompanied by noise, or from noise alone, or effluvia alone, may be the subject of substantial damages in an action at law; and wherever a jury would give substantial damages at law in respect of any of these causes of action, an injunction will be granted to restrain the continuance of them, (2) and the mere discontinuance of a nuisance after the filing of a bill for an injunction is not in itself a ground for dissolving it. Where the nuisance is of a nature to be capable of renewal, the injunction will be made perpetual. (3)

The above mentioned provisions in 21 & 22 Vict. c. 98, s. 45, with respect to the prevention of smoke, do not extend to compel the consumption of all smoke in the case of all or any of the processes following; that is to say: to the coking of coal, the calcining of ironstone or limestone, the making or burning of bricks, earthenware, quarries (*sic*), tiles, or pipes, the raising of any mines or minerals, the smelting of iron ores, the refining, puddling, shingling, and rolling of iron or other metals, or to the melting or casting of iron into castings, or to the manufacture of glass in any district where the above provisions for the prevention of smoke are not now in force, in which the Local Board resolve that any one or more of such processes should be exempted from penalties for not consuming all smoke for any time specified in such resolution, not exceeding ten years, which may be annually renewed for a similar or any shorter period, if the Board think fit.

Processes
excepted.
21 & 22 Vict.
c. 98, s. 45.

Any justice or justices before whom any person is summoned may remit the penalty in any case within such district in which he or they are of opinion that such person has adopted the best known means for preventing any nuisance from smoke, and has carefully attended to the same, so as to consume, as far as possible, the smoke arising from any process so exempted during such time as the resolution shall extend to, unless an order be issued by a Secretary of State directing that such exemption shall no longer be continued in the district to such processes, or any of them, after a time specified in the order.

Remission
of penalty.
Ib.

No conviction for any of the above mentioned offences can take place within the Rotherham and Kimberley district, except in the case of furnaces for generating steam, unless it be proved that it is practicable, by some means in use, to consume

Rotherham
and Kimber-
ley district.
15 & 16 Vict.
c. 42, s. 3.

(1) *Walker*, app., *Evans*, resp., 6 Jur. (N. S.) 71; 1 L. T. (N. S.) 59; 29 L. J. (N. S.) M. C. 22. (N. S.) 600; L. R. 2 Eq. (M. R.) 409. Affirmed on appeal, ib. 17 L. T. (N. S.) 133.

(2) *Crumph v. Lambert*, 15 L. T. (3) *Ibid*.

the smoke arising from the combustibles used in the furnace or fireplace in respect of which the complaint is made.

Birmingham.

The Birmingham Improvement Act, 1851, which incorporates the 10 & 11 Vict. c. 34, provides that the justices before whom any person is summoned for an offence under s. 108, may remit the penalties if they shall be of opinion that such person has so constructed or altered his furnace as to consume as far as possible all the smoke arising from it, and has carefully attended to the same and consumed *as far as possible* the smoke arising from such furnace. The defendant, a wire-drawer, having been convicted of negligently using his furnace so as not to consume its smoke, and the evidence being to the effect that the quantity of smoke emitted might be greatly reduced by keeping partially open the door of the fireplace, or by the use of a ventilator, actually attached to the fireplace, but not used; but that if the external air were thus admitted the temperature of the furnace would not be uniform, and that the process of annealing the metal for the purpose of making wire would be rendered impossible, the Court quashed the conviction, holding that the effect of the qualification introduced by the local Act was to exempt from a penalty where the smoke was consumed as far as possible, consistently with carrying on the trade in which the furnace was used. (1)

(1) *Cooper*, app., *Woolley*, resp., L. R. 2 Exch. 88; 36 L. J. (M. C.) 27; 15 L. T. (N. S.) 539.

CHAPTER XIX.

OBSTRUCTIONS AND NUISANCES IN STREETS.

WITH respect to obstructions and nuisances in the streets within the district, the Local Board may make orders for the route to be observed by all carts, carriages, horses, and persons in times of public processions, rejoicings, or illuminations, and generally for observing order in the streets. A wilful breach of any such order subjects the offender to a penalty not exceeding 40s. The Board may also, on application by the minister, churchwardens, or chapelwardens, of any church or chapel, make orders for regulating the route by which persons shall drive in the neighbourhood of the church or chapel on Sundays and fast-days, etc., and a breach of any such order likewise subjects the offender to a penalty not exceeding 40s. But proprietors of stage-coaches are exempted from compliance with such orders when in the line of route specified in their licence.

During processions, etc.
21 & 22 Vict
c. 98, s. 44.
10 & 11 Vict.
c. 89, s. 21.

During
Divine service.
Ib. s. 22.

Stage-coaches.
Ib. s. 23.

Cattle at large in any street within the limits of the district may be impounded and detained until the owner pay to the Local Board a penalty not exceeding 40s. besides expenses of keep; and if the penalty and expenses be not paid, the cattle may be sold to defray them, and the overplus is to be paid to the owner on demand. Persons guilty of pound breach are liable to be committed to prison for any time not exceeding three months. For the above mentioned purposes the Local Board may purchase land and erect a pound thereon, which they are to keep in repair.

Stray cattle.
Ib. s. 24.

Penalty.
Ib. s. 25.

Pound
breach.
Ib. s. 26.
Pound to be
provided.
Ib. s. 27.

The Local Board are bound to provide a proper pound for the purpose; and even though the distress may be placed in the manor pound, if there should be one, they will be liable to pay for any injury that the cattle may meet with in the pound, unless it was in a proper condition when the distress was placed there. (1)

Persons in any street, to the obstruction, annoyance, or danger of the residents or passengers, committing any of the offences undermentioned are liable to a penalty not exceeding 40s. for each offence, or to be committed to prison for a period not exceeding fourteen days. Exposing for show, hire, or sale, except in markets or fairs, horses or other animals; exhibiting shows, or public entertainments; shoeing, bleeding, or "farrying" horses or animals, except in cases of

Offences in
streets.
Ib. s. 28.

Horses, etc.
Ib.

(1) *Bignold v. Clarke*, 2 L. T. (N. S.) 189.

Mad dogs. 10 & 11 Vict. c. 89, s. 28. Slaughtering etc., cattle. Ib. Waggons, carts, etc. Ib.	accident; cleaning, dressing, exercising, training or breaking, or turning loose horses or animals, or making or repairing carts or carriages, except in cases of accident where repair on the spot is necessary; suffering unmuzzled dogs to be at large; setting on or urging dogs or other animals to attack or put in fear any person or animal; suffering rabid or dogs suspected to be rapid to be at large; slaughtering or dressing cattle, except when overdriven, or when for the public safety they ought to be killed on the spot; riding on shafts of waggons, etc., or in them without reins, or being at a distance so as not to have control over the horses, or keeping on the wrong side of the way, or obstructing the street and wilfully preventing persons or carriages passing; driving more than two carts or waggons without having the halter of the horse in the last cart, etc., properly fastened; furiously driving; causing carriages, etc., to stand longer than is necessary for loading, etc.; interrupting public crossings; obstructing public footways; causing trees, timber, or iron beams to be drawn upon carriages without sufficient means of guiding the same; driving or fastening horses on footways; placing furniture, goods, etc., on footways or projections over them less than eight feet from the ground; placing, hanging up, or otherwise exposing to sale goods projecting over the footway so as to obstruct the public passage thereon; rolling or carrying casks, hoops, timber, etc., on footways; placing lines, cords, or poles across streets, or hanging clothes thereon; loitering for the purpose of prostitution; exposing the person; offering for sale or distribution obscene books, etc. (additional powers are given by Lord Campbell's Act, 20 & 21 Vict. c. 83, for the suppression of the trade in obscene books, prints, drawings, and other obscene articles, and enables the justices to authorize search to be made of the suspected premises); singing profane or obscene songs, or using profane or obscene language; discharging fire-arms; letting off fireworks, or making bonfires; (with regard to fireworks it is enacted by the Gunpowder Act, 1860, that if any person throw, cast, or fire, or aid or assist in throwing, casting, or firing any squib, serpent, rocket, or other firework in or into any thoroughfare or public place, he shall for every such offence forfeit any sum not exceeding £5); wantonly ringing door-
Driving, etc. Ib.	bells, or knocking at doors; (the mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint against him under the 10 & 11 Vict. c. 89, s. 28, charging him with having wilfully and wantonly disturbed the party and his family by violently knocking and ringing at the door at an unreasonable hour of the night); (1) unlawfully extinguishing lights of lamps; flying kites; sliding upon ice or snow; cleaning casks, etc.; cutting timber or stone; slacking, sifting, or screening lime; throwing or laying down stones, coals, etc.; beating or shaking carpets, etc., ex-
Obstructions to footways. etc. Ib.	
Prostitution. Obscene books, etc. Ib.	
Fireworks, etc. 23 & 24 Vict. c. 139, s. 9.	
Ringling bells, etc. 10 & 11 Vict. c. 89, s. 28.	
Other obstructions and nuisances. Ib.	

cept door-mats before eight o'clock in the morning; placing flower-pots, etc., on windows not properly guarded; throwing articles from roofs of houses, except snow thrown so as not to fall on passengers; permitting persons to stand on sills of windows to clean or paint them; leaving vaults or cellars open without being properly guarded, or leaving an open area, pit, or sewer, without a sufficient light after sunset; throwing dirt, ashes, etc., carrion, fish, offal, or rubbish upon, or causing offensive matter to run into any street; keeping pigsties to the front of any street not shut out by a wall or fence, or keeping swine in or near any street so as to be a common nuisance.

Pigsties and
keeping
swine.
10 & 11 Vict.
c. 88, s. 29.

Where a local Act imposed a penalty on any driver or other person who conducts or drives in, upon, or through the streets, any cattle during Sunday, it was held that the penalty was not incurred by a person who conveyed the cattle in a van or carriage through the streets. (1)

Drunken persons guilty of riotous or indecent conduct in any street or police office or station within the district of the Local Board are liable to a penalty not exceeding 40s. for each offence, or to be imprisoned for a period not exceeding seven days.

Drunkards.
Ib.

As touching nuisances in streets, the following has reference to the subject:—The owner of property is not justified in giving a person into custody found (popularly speaking) committing a nuisance against his premises, nor is he entitled to notice of action for having done so, unless he is fairly justified in believing that the person had the intention to soil or deface them within the meaning of 2 & 3 Vict. c. 47, s. 54, or the intention to commit damage or injury, or spoil them within the meaning of 24 & 25 Vict. c. 97, s. 52. (2)

Committing
a nuisance
in street.

By the Wine Licences and Refreshment Houses Act it is also enacted that every person found drunk in any street or public thoroughfare, and who, while drunk, is guilty of riotous or indecent behaviour, shall upon summary conviction of the offence before two justices be liable to a penalty of not more than 40s. for every offence, or may be committed, if the justices or magistrate before whom he is convicted think fit, instead of inflicting upon him any pecuniary penalty, to the house of correction for any time not more than seven days.

23 Vict.
c. 27, s. 40.
Penalty for
being drunk
and dis-
orderly.

These two provisions being cumulative, the offence may be dealt with under either, as may be found most expedient. Neither Act, however, interferes with proceedings under the 21 Jac. I. c. 7, in cases of drunkenness not attended with riotous or indecent behaviour, and the offences under each are quite distinct.

From a return to Parliament (No. 489, 1867), it appears that in the year 1866, there were 243 houses licensed to sell wine, and

(1) *Triggs v. Lester*, 30 J. P. 228.

(2) *Bayley v. Aldred*, 10 Jur. (N. S.) 523.

1246 licensed to sell wine and beer. By the same return it appears that the keepers of 30 of the former were convicted of offences against the licence, and 482 of the latter.

Safe keeping
of petroleum.
25 & 26 Vict.
c. 66, s. 4.

In concluding this chapter, the Petroleum Acts, 1862, 1868, for the safe keeping of petroleum may in general terms be referred to. By section 4 of the first Act the following are the local authorities beyond the district of the metropolis who are to grant licences:—

1. In boroughs, the mayor, aldermen, and burgesses, by the Council.
2. In any places, except as hereafter mentioned, within the jurisdiction of any trustees or Improvement Commissioners, appointed under the provisions of any local or general Act of Parliament, the trustees or Commissioners.
3. In any harbour within the jurisdiction of a harbour authority, the harbour authority, to the exclusion of any other local authority.
4. In any other place in which there is no local authority as above defined, the justices in petty sessions assembled.

Nitro-
glycerine.
29 & 30 Vict.
c. 69, s. 8.

By the 29 & 30 Vict. c. 69, s. 8, the 25 & 26 Vict. c. 66, is extended and applied to nitro-glycerine, and the latter Act shall be read and have effect as if throughout its provisions nitro-glycerine had been mentioned in addition to petroleum, save that so much of it as specifies the maximum quantity of petroleum to be kept without a licence shall not apply in the case of nitro-glycerine, and any quantity whatever of nitro-glycerine shall be deemed to be subject to the provisions of the Act.

Other
substances.
Ib.

The Act of 25 & 26 Vict. c. 66, is also extended and applied to any substance for the time being declared by any Order in Council to be specially dangerous.

Definition of
"Petroleum."
31 & 32 Vict.
c. 56, s. 3.

For the purposes of the Petroleum Acts, 1862, 1868, including all local Acts and bye-laws relating to petroleum or the produce thereof, "petroleum" shall include all such rock oil, Rangoon oil, Burmah oil, any product of them, and any oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any product of them, as gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer.

Regulations as
to storage of
petroleum.
Ib. s. 4.

From and after the first day of February, one thousand eight hundred and sixty-nine, no petroleum shall be kept, otherwise than for private use, within fifty yards of a dwelling-house or of a building in which goods are stored, except in pursuance of a licence given in accordance with the Petroleum Act, 1862.

Ib.

There may be annexed to any such licence such conditions as to the mode of storage, as to the nature of the goods with which petroleum may be stored, as to the testing such petroleum from time to time, and generally as to the safe keeping of petroleum, as may seem expedient to the local authority.

Any petroleum kept in contravention of this section shall be forfeited, and in addition thereto the occupier of the place in which such petroleum is kept shall be liable to a penalty not exceeding £20 a day for each day during which petroleum is kept in contravention of the Petroleum Acts, 1862 and 1868, or either of such Acts.

Regulations as to storage of petroleum.
31 & 32 Vict.
c. 56, s. 4.

No person shall sell or expose for sale for use within the United Kingdom any description of petroleum from and after the 1st of February, 1869, which gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer, unless the bottle or vessel containing such petroleum have attached thereto a label in legible characters stating as follows: "Great care must be taken in bringing any light near to the contents of this vessel, as they give off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer." Any person acting in contravention of this section shall for each offence be subject to a penalty not exceeding £5.

Prohibition of sale of petroleum for purpose of illumination.
Ib. s. 5.

CHAPTER XX.

EXTINGUISHING FIRES.

Chimneys
on fire.
21 & 22 Vict.
c. 98, s. 44.
10 & 11 Vict.
c. 89, s. 30.
Ib. s. 31.

WITH respect to fires, it is provided that persons wilfully setting or causing to be set on fire any chimney within the district shall be liable to a penalty not exceeding £5; but, notwithstanding such liability, such person is not exempted from liability to be indicted for felony. If owing to any omission, neglect, or carelessness, the chimney of any house within the district catch fire, the occupier of the premises is liable to a penalty not exceeding 10s.

Fire-engines,
etc.
Ib. s. 32.

In order to provide for the extinguishing of fires the Local Board may provide fire-engines and all necessary appliances and fire-escapes; they may also purchase and keep or hire horses for drawing the engines, provide engine-houses, and employ persons to act as firemen, subject to such rules as they may make for their regulation, and pay them such salaries and rewards as they think fit for their exertions in cases of fire.

Fires beyond
limits of
district.
Ib. s. 33.

The engines and firemen so provided may be employed in cases of fire beyond the limits of the district, and the owners of the buildings on fire are to pay for the service rendered; the amount of the compensation, in case of dispute, to be settled by two justices (whose decision is to be final) and recovered as damages.

The costs and charges incurred by the Local Board in respect of any of the above mentioned matters will fall to be defrayed out of the general district rates.

By the 28 & 29 Vict. c. 90, s. 30, when occasion requires, the Metropolitan Board of Works may permit any part of the fire brigade establishment of the metropolis with their engines, escapes, and other implements, to proceed beyond the limits of the metropolis for the purpose of extinguishing fires. The Board may also permit any part of the fire brigade establishment to be employed on special services upon such terms of remuneration as the Board may think fit.

The Select Committee of the House of Commons on fire protection, in their report (No. 471, Session 1867) recommend, in order to prevent the frequency of fires from the faulty construction of buildings, a general building Act for all towns and places in the United Kingdom governed by Municipal Corporations, Improvement Commissioners, or Local Boards of Health, similar in its general provisions and in the powers it confers on such local authorities to the Metropolitan Building Act, and to the Building Acts of Liverpool. They also recommend that the floors of all large lodging-houses for the poor be made fire-proof, and that there be ample means of escape for the lodgers in case of fire.

CHAPTER XXI.

PLACES OF PUBLIC RESORT.

VICTUALLERS or keepers of public-houses within the district who knowingly harbour or entertain constables whilst on duty are, for every offence, liable to a penalty not exceeding 20s.; and coffee-shop keepers who knowingly suffer common prostitutes or reputed thieves to assemble at and continue in their premises, are for each offence liable to a penalty not exceeding £5. A licensed ale-house is a place of public resort for the sale of refreshments within the Towns Police Clauses Act, 10 & 11 Vict. c. 89, s. 35, and the keeper of it is liable to penalties under that section for allowing prostitutes to assemble therein, although he may also at the same time be guilty of an offence against the terms of his licence under 9 Geo. IV. c. 61. The information under the section being for an offence against public policy may be laid by any one without authority from the person to whom the penalties to be recovered are to be awarded, so long as he professes that the recovery of the penalties should enure to the benefit of that person. This latter point was so held with reference to the provisions of a Local Act incorporating amongst others the 35th section of the 10 & 11 Vict. c. 89; and providing that penalties recovered before justices and not otherwise directed to be paid should be awarded to the corporations of the town or the corporation under the Act, according as the proceeding for the penalty was on behalf of one or other of those bodies. (1)

The words "assemble at and continue" must be taken to have reference to the class of persons in question assembling at and continuing in the premises for an unlawful purpose. If they go there for a lawful purpose, as for the purpose of getting necessary refreshment, and do not remain longer than is requisite for that purpose, the keeper of the house will not be liable to a conviction for knowingly suffering them to assemble in his premises. With reference to a somewhat similar provision in a local Act, it was held on a case stated for the opinion of the Court, under the 20 & 21 Vict. c. 43, that where the defendant kept a coffee-house frequented chiefly by prostitutes, and had allowed prostitutes to remain there after he had been warned that they were such, but where no disorderly conduct on their part had taken place, the magistrate had authority to

(1) *Cole v. Coulton*, 29 L. J. (N. S.) M. C. 125; 6 Jur. (N. S.) 698; 2 L. T. (N. S.) 216.

convict, though there might be no proof of disorderly conduct; but that he was not bound to convict if he was of opinion that the prostitutes did not remain in the shop beyond the time requisite for taking necessary refreshment there. (1)

Bear-baiting.
10 & 11 Vict.
c. 89, s. 36.

Persons keeping places for bear-baiting, cock-fighting, etc., are liable to a penalty of not more than £5, or, in the discretion of the justices, to imprisonment with or without hard labour for a time not exceeding one month. The Local Board may, by an order in writing, authorize the superintendent constable, with such constables as he thinks necessary, to enter any premises kept for such purposes, and take into custody all persons found therein without lawful excuse; and every person so found is liable to a penalty not exceeding 5s. A conviction for this offence does not, however, exempt the offender from any penal consequences.

The Act 12 & 13 Vict. c. 92, for the prevention of cruelty to animals, also contains provisions against bull-baiting, bear-baiting, etc., and cock-fighting, and under that Act it has been held that to assist at a cock-fight elsewhere than in a place "kept or used for the purpose of fighting or baiting any bull, bear, badger, dog, cock," etc. (s. 3), is not an offence under the Act. (2)

Under s. 2 of the same Act, it has been held that a cock is a domestic animal, and that fighting cocks with steel spurs is cruelly ill-treating them within the Act. (3)

Closing public-houses, etc.
27 & 28 Vict.
c. 64.
Ib. s. 2.

It is necessary, in concluding this subject, to advert to the Public House Closing Act, 1864 (27 & 28 Vict. c. 64), which may be adopted in certain districts under the Public Health and Local Government Acts. With the exception of the district of the Metropolitan Police force, the Act is permissive only, and shall be in force only within the limits of such corporate boroughs and districts of Improvement Commissioners as shall adopt the same by a resolution of the Council or Board assembled at a meeting held for the purpose, of which such notice has been given and which is required to be summoned on such requisition of the ratepayers as is required in the case of the adoption of the said Local Government Act, 1858 (as to which see *ante*, page 12), by a corporate borough, or in a district of Improvement Commissioners, to which the Local Government Act has not been applied, in pursuance of sections 12 and 13 of the Local Government Act, and notice of the adoption of the Act shall be given to the Secretary of State as in the case of the adoption of the Local Government Act.

As to adoption of Act by corporate borough.
Ib. s. 9.

The reference to the Local Government Act only applies to the notice to be given of the meeting of the Town Council to be held for the adoption of the Act, and not to the proceedings at such meeting. (4)

(1) *Greig v. Bendeno*, 1 E. B. & E. 133; 27 L. J. (N. S.) M. C. 294; 4 Jur. (N. S.) 875.

(2) *Morley v. Greenhalgh*, 3 B. & S. 374; 9 Jur. (N. S.) 745.

(3) *Budge v. Parsons*, 7 L. T. (N. S.) 784; 32 L. J. (M. C.) 93, 95; 3 B. & S. 379, 382.

(4) See 29 J. P. 11.

The Act shall come into operation in a corporate borough or district of Improvement Commissioners in which a resolution adopting the same has been passed at the expiration of one month from the date of the passing of the resolution; and no objection whatever to the legality of the adoption of the Act by any corporate borough or Board of Improvement Commissioners shall be made at any trial or in any legal proceeding after the expiration of three months from the date of the passing of the resolution adopting the same.

"Corporate borough" shall mean any place for the time being subject to the Act, 5 & 6 Will. IV. c. 76; "District of Improvement Commissioners" shall mean any place within the jurisdiction of a Board of Improvement Commissioners as defined for the purposes of the 12th section of the Local Government Act, 1858 (as to which see *ante*, page 10), and "Board of Improvement Commissioners" shall mean such last-mentioned Commissioners.

Definition of "corporate borough," etc. 27 & 28 Vict. c. 64, s. 4.

"Refreshment house" shall in this Act have the same meaning as it has in the Act passed in the session holden in the 23 Vict. c. 27; that is to say, all houses, rooms, shops, or buildings kept open for public refreshment, resort, and entertainment, at any time between the hours of nine of the clock at night and five of the clock of the following morning, not being licensed for the sale of beer, cider, wine, or spirits respectively, shall be deemed refreshment houses within the Act, and the resident, owner, tenant, or occupier thereof shall be required to take out a licence to keep a refreshment house (23 Vict. c. 27, s. 6).

Definition of "refreshment houses," etc. *Ib.* s. 4.

"Exciseable liquor" shall mean any spirits, foreign wine, beer, cider, sweets, or made wines, as defined by the Acts relating to the excise.

Ib. s. 4.

Save as hereinafter mentioned, no licensed victualler within the limits of this Act shall sell or expose for sale or open or keep open any house, room, garden, or other place for the sale or consumption of exciseable liquors or any article whatsoever between the hours of one and four o'clock in the morning.

Closing public houses and refreshment houses. *Ib.* s. 5.

No person within the limits of this Act shall open or keep open any refreshment house, or sell or expose for sale or consumption in any refreshment house any refreshments or any article whatsoever between the above mentioned hours.

Any person acting in contravention of this section shall be liable to a penalty not exceeding £5, to be recovered in a summary manner as provided by the Act 11 & 12 Vict. c. 43.

Nothing herein contained shall preclude a licensed victualler from selling exciseable liquors to or allowing the same to be consumed by persons lodging in his house, or the keeper of a refreshment house from selling refreshments to or allowing the same to be consumed by persons lodging in his house, within the above mentioned hours.

Nothing herein contained shall authorize a licensed victualler

to sell exciseable liquors on any Sunday, Christmas Day, Good Friday, or day appointed for public fast or thanksgiving, otherwise than during the times at which he is now authorized by law to sell the same, or authorize any other person to sell exciseable liquors, keep open any refreshment house, or sell refreshments otherwise than at the times and upon the conditions prescribed by the Acts of Parliament in that behalf made.

Occasional
licence.
27 & 28 Vict.
c. 64, s. 7.

If any licensed victualler or keeper of a refreshment house within the limits of this Act applies to the local authority for a licence exempting him from the provisions of this Act on any special occasion or occasions, it shall be lawful for the local authority, if in its discretion it thinks fit so to do, to grant to the applicant an occasional licence exempting him from the provisions of this Act during certain hours and on a special occasion or occasions to be specified in the licence; and no licensed victualler or keeper of refreshment house to whom an occasional licence has been granted under this Act shall be subject to any penalty for a contravention of this Act during the time to which his occasional licence extends, but he shall not be exempted by such occasional licence from any penalty to which he may be subject under any other Act of Parliament.

The occasional licence must be obtained from the local authority, though such a licence may have been obtained with the consent of a justice of the peace from the Inland Revenue Commissioners under 25 Vict. c. 22, s. 13, and 26 & 27 Vict. c. 33, s. 20. (1)

Partial
suspension
of Act.
28 & 29 Vict.
c. 77, s. 2.

The licensing justices at the time of granting or renewing any licence, upon the production of such evidence as they shall deem sufficient to show that it is necessary or desirable for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, if, in the discretion of such justices, they shall think fit, may grant to any licensed victualler or keeper of a refreshment house whose place of business is in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, a licence exempting him from the provisions of the Public House Closing Act, 1864, between the hours of two and four o'clock in the morning, or any part of such hours, during such days, times, or hours as shall be specified in such licence; and no licensed victualler or keeper of a refreshment house to whom such licence has been so granted shall be subject to any penalty for a contravention of the Act of 1864 during the days or times to which such licence extends, but he shall not be exempted by such licence from any penalty to which he may be subject under any other Act of Parliament; a printed notice stating the days and special hours during which and the class of persons for whom the house is open under such licence must however be affixed in a conspicuous position outside the house.

(1) *Hannant v. Foulger*, L. R. 2 Q. B. 399; 36 L. J. (M. C.) 119.

The justices, from time to time, as and when it may seem fit to them, may either withdraw such licence altogether, or alter, vary, or amend the same in such manner as such justices may deem necessary or expedient.

Withdrawal
of licence.
28 & 29 Vict.
c. 77, s. 2.

The Public House Closing Act, 1864, as amended, shall be in force in such districts under the operation of the Public Health Act, 1848, or the Local Government Act, 1858, as adopt the same; and Local Boards of Health established under or by virtue of the Public Health Act, 1848, and Local Boards established under or by virtue of the Local Government Act, 1858, may adopt the Public House Closing Act, 1864, in the same manner, and the same shall come into operation at the same time, as is provided for the adoption and coming into operation of that Act by Corporate Boroughs, or Boards of Improvement Commissioners; this provision however shall not apply to any district which is a corporate borough, or within the jurisdiction of a Board of Improvement Commissioners.

Act to be in
force in
certain dis-
tricts, etc.
Ib. s. 4.

The following persons and bodies of persons shall be deemed to be local authorities for the purposes of this Act; that is to say:

Definition of
"local
authority."
Ib. s. 5.

In any district, city, or town where petty sessions are held, except in the Metropolitan Police district, two justices of the peace sitting at petty sessions, and in any other district, city, or town, two justices of the peace acting in the district, city, or town:

In any district of Improvement Commissioners in which this Act may be in force, the superintendent or other chief officer of police in the said district, subject to the approbation of the chairman of the Commissioners.

Nothing contained in the Act shall apply to the sale at a railway station between the hours of one and four o'clock in the morning of exciseable liquors or refreshments to persons arriving at or departing from such station by railroad.

Sales at
railway
stations.
27 & 28 Vict.
c. 64, s. 10.

With reference to the above it may be added, that a person who has taken a railway ticket for a journey by railway at the usual time before the starting of the train, is a traveller within the meaning of 2 & 3 Vict. c. 47, s. 42. (1)

(1) *Fisher v. Howard*, 11 L. T. (N. S.) 373; 34 L. J. (M. C.) 42; 11 Jur. (N. S.) 305.

CHAPTER XXII.

HACKNEY CARRIAGES.

Licensing
carriages.
21 & 22 Vict.
c. 98, s. 44.
10 & 11 Vict.
c. 89, s. 37.
Ib. s. 38.
Ib. s. 39.
Ib. s. 40.
Ib. s. 41.
Ib. s. 42.
Ib. s. 43.
Ib. s. 44.

Ib. s. 45.

THE LOCAL BOARD may, within a prescribed distance, license hackney carriages to ply for hire: those carriages are defined by the 10 & 11 Vict. c. 89, s. 38, and for each licence a fee is to be paid not exceeding 5s. The fees so derived it is presumed will be applied in aid of the district fund of the Local Board. Persons applying for a licence must sign a certain requisition, which if it be false in any respect subjects the person signing it to a penalty not exceeding £10. Every licence must specify certain particulars, and is to be duly registered by the clerk of the Local Board, and to be in force for one year only. If the person holding the licence changes his place of abode, he must give notice thereof in writing to the Local Board, who by their clerk are to indorse on the licence the particulars of the change. Persons offending in this respect are liable to a penalty not exceeding 40s.; and persons permitting carriages not licensed to ply for hire, or plying for hire with such carriages, or not having the number thereof openly displayed, are liable for every offence to a penalty not exceeding 40s.

It will be no answer to an information for plying for hire without a licence from the Local Board that the hackney carriage is licensed by the Inland Revenue authorities, under the 2 & 3 Will. IV. c. 120. (1)

With reference to sect. 45 of the Towns Police Clauses Act, it has been held that the penalty attaches although the road on which the carriage plied for hire was a turnpike road under the management of turnpike trustees. (2)

Where a local improvement Act enacted that the provisions of the Towns Police Clauses Act as to hackney carriages should be extended to all stage-coaches, omnibuses, and carriages of every description plying for hire within the borough; and the 38th section of the Towns Police Clauses Act containing a proviso exempting stage-coaches from the necessity of a licence from the local authority, it was held that such proviso was incorporated into and overrode the local Act, and that omnibuses required no licence from the local authority. (3)

Drivers of hackney carriages are not to act without a licence,

(1) *Buckle v. Wrightson*, 11 L. T. (N. S.) 341; 34 L. J. (N. S.) M. C. 43; 11 Jur. (N. S.) 281.

(2) *Sims v. Matlock Bath*, 32 J. P. 134.

(3) *Cousins v. Stockbridge*, 30 J. P. 166.

for which a fee of 1s. is to be paid; and if any person does so act without being licensed, or whilst his licence is suspended, or if he lend or part with his licence except to the proprietor of the carriage; or if the proprietor employ any person who has not obtained a licence, or whose licence is suspended, such person or proprietor is liable to a penalty not exceeding 20s. for each offence. The licence of the driver is to be delivered to the proprietor of the hackney carriage, who is to retain it whilst the driver remains in his employ; and in case of complaint against the driver, to produce it to the justices, who are to make an indorsement upon it, stating the nature of the offence of which they convicted the driver, and the penalty they inflicted. Proprietors offending in this respect are liable for every offence to a penalty not exceeding 40s.

Licensing
drivers.
10 & 11 Vict.
c. 89, s. 46.
Ib. s. 47.

Ib. s. 48.

Ib. s. 49.

The proprietor of a hackney carriage, when the driver quits his service, must return to him his licence, if he has not been guilty of any misconduct; but if otherwise, the proprietor, after notice to him, is to summon the driver before a justice to answer the complaint, who may award compensation to the driver in case he find that the licence has been improperly withheld.

The proprietor of a metropolitan stage-carriage has no right to deteriorate the value of a licence of a conductor in his employment, which had been duly obtained by the conductor under the 6 & 7 Vict. c. 86, s. 8, by writing across it words injurious to the character of the conductor, even though the writing may be true. (1)

In the case of a second conviction for any offence, the Local Board, if they deem it right so to do, may revoke the licence of any proprietor or driver of a hackney carriage.

Revocation of
licence.
Ib. s. 50.

The number of persons to be carried in each hackney carriage must be painted in words at length on a plate, and publicly exhibited on the outside of the carriage; and persons failing in this respect, or refusing to carry the prescribed or any less number of persons, or refusing to drive to any place within the prescribed distance, are liable to a penalty not exceeding 40s. Exacting more than the fare agreed upon also subjects the offender to like penalty; agreements to pay more than the legal fare are not binding, and the sum paid beyond the proper fare may be recovered back, and the driver is liable to a penalty not exceeding 40s., for exacting more than the proper fare, in default of payment of which he may be committed to prison for any time not exceeding one month, unless the excess of fare and penalty be sooner paid.

Fares.
Ib. s. 51.
Ib. s. 52.
Ib. s. 53.

Ib. s. 54.

Ib. s. 55.

If an agreement be made to carry persons in a hackney carriage for a discretionary distance, and for an agreed sum, the proprietor or driver is liable to a penalty not exceeding 40s. if the distance travelled be less than that to which the persons were entitled to be carried.

Ib. s. 56.

(1) *Rogers v. Macnamara*, Weekly Reporter, 1853, p. 19.

Fares.
10 & 11 Vict.
c. 89, s. 57.
Ib. s. 58.

Other regu-
lations.
Ib. s. 59.
Ib. s. 60.
Ib. s. 61.
Ib. s. 62.
Ib. s. 64.
Ib. s. 63.

Liability of
proprietor of
licensed
carriage.

How as
regards the
public.
10 & 11 Vict.
c. 89, s. 65.
Ib. s. 66.
Ib. s. 67.

Bye-laws
with respect
to carriages
and drivers.
Ib. s. 68.

Drivers required to wait by the hirer of the carriage may demand a deposit, to be accounted for when the hiring is at an end, under a penalty not exceeding 40s., for refusing to wait or to account for the deposit; and persons taking larger than the legal fare are liable to a like penalty, and to refund the amount of the overcharge with costs. The evidence of the person aggrieved is admissible in proof of the offence.

Further penalties are provided in the case of persons being permitted to ride in hackney carriages without the consent of the hirer; for suffering other than the authorized person to act as driver; or drivers for misbehaviour; for leaving hackney carriages unattended at places of public resort, and for improperly standing with carriage, refusing to give way, obstructing any other driver, or depriving him of his fare. Hurt or damage occasioned by the driver is to be compensated for by the proprietor, to the extent of £5, on the order of a justice, which the proprietor may recover from the driver.

The following decision upon the liability of the proprietor of a hackney carriage may be cited in this place:—By arrangement between the registered proprietor and the licensed driver of a hackney carriage, plying for hire under the provisions of the 1 & 2 Will. IV. c. 22, and 6 & 7 Vict. c. 86, the driver paid 14s. 6d. each morning for the uncontrolled use of the carriage and two horses during the day, and the fares earned each day belonged to the driver. The horses were fed at the expense of the proprietor, and his name appeared upon a plate on the carriage, as required by 1 & 2 Will. IV. c. 22, s. 20. A loss having been occasioned to a person hiring the carriage, from a breach of contract by the driver safely and securely to carry, it was held that, under the circumstances, and looking to the provisions of the above statutes, the driver was to be considered as the servant or agent of the proprietor of the carriage, with authority to enter into contracts for the employment of the carriage, and that the proprietor was therefore liable for the loss occasioned by breach of contract. (1)

As regards the public, they are liable, on the order of a justice, to make compensation to drivers for loss of time in attending to answer complaints not substantiated; or refusal to pay on demand the proper fare, to have it enforced against them, with costs as a penalty; and to a penalty not exceeding £5 for wilfully damaging hackney carriages.

The Local Board may make bye-laws for regulating hackney carriages in the following respects:—the conduct of the proprietors and drivers, their badges, and hours for plying for hire; the display on the carriage of the number of licence; the number of persons to be carried in each, the display of the number so to be carried on the carriage; the number of horses to be used for each; check strings, and the furnishing of the

(1) *Powles v. Hider*, 6 El. & Bl. 207; 25 L. J. (N. S.) Q. B. 331; 2 Jur. (N. S.) 472.

carriages; the stands where they are to ply for hire; the fares to be taken; and the recovery of property left in the carriages.

The Local Board may also make bye-laws for licensing and regulating horses, ponies, mules, or asses standing for hire in the district, and for prescribing and regulating the stands, and fixing the rates of hire, and ordering the conduct of the drivers or attendants thereof, and also for licensing, regulating, and fixing the rates of hire of pleasure boats or vessels, and the persons in charge of the same.

Local Board may make bye-laws for licensing, etc., horses, boats, etc., for hire.
24 & 25 Vict. c. 61, s. 25.
Scarborough. 23 & 24 Vict. c. 44, s. 2.

A somewhat similar provision with regard to the borough of Scarborough is contained in the 23 & 24 Vict. c. 44, s. 2, which enacts that the Local Board for that district may exercise the same powers as are given to them by the Local Government Act, 1848, for licensing and making bye-laws for the regulation of hackney carriages, in and for licensing and making bye-laws for the regulation of horses, mules, and asses standing for hire in the borough, and of the persons driving and attending upon the same, and also in and for the licensing and making bye-laws for the regulation of pleasure boats plying for hire within the district of the Local Board, and the persons navigating or in attendance upon the same.

Where a Local Board made a bye-law under a local improvement Act, "that the several places in the district where painted boards shall from time to time be placed by the Local Board of Health to distinguish them as stands shall be stands for such number of carriages, &c.," the bye-law so made was held to be valid; and it was further held that it was not necessary that the exact position of the stands should be set out in the bye-law. (1) The cases in which it was so decided also establish that the jurisdiction of the Local Board extends to the sands of the sea-shore between high and low water-mark. See, however, *Reg. v. Musson, ante*, and 31 & 32 Vict. c. 122, s. 27, page 17.

Stands for carriages.
Extent of jurisdiction of Local Board.

(1) *Reg. v. Bennett*, 4 H. & N. 127; 32 L. T. 299. *Reg. v. Kenyon*, *ib.*

CHAPTER XXIII.

BURIAL OF THE DEAD.

The Burial
Acts.
15 & 16 Vict.
c. 85.
16 & 17 Vict.
c. 134.
17 & 18 Vict.
c. 87.
18 & 19 Vict.
c. 128.
20 & 21 Vict.
c. 35.
20 & 21 Vict.
c. 81.
22 Vict. c. 1.
23 & 24 Vict.
c. 64.

THE subject of the powers of Local Boards, acting as Burial Boards, is one which is much too extensive to be exhausted in the present work; and, therefore, the provisions of the Burial Board Acts and of the Public Health and Local Government Acts will be treated of only so far as they apply directly to Local Boards of Health and Local Government Boards. The Burial Board Acts have been collated by the author of this work, and are published in a separate volume, with an introduction and notes of the decisions upon those Acts; and to that work the reader is referred for detailed information on the subject of the provision of burial-grounds and the burial of the dead generally. It is necessary to observe, however, that the functions of a Local Board of Health acting as a Burial Board are wholly distinct from their functions under the Public Health and Local Government Acts, and that when, as a Burial Board, they adopt proceedings under the Burial Acts, their action in so far is in no way governed by the provisions of the Public Health and Local Government Acts.

Local Boards
under local
Acts to exer-
cise powers
of Burial
Boards.
18 & 19 Vict.
c. 128, s. 20.

The first of the series of Burial Acts in which Local Boards of Health are referred to is the 18 & 19 Vict. c. 128. By the 20th section of that Act it is enacted that any Local Board of Health acting as or created a Board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by that Act, or by the 16 & 17 Vict. c. 134, are or can be had, enjoyed, or exercised by any Burial Board therein named. By the 19th section of the same Act it is enacted that nothing therein contained shall in any wise abridge, lessen, or defeat any power, right, or privilege of any Local Board of Health, being the Burial Board of a borough created or to exist under or by virtue of any local Act of Parliament.

Ib. s. 19.

Town Coun-
cils, when
to provide
burial-
grounds.
17 & 18 Vict.
c. 134.

By a previous Act Her Majesty is empowered, by Order in Council, to invest Town Councils with the power of providing burial-grounds; whereupon the Council is to have all the powers vested in Burial Boards under the 16 & 17 Vict. c. 134. The Act also gives power to pay the expenses of carrying it into execution out of the borough fund or borough rates, and contains other provisions exclusively applicable to a Town Council acting as a Burial Board, which need not be further referred to in this work.

In case it appear to Her Majesty in Council, upon the petition

of the Local Board of Health of any district established under the Public Health Act, or upon the petition of any Commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such Local Board of Health or of such Commissioners is co-extensive with a district for which it is proposed to provide a burial-ground, and that no Burial Board has been appointed for such district, and that an Order in Council (1) has been made for closing all or any of the burial-grounds within the district, Her Majesty, with the advice of her Privy Council, in case Her Majesty see fit to do so, may order that such Local Board shall be a Burial Board for the district of such Local Board, or that such Commissioners shall be a Burial Board for the district of such Commissioners; and thereupon such Local Board or such Commissioners, as the case may be, shall be a Burial Board for such district accordingly. The powers and provisions of the 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; and 18 & 19 Vict. c. 128 (except the provisions in the 15 & 16 Vict. c. 85, sections 11-14, relating to the constitution, appointment, and resignation of members of the Burial Boards); and the provisions contained in the 20 & 21 Vict. c. 81, shall extend to the Board and Commissioners, and to their districts respectively, and to any burial-ground and places for the reception of the bodies of the dead, previously to interment, which may be provided by the Board and Commissioners respectively, in like manner as to any parish or parishes, and the Burial Board thereof, and any burial-ground, and places for the reception of the dead provided by the last-mentioned Board; save that no approval, sanction, or authorization of any vestry shall be requisite. The Act also provides that notice of the petition, and of the time when it shall please Her Majesty to order it to be taken into consideration by the Privy Council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of the Local Board of Commissioners, one month at least before the petition is to be considered. The foregoing provisions, however, shall not apply to any district exclusively consisting of the whole or part of one corporate borough, within the meaning of the Public Health Act, 1848.

In any district where a vestry of any one or more parish or place comprised therein having a known or defined boundary adopts the Act 20 & 21 Vict. c. 81, "to amend the Burial Acts," the Local Board may, at the option of the vestry, be the Burial Board for the execution of that Act within the parish or parishes, place or places so adopting the Act, and thereupon are to have all the powers, duties, rights, and obligations of a Burial Board. If the parish or parishes, place or

Constitution
of Local
Boards of
Health as
Burial Boards
by Order in
Council.
20 & 21 Vict.
c. 81, s. 4.

Constitution
by vestry
of Local
Boards as
Burial Boards
for the dis-
trict.
21 & 22 Vict.
c. 98, s. 49.

(1) See 16 & 17 Vict. c. 134, s. 1.

Constitution
by vestry
of Local
Boards as
Burial Boards
for the dis-
trict.

21 & 22 Vict.
c. 98, s. 49.

places comprised in the district adopting the Burial Acts have been declared a ward or wards for the election of members of the Local Board, and members have been elected accordingly, those members are to form the Burial Board for the parish, instead of the members of the Local Board, and are to have the like powers, duties, rights, and obligations of the Burial Board under 20 & 21 Vict. c. 81. Where, however, the parish or place has been divided into two or more parts or districts for all or any ecclesiastical purpose, and any one of such parts has a separate burial-ground, the vestry or meeting in the nature of a vestry for such entire parish or place cannot appoint a Burial Board without the approval of one of Her Majesty's principal Secretaries of State.

Power to
Burial Boards
in certain
cases to
transfer their
powers to
Local Board.
29 & 30 Vict.
c. 90, s. 44.

By the Sanitary Act, 1866, when the district of a Burial Board is conterminous with the district of a Local Board of Health, the Burial Board may, by resolution of the vestry, and by agreement of the Burial Board and Local Board, transfer to the Local Board all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer the Local Board shall have all such estate, property, rights, powers, duties, and liabilities as if the Local Board had been appointed a Burial Board by Order in Council under the 20 & 21 Vict. c. 81, s. 4 (see *ante*, p. 323).

Expenses of
Local Board
acting as a
Burial Board.
21 & 22 Vict.
c. 98, s. 49.

The expenses incurred by the Local Board in carrying into execution the powers given to them by the 20 & 21 Vict. c. 81, are to be defrayed out of rates to be levied on the parish, etc., adopting the Act, in the same manner as general district rates are levied; and all receipts by the Board, by reason of the exercise of such powers, are to be carried to the credit of the parish, etc., adopting the Act.

Expenses of
Local Board
may be paid
out of general
district rate,
or by a sepa-
rate rate.
23 & 24 Vict.
c. 64, s. 1.

Further provision is made by the 23 & 24 Vict. c. 64, reciting the 20 & 21 Vict. c. 81, s. 4, and the 21 & 22 Vict. c. 98, s. 49, and that it is expedient that the Local Boards and Commissioners respectively, when constituted Burial Boards, should be authorized to provide for their expenses, it enacts that any money required by any Local Board constituted a Burial Board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of the 23 & 24 Vict. c. 64, in the district for which they may have been so constituted a Burial Board, or for paying any moneys borrowed or annuities granted under the authority of those Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the Local Board so think fit, be paid out of the general district rates leviable within the district. The Local Board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate, to be assessed and recovered in like manner as a general district rate within the district for which they act as a Burial Board, such sums of money as shall be from time to time necessary for those purposes, or any of them.

Any money required by any such Commissioners as before mentioned, who shall have been constituted a Burial Board, for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a Burial Board, or for paying any moneys borrowed, or annuities granted under the authority of the Burial Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the Commissioners so think fit, be paid out of the improvement rate leviable within such district. The Commissioners, as such Burial Board, may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for these purposes or any of them.

Expenses of Improvement Commissioners may be paid out of improvement rate, or by a separate rate. 23 & 24 Vict. c. 64, s. 2.

The Local Board and the Commissioners respectively who may have been constituted a Burial Board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such Burial Board. Where their expenses are defrayed by moneys raised under the provisions of the 23 & 24 Vict. c. 64, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such Local Board and Commissioners respectively; and any surplus of the moneys raised by any rate made under that Act, and of the income of any burial-ground provided by means of moneys raised or paid under its provisions, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate.

Accounts. Ib. s. 3.

Audit. Ib.

With respect to the closing of existing burial-grounds, and the providing of new burial-grounds, the Burial Board of the district should proceed in the manner directed by the Burial Acts before referred to; but it is necessary to notice in this place some further provisions regarding the burial of the dead which are contained in the Public Health Act, 1848. It should be observed, however, that the following references to the General Board of Health must be read in connection with the provision in the 8th section of the Local Government Act, 1858, as to the exercise of their powers by Local Boards, without the sanction, consent, direction, or approval of the General Board of Health.

Closing burial-grounds.

If upon the representation of the Local Board, and after inquiry and report by a superintending inspector, notified to the lord bishop of the diocese, and made, notified, and published in the manner directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under the Public Health Act, and after inquiry by such other ways and means as the General Board of Health may

Prohibition of burial-grounds dangerous to health. 11 & 12 Vict. c. 63, s. 82.

Prohibition
as to burial
in certain
places.
11 & 12 Vict.
c. 63, s. 82.

Interments
within
churches
or burial-
grounds
newly erected
or formed.
Ib. s. 83.

Reception
houses for
the dead.
Ib. s. 81.
Bye-laws.
Ib.

Common
law liability
to bury.

direct, the General Board shall certify (such certificate to be published in the *London Gazette* and in some one or more of the public newspapers usually circulated within the district) that any burial-ground situate within any district to which the Act is applied, is in such a state as to be dangerous to the health of persons living in the neighbourhood, or that any church or other place of public worship within any district is dangerous to the health of persons frequenting it, by reason of the surcharged state of the vaults or graves within the walls of or underneath the building, and that sufficient means of interment exist within a convenient distance from the burial-ground, church, or place of public worship, after a time to be named in the certificate, it shall not be lawful to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which the certificate relates, except in so far as may be thereby allowed; and whosoever, after notice of the certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary thereto is liable for every offence to a penalty of £20.

No vault or grave is to be constructed or made within the walls of or underneath any church or other place of public worship built in any district after the passing of the Public Health Act, 1848, and no burial-ground is to be made or formed within any such district, without the consent of the General Board of Health, unless it be made or formed upon land purchased or authorized by Parliament to be appropriated for the purpose of being used as a burial-ground before the passing of the Act. Whosoever buries, causes, permits, or suffers to be buried any corpse or coffin in any vault, grave, or burial-ground constructed, made, or formed contrary to this prohibition, for every such offence is liable to a penalty not exceeding £50, which may be recovered by any person, with full costs of suit, in an action of debt.

For the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor, the Local Board may provide, fit up, and make bye-laws with respect to the management and charges for the use of rooms or premises in which corpses may be received and decently and carefully kept previously to interment; and they may, upon proper application, and subject to such regulations and at such rates and charges as are prescribed by their bye-laws, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any such rooms or premises.

The nuisance authority are also empowered by 29 & 30 Vict. c. 90, s. 28, *post*, to provide places for the reception of dead bodies.

The common law casts upon the person under whose roof a death takes place the duty of providing sepulture for the body, and of carrying it to the grave decently covered; for such

person cannot keep the body unburied, neither can he do anything to prevent Christian burial,—he cannot cast out the body to do violence to the feelings and health of the living, neither can he be permitted to carry it uncovered to the grave. This duty of providing burial for the dead extends not only to private persons, but to public bodies also; and therefore when the death takes place in a hospital for the cure of diseases, or other public establishment, the obligation of burying the body is imposed upon the governing body of the hospital or establishment. (1) According to this rule, therefore, if after a dead body has been received into the house provided by the Local Board for the reception of the dead the relations or friends do not make provision for the burial, the Local Board would apparently be bound to do so, though perhaps the case might be provided for by any bye-laws made under 11 & 12 Vict. c. 63, s. 81. Nevertheless in such a case application may be made to the Board of Guardians of the union in which the reception house is situated to provide for the burial of the body at the cost of the poor rates, which they are empowered to do by the 7 & 8 Vict. c. 101, s. 31. That enactment, however, is only permissive; and the Guardians may therefore exercise a discretion as to whether or not they will undertake to provide for the burial.

Burial by
guardians
of the poor.

The 18 & 19 Vict. c. 79, s. 2, enables Boards of Guardians of unions or the overseers, where there are no guardians, to enter into agreements with Burial Boards for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury; and a like power is given to visitors of lunatic asylums by the 18 & 19 Vict. c. 105, s. 12, for the burial of the dead bodies of pauper lunatics dying in asylums which they may undertake to bury.

Local Boards of Health have special duties cast upon them, when constituted Burial Boards, in respect of the repair and keeping in order closed burial-grounds; but previous to referring to those special duties, it is necessary to advert to the provisions in the 18 & 19 Vict. c. 128, s. 18, on the same subject. It is thereby enacted, that in every case in which any Order in Council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial-ground, the Burial Board or churchwardens, as the case may be, shall maintain such churchyard or burial-ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof. The costs and expenses so incurred shall be repaid by the overseers upon the certificate of the Burial Board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial-ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses.

Closed burial
grounds to
be kept in
decent order
and repair.
18 & 19 Vict.
c. 128, s. 18.

(1) *Reg. v. Stewart*, 12 A. & E. 773; 10 L. J. (N. S.) M. C. 40.

Closed burial-
grounds.
18 & 19 Vict.
c. 128, s. 18.

The above provision applies only to cases in which the churchyard or burial-ground has been closed by an Order in Council; and it is only the burial-ground of or belonging to a parish that comes within the provision, and in regard to which the Burial Board can interfere. (1) The provision is not applicable to a churchyard closed by Act of Parliament, and though it applies to the churchyard, it does not apply to the vaults which are inside a church. The subsequent Acts, 20 & 21 Vict. c. 81, s. 23, and 22 Vict. c. 1, however, make provision for the case of vaults in churches.

The churchwardens or Burial Board, as the case may be, are to maintain the churchyard or burial-ground in decent order, and to do the necessary repair of the walls and other fences, but they cannot interfere with the grave-stones or tombs, unless they be in such a state that the ground cannot otherwise be put in decent order. The repairs must be substantial repairs, and not merely repairs undertaken for ornamental purposes; though it seems that they may extend to the taking down of a ruinous wall, and supplying its place with an iron railing. All that is done for the sole purpose of rendering the churchyard reasonably fit and proper for its uses by the rector or vicar, and the inhabitants, will come under the definition of "necessary repair."

Where it is an ancient churchyard of a parish that has been closed, the churchwardens will be the proper authority to keep it in decent order, and the walls and fences in repair; but a closed burial-ground of or belonging to the parish will be kept in order, and the walls and fences in repair, by the Burial Board.

An eminent counsel has, however, advised that the correct construction of the various sections of this Act is, that the appointment of a Burial Board supersedes the churchwardens, and that the duties imposed on the latter with reference to churchyards or burial-grounds would be transferred to the former. On the other hand, it is understood that the law officers of the Crown, in a case submitted to them, have advised in accordance with the opinion expressed by the author on this point in the former editions of this work.

The provision in 18 & 19 Vict. c. 128, s. 18, is not applicable to the case of a churchyard closed by Act of Parliament, neither does it apply to the repair of vaults which are inside of the church, nor, as already stated, to burial-grounds which do not belong to the parish, such as burial-grounds attached to dissenting places of worship, or a proprietary burial-ground. As regards vaults, see the provisions in the 20 & 21 Vict. c. 31, s. 23, and 22 Vict. c. 1, s. 1.

The ground after it is closed for the purposes of burial can-

(1) *Reg. v. St. John Westgate and Elswick*, 5 L. T. (N. S.) 436; 31 L. J. (N. S.) M. C. 15.

not be applied to any secular purpose without a faculty, and no faculty could be obtained giving authority for its being so applied. It is not in the power of any Ecclesiastical Court whatever to allow any portion of consecrated ground to be devoted to secular uses, or to grant a faculty to confirm such an appropriation. Where a person has been proved to have interfered illegally with the soil of the churchyard or with erections upon it, it has invariably formed part of the judgment of the Court, that he should restore to its former state what he has so interfered with. (1)

Closed burial-grounds.
18 & 19 Vict.
c. 128, s. 18.

These observations must, however, be taken to apply to purposes which are purely secular; for it has been held that a faculty or licence may be granted for the erection of a school-house on a portion of consecrated ground in which no interments have taken place, and in which burials have been prohibited by an Order in Council, issued under the authority of the 15 & 16 Vict. c. 85, s. 2. (2)

The cost of the repairs is to be repaid out of the poor rates of the "parish or place;" but it is apprehended that it was not the intention of the legislature to cast the expense upon a single township where the churchyard belongs to the entire ecclesiastical parish, as is the case in many counties the parishes of which are divided into townships for the purposes of relief to the destitute poor under the statute of 14 Car. II. c. 12. See the introduction to Glen's Union Chargeability Act of 1865. It should be stated, however, that a contrary view of the Act has been taken, influenced by the consideration that the township itself is benefited by the protection of the churchyard, and its being prevented from becoming a nuisance to the immediate neighbourhood.

As to the species of repair or renovation which would fall within the definition of the word "necessary," it is to be observed that all which is done for the sole purpose of rendering the churchyard reasonably fit and proper for its uses by the rector and by the inhabitants is *necessary*; and that the foot-paths through the churchyard would come within the section if they are in bad condition, as in that case the churchyard would be out of order.

It has, however, been enacted with respect to closed burial-grounds, that all Local Boards of Health constituted Burial Boards may from time to time repair and uphold the fences surrounding any burial-ground which shall have been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial-grounds, and placing them in a proper sanitary condition; and where such Burial Boards are a Local

Local Boards of Health may repair fences surrounding burial-grounds.
24 & 25 Vict.
c. 61, s. 21.

(1) *Harper v. Forbes and Sisson*,
5 Jur. (N. S.) 275.

(2) *Russell v. St. Botolph, Bishopsgate*, 5 Jur. (N. S.) 300.

Repairs of
fences of
burial-
grounds.

Board of Health, they may from time to time pass bye-laws for the preservation and regulation of all burial-grounds within their limits, and the expense of carrying this section into execution may be defrayed out of any rates authorized to be levied by any Local Board constituted a Burial Board.

It will be observed that in this latter enactment the word churchyard is not named, and moreover that the words "burial-ground" are not, as in the 18 & 19 Vict. c. 128, s. 18, limited to burial-grounds of the parish, but apply apparently to all burial-grounds, whether belonging to the parish or to private persons. The expenses which may be incurred by the Board in carrying the provision into execution may be defrayed out of any rates authorized to be levied by "any Local Board constituted a Burial Board," that is to say, out of any rates levied under the 21 & 22 Vict. c. 98, s. 49, to defray the expenses incurred by the Local Board in carrying into execution the powers given to them by the 20 & 21 Vict. c. 81, in the same manner as general district rates are levied.

CHAPTER XXIV.

BAKEHOUSE REGULATION ACT.

THE BAKEHOUSE REGULATION ACT, 1863, limits the hours of labour of young persons employed in bakehouses, and makes regulations with respect to cleanliness and ventilation in bakehouses.

By the Factory Acts Extension Act, 1867, 30 & 31 Vict. c. 103, s. 5, and the Workshop Regulation Act, 1867, 30 & 31 Vict. c. 146, s. 5, bakehouses are excluded from the provisions thereof.

The "Local Authority," for the purposes of the Act, shall, as respects any place, mean the persons or bodies of persons defined to be the local authority in that place, as regards the metropolis, by the 18 & 19 Vict. c. 120, s. 134, and as regards other places, by the Nuisances Removal Act, 18 & 19 Vict. c. 121, and 23 & 24 Vict. c. 77.

Interpretation of terms.
26 & 27 Vict.
c. 40, s. 2.

"Bakehouse" shall mean any place in which are baked bread, biscuits, or confectionary, from the baking or selling of which a profit is derived.

"Employed," as applied to any person, shall include any person working in a bakehouse, whether he receives wages or not.

"Occupier" shall include any person in possession.

"The Court" shall include any justice or justices, sheriff or sheriff substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

No person under the age of eighteen years shall be employed in any bakehouse between the hours of nine of the clock at night and five of the clock in the morning.

If any person is so employed in contravention of the Act, the occupier of the bakehouse in which he is employed shall incur the following penalties in respect of each person so employed; that is to say:

Limitation of hours of labour of persons under eighteen years of age.
Ib. s. 3.

For the first offence, a sum not exceeding £2.

For a second offence, a sum not exceeding £5.

For a third and every subsequent offence, a sum not exceeding £1 for each day of the continuance of the employment in contravention of this Act, so that no greater penalty be imposed than £10.

The inside walls and ceiling or top of every bakehouse situate in any city, town, or place containing, according to the last census, a population of more than five thousand persons, and

Regulations as to cleanliness of bakehouses.

26 & 27 Vict.
c. 40, s. 4.

the passages and staircase leading thereto, shall either be painted with oil or be limewashed, or partly painted and partly limewashed: where painted with oil there shall be three coats of paint, and the painting shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months: where limewashed the limewashing shall be renewed once at least in every six months.

Ib.

Every bakehouse, wherever situate, shall be kept in a cleanly state, and shall be provided with proper means for effectual ventilation, and be free from effluvia arising from any drain, privy, or other nuisance.

Ib.

If the occupier of any bakehouse fails herein he shall be deemed to be guilty of an offence against the Act, and be subject in respect of such offence to a penalty not exceeding £5.

Ib.

The Court having jurisdiction under the Act may, in addition to or instead of inflicting any penalty in respect of an offence under section 4 of the Act, make an order directing that within a certain time, to be named in such order, certain means are to be adopted by the occupier for the purpose of bringing his bakehouse into conformity with that section; the Court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the Court shall, after the expiration of the time as originally limited, or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding £1 for every day that such non-compliance continues.

As to sleeping
places near
bakehouses.
Ib. s. 5.

No place on the same level with a bakehouse situate in any city, town, or place containing, according to the last census, a population of more than five thousand persons, and forming part of the same building, shall be used as a sleeping place, unless it is constructed as follows; that is to say:

Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling.

Unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

And any person who lets, occupies, or continues to let, or knowingly suffers to be occupied, any place contrary to the Act, shall be liable for the first offence to a penalty not exceeding 20s., and for every subsequent offence to a penalty not exceeding £5.

Power to
local
authority to
enforce
provisions of
this Act.
Ib. s. 6.

It shall be the duty of the local authority to enforce within their district the provisions of the Act, and in order to facilitate the enforcement thereof, any officer of health, inspector of nuisances, or other officer appointed by the local authority, hereinbefore referred to as the inspector, may enter into any bakehouse at all times during the hours of baking, and may inspect the same, and examine whether it is or not in con-

formity with the provisions of the Act. Any person refusing admission to the inspector, or obstructing him in his examination, shall for each offence incur a penalty not exceeding £20 ; and it shall be lawful for any inspector who is refused admission to any bakehouse to apply to any justice for a warrant authorizing him, accompanied by a police constable, to enter into any such bakehouse for the purpose of examining the same and to enter the same accordingly.

All expenses incurred by any local authority in pursuance of the provisions of the Act may be paid out of any rate leviable by them, and applicable to the payment of the expenses incurred by the local authority under the Nuisances Removal Act, and the authority may levy such rate accordingly.

All penalties under the Act may be recovered summarily before two or more justices ; as to England, in manner directed by 11 & 12 Vict. c. 43, or any Act amending the same.

Any act, power, or jurisdiction authorized by the Act to be done or exercised by two justices, may be done or exercised by the following magistrates within their respective jurisdictions ; that is to say, as to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the lord mayor of the city of London, or any alderman of the said city sitting alone or with others at the Mansion House or Guildhall.

As to expenses of local authority acting under this Act.

26 & 27 Vict. c. 40, s. 7.

Recovery of penalties.

Ib. s. 8.

Jurisdiction of certain magistrates.

Ib. s. 9.

CHAPTER XXV.

WORKSHOP REGULATION ACT.

THE WORKSHOP REGULATION ACT, 1867, regulates the hours of labour for children, young persons, and women employed in workshops.

Application
of Act.
30 & 31 Vict.
c. 146, s. 5.

By section 2 the Act applies to the whole of the United Kingdom; but it is not to apply—(1.) To any factory or part of a factory, or other place subject to the jurisdiction of the inspectors of factories, in pursuance of any Act of Parliament. (2.) To any bakehouse as defined by the Bakehouse Regulation Act, 1863.

Description
of local
authority.
Ib. s. 13.

For the purposes of the Act in the several places mentioned in the first column below, the local authority shall be the bodies of persons or persons in that behalf specified in the second column.

Places within Jurisdiction of Local Authority.

Description of Local Authority.

30 & 31 Vict.
c. 146.
Sch. II.

ENGLAND AND WALES.

The City of London and the liberties thereof.

Commissioners of Sewers of the City of London.

Parishes within the metropolis mentioned in Schedule (A.) to the Metropolis Management Act, 1855.

The vestries incorporated by the Metropolis Management Act, 1855.

Districts within the metropolis formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.

The Board of Works for the district incorporated by the Metropolis Management Act, 1855.

Boroughs (*i. e.* any place for the time being subject to the 5 & 6 Will. IV. c. 76, excepting Oxford.

The mayor, aldermen, and burgesses, acting by the Council.

The borough of Oxford and any place not included in the above descriptions, and within the jurisdiction of a Local Board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.

The Local Board.

Places within Jurisdiction of Local Authority.	Description of Local Authority.	
ENGLAND AND WALES.		
Any place not included in the above descriptions, and under the jurisdiction of Commissioners, trustees, or other persons entrusted by any local Act with powers of improving, cleansing, or paving any town.	The Commissioners, trustees, or other persons entrusted by the local Act, with powers of improving, cleansing, or paving the town.	30 & 31 Vict. c. 146. Sch. II.
Any parish not within the jurisdiction of any local authority hereinbefore mentioned, and in which a separate rate is or can be levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	

In the Act the following words and expressions have the meanings thereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say, "child" shall mean a child under the age of thirteen years: "young person" shall mean a person of the age of thirteen years and under the age of eighteen years: "woman" shall mean a female of the age of eighteen years or upwards: "parent" shall mean parent, guardian, or person having the custody of or control over any such child or young person: "employed" shall mean occupied in any handicraft, whether for wages or not, under a master or under a parent as herein defined: "handicraft" shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any article: "workshop" shall mean any room or place whatever, whether in the open air or under cover, in which any handicraft is carried on by any child, young person, or woman, and to which and over which the person by whom such child, young person, or woman is employed has the right of access and control: "the Court" shall include any justice or justices, sheriff or sheriff substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

1. During the first six calendar months next ensuing the day on which this Act is limited to come into operation, hereinafter referred to as the commencement of this Act, children of not less than eleven years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this Act:

2. During the first thirty calendar months next ensuing the commencement of this Act, children of not less than twelve

General
definitions.
30 & 31 Vict.
c. 146, s. 4.

Temporary
exceptions
to Act.
30 & 31 Vict.
c. 146.
Sch. I.

Temporary
exceptions
to Act.
30 & 31 Vict.
c. 146.
Sch. I.

years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this Act.

3. During the first twelve calendar months next ensuing the commencement of this Act, children, young persons, and women may be employed on Saturdays until half-past four o'clock in the afternoon.

4. During the first thirty calendar months next ensuing the commencement of this Act, children, young persons, and women may be employed in the manufacture of preserves from fruit in the same manner as they were employed therein before the passing of this Act.

5. During the first thirty calendar months next ensuing the commencement of this Act, male young persons of not less than sixteen years of age may be employed in any workshop where the manufacture of machinery is carried on in the same manner as if they were male persons exceeding the age of eighteen years.

Permanent
exceptions.
Ib.

6. Whereas the customs or exigencies of certain trades require that male young persons of the age of sixteen years and upwards should be occasionally employed beyond the hours allowed by this Act; it shall be lawful for one of Her Majesty's principal Secretaries of State, on due proof to his satisfaction that such customs or exigencies exist, and that such occasional employment is not injurious to the health of such male young persons, from time to time, by order to be advertised in the *London Gazette*, or otherwise published in such manner as he may think fit, to give permission that in the case of any particular workshop or class of workshops male young persons of sixteen years of age and upwards may be employed for a period not exceeding fifteen hours on any one day:

Provided that—

1st. They are not so employed except between the hours of six in the morning and nine in the evening.

2nd. In addition to the time allowed under this Act for meals, they shall be allowed half an hour for a meal after the hour of five in the evening.

3rd. They are not so employed for more than twelve days in any period of four weeks, nor on the whole for more than seventy-two days in any period of twelve months.

7. In any workshop in which the mechanical power is water, and in any workshop or class of workshops with respect to which one of Her Majesty's principal Secretaries of State certifies by order under his hand that it has been proved to his satisfaction that by reason of the nature of the business it is necessary to carry on the same throughout the night, it shall be lawful to employ male young persons during the night, subject to the same intervals of rest which they are allowed during the day, and subject to this provision, that no male young person employed during the night shall be employed

during either the preceding or succeeding day, and that no male young person shall be employed more than six nights in any fortnight.

Permanent exceptions.
30 & 31 Vict.
c. 146.
Sch. I.

For the purposes of the last mentioned provision, night shall mean any time between six o'clock in the afternoon of one day and six o'clock of the morning of the following day.

8. So much of this Act as forbids the employment of young persons and women on any Saturday after two o'clock of the afternoon shall not apply to male young persons employed in day and night turns, changing every alternate week, nor in any week to any woman or young person whose hours of actual work have not in any day in such week exceeded eight.

9. The said Secretary of State, on proof to his satisfaction that the customs or exigencies of trade, or any other special circumstances, require the alteration to be made, may, by order to be advertised in the *London Gazette*, or otherwise published in such manner as the Secretary of State may think fit, give permission, with respect to any particular workshop or class of workshops, for all or any of the following things; namely—

- (1.) That children, young persons, or women may be employed between two and eight o'clock in the afternoon on Saturday, provided that in any such workshop or workshops arrangements are made to the satisfaction of the said Secretary of State for giving on some workday in every week to every child, young person, or woman employed a half-holiday of equal length either at the beginning or at the end of their day's work; or,
- (2.) That in any workshop in which it is proved to his satisfaction that work does not commence before the hours of seven or eight in the morning, children, young persons, and women may be employed on Saturday, or on any other day on which the weekly half-holiday is given, from the hours of seven in the morning to three in the afternoon, or from eight in the morning to four in the afternoon. Subject to the usual hours for meals.
- (3.) That male young persons of not less than sixteen years of age may be employed in the same manner as if they were male persons exceeding the age of eighteen.

10. Where the occupier of any workshop is a person of the Jewish religion, and it is his custom to keep such workshop closed on Saturday until sunset, it shall be lawful for him to employ young persons or women on that day from after sunset until nine o'clock at night.

Subject to the foregoing exceptions, the following regulations shall be observed with respect to the employment of children, young persons, and women in workshops.

Regulations as to time of labour.
30 & 31 Vict.
c. 146, s. 6.

- (1.) No child under the age of eight years shall be employed in any handicraft.

Regulations
as to time
of labour.
30 & 31 Vict.
c. 146, s. 6.

(2.) No child shall be employed on any one day in any handicraft for a period of more than six and a half hours, and such employment shall take place between the hours of six in the morning and eight at night.

(3.) No young person or woman shall be employed in any handicraft during any period of twenty-four hours for more than twelve hours, with intervening periods for taking meals and rest amounting in the whole to not less than one hour and a half, and such employment shall take place only between the hours of five in the morning and nine at night.

(4.) No child, young person, or woman shall be employed in any handicraft on Sunday, or after two o'clock on Saturday afternoon, except in cases where not more than five persons are employed in the same establishment, and where such employment consists in making articles to be sold by retail on the premises, or in repairing articles of a like nature to those sold by retail on the premises.

(5.) No child under the age of eleven years shall be employed in grinding in the metal trades or in fustian cutting.

Penalty for
employment
of children,
young per-
sons, and
women con-
trary to the
provisions of
this Act.
Ib. s. 7.

If any child, young person, or woman is employed in contravention of the Act, the following consequences shall ensue:

First, the occupier of the workshop in which such child, young person, or woman is employed shall be liable to a penalty of not more than £3.

Second, the parent of or the person deriving any direct benefit from the labour of or having the control over the child, young person, or woman shall be liable to a penalty of not more than 20s., unless it appears to the Court before whom the complaint is heard that the offence has been committed without the consent, connivance, or wilful default of the parent or person so benefited, or having such control.

Provision
with respect
to use of fan
in grinding.
Ib. s. 8.

In every workshop where grinding, glazing, or polishing on a wheel, or any other process is carried on by which dust is generated and inhaled by the workmen to an injurious extent, if it appears to the local authority or to any inspector of factories that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, it shall be lawful for the local authority or for the inspector of factories, by notice served on the occupier of the workshop in the manner in which notices given by such local authority or by the inspector of factories are usually served, to require a fan or such mechanical means as may from time to time be approved by one of Her Majesty's principal Secretaries of State, under the provisions of the Factory Acts, to be provided by the occupier of the workshop within a reasonable time.

If the occupier of any workshop fails to provide a fan or other mechanical means in compliance with a notice served on him in manner aforesaid he shall be deemed to be guilty of an

offence against this Act, and to be subject in respect of such offence to a penalty not exceeding £10 nor less than £3.

The Court having jurisdiction to inflict any penalty under this Act may, in addition to or instead of inflicting such penalty in respect of an offence under this section, make an order directing that within a certain time to be named in such order he do provide such fan or other mechanical means: the Court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the Court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding £1 for every day that such non-compliance continues.

If, on the complaint of any officer of health, inspector of nuisances, or other officer appointed by a local authority, or of any superintendent of police, it appears to any justice of the peace that there is reasonable cause for believing that any of the provisions of this Act or of the Sanitary Act, 1866, are contravened in any workshop, it shall be lawful for such justice, by order under his hand, to empower the complainant to enter into such workshop at any time within forty-eight hours from the date of such order, and to examine such workshop; and any person so empowered may examine touching any matter within the provisions of this Act or of the Sanitary Act, 1866, so far as relates to such workshop, any person whom he finds in such workshop.

Any person refusing admission to any person so empowered, or obstructing him in the discharge of his duty, shall for each offence incur a penalty not exceeding £20.

Any inspector or sub-inspector of factories may, when any person is at work at any handicraft, enter any workshop and inspect the condition thereof, and examine touching any matter within the provisions of this Act or of the Sanitary Act, 1866, so far as relates to such workshop, the persons therein, provided that he report to one of Her Majesty's principal Secretaries of State the fact of such entry, and the condition of the workshop, in his next half-yearly report.

Any person obstructing any inspector or sub-inspector in making such entry as aforesaid, or in his inspection of a workshop, shall for each offence be liable to a penalty not exceeding £20.

Where in any workshop the owner or hirer of any machine or implement moved by steam, water, or other mechanical power, in or about or in connection with which machine or implement children, young persons, or women are employed, is some person other than the occupier of the workshop, and such children, young persons, or women are in the employment and pay of the owner or hirer of such machine or implement, in any such case such owner or hirer shall, so far as respects any

Provision with respect to use of fan in grinding. 30 & 31 Vict. c. 146, s. 8.

Power to officers appointed by local authority, etc. to enter workshops. Ib. s. 9.

Penalty on persons refusing admission. Ib.

Power to inspector or sub-inspector of factories to enter workshops and inspect condition thereof. Ib. s. 10.

Penalty on obstructing inspector, etc. Ib.

Liability of hirer of machine instead of occupier. Ib. s. 11.

offence against this Act which may be committed in relation to such children, young persons, or women, be deemed to be the occupier of the workshop.

Recovery
and appli-
cation of
penalties.
30 & 31 Vict.
c. 146, s. 12.
Ib.

All penalties under this Act may be recovered summarily, as to England before two or more justices in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

The Court imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards the payment of such costs of the proceedings as the Court thinks just (including compensation for loss of time to the person upon whose information such penalty was recovered), and, subject as aforesaid, all penalties shall be applied in the manner directed by the Acts referred to in this section.

Regulations
for attendance
at school of
children em-
ployed in
workshops.
Ib. s. 14.

The following regulation shall be made (subject to the provisions hereafter to be mentioned) respecting the education of children employed in workshops :

- (1.) Every child who is employed in a workshop shall attend school for at least ten hours in every week during the whole of which he is so employed.
- (2.) In computing for the purpose of this section the time during which a child has attended school there shall not be included any time during which such child has attended either—
 - (a) In excess of three hours at any one time, or in excess of five hours on any one day ; or
 - (b) On Sundays ; or
 - (c) Before eight o'clock in the morning, or after six o'clock in the evening :

Provided, that the non-attendance of any child at school shall be excused—

- (1.) For any time during which he is certified by the principal teacher of the school to have been prevented from attendance by sickness or other unavoidable cause.
- (2.) For any time during which the school is closed for the customary holidays, or for some other temporary cause.
- (3.) For any time during which there is no school which the child can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child.

Parents
to cause
children
to attend
school.
Ib. s. 15.

The parent of every child employed in a workshop shall cause that child to attend school in manner required by this Act, and every parent who wilfully fails to act in conformity with this section shall be liable to a penalty of not more than 20s. for each offence.

Occupiers of
workshops
shall obtain
certificates
of attendance
of children at
school.

Every occupier of a workshop who has employed a child for any time amounting in the whole to not less than fourteen days, shall on Monday in every week during the employment of such child obtain from the principal teacher of some school a certificate that the child so employed has, in manner required by this

Act, attended school during the preceding week, if attendance at school was so required during that week. 30 & 31 Vict. c. 146, s. 16.

The certificate may be in the following form, or in such other form as one of Her Majesty's principal Secretaries of State may from time to time prescribe. Ib.

The employer shall keep the said certificate for one month, and shall produce the same to any inspector or sub-inspector of factories whenever required by him during that period. Ib.

Every person who acts in contravention of this section shall be liable to a penalty of not more than £3. Ib.

FORM OF CERTIFICATE OF SCHOOL ATTENDANCE.

30 & 31 Vict.
c. 146.
Sch. III.

School.

I do hereby certify that [*Christian name and surname of the child*] has attended the above school for not less than ten hours during the week ending on Saturday the _____ of _____, 18 ____.

(Signed) A.B.

Principal teacher of the above school.

Date _____ of _____ 18 ____.
Address of school _____

The principal teacher of a school which is attended by any child employed in a workshop may apply in writing to the occupier of such workshop to pay such sum as hereinafter mentioned on account of any child in respect of whom he may have duly granted a certificate in pursuance of this Act, and after the date of such application the occupier, so long as he employs the child, shall pay to the principal teacher of the said school for every week that the child attends that school the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one-twelfth part of the wages of the child. The occupier may deduct the sum so paid by him from the wages payable for the services of such child. On application of teacher, occupier to pay sum for schooling of child, and deduct it from wages. 30 & 31 Vict. c. 146, s. 17.

Any occupier who, after such application, refuses to pay on demand any sum that may become due as aforesaid, shall be liable to a penalty not exceeding 10s.

If an inspector of factories is satisfied, by inspection of a school or otherwise, that the principal teacher of a school who grants certificates of school attendance required under this Act ought to be disqualified for granting such certificates for any of the following reasons; namely, Inspector may disqualify for granting certificates any teacher who is unfit. Ib.

1. Because he is unfit to instruct children by reason either of his ignorance or neglect, or of his not having the necessary books and materials;
2. Because of his immoral conduct;
3. Because of his continued neglect to fill up proper certificates of school attendance—

in any such case he may serve on the teacher a written notice, stating the reason for such disqualification. At the expiration of two weeks from the date of such notice the teacher shall,

Inspector
may dis-
qualify for
granting
certificates
any teacher
who is unfit.
30 & 31 Vict.
c. 146, s. 17.

subject to the appeal hereinafter mentioned, be disqualified for granting certificates.

The inspector shall, so far as he can, serve on every occupier of a workshop who obtains certificates from such teacher a notice to the like effect as the notice served on the teacher, and also specifying a school which the child employed in the workshop of such occupier can attend within one mile (measured according to the nearest road) from the workshop or the residence of the child.

Any teacher who is disqualified as aforesaid, and any occupier of a workshop who obtains certificates from him, may, within three weeks after the service of the notice on the teacher, appeal therefrom to one of Her Majesty's principal Secretaries of State, who may confirm or reverse such disqualification.

After a teacher is disqualified for granting certificates no certificate given by him shall be deemed to be a certificate in compliance with this Act, unless in the case of there being no other school which the child employed in a workshop can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child, or unless with the written consent of an inspector of factories.

The inspectors of factories shall in their reports to one of Her Majesty's principal Secretaries of State report the name of every teacher disqualified under this section during the preceding six months, the name of the school at which he taught, and the reason for the disqualification; and in the case of such teacher's continued neglect to fill up proper certificates, shall report the fact of such neglect to the Committee of Council on Education, if such teacher be employed in any school in receipt of annual grants made by the Committee of Council on Education.

Penalty for
forging, etc.
certificates.
Ib.

Every person who forges or counterfeits any certificate required by this Act, or gives or signs any such certificate falsely, or wilfully makes use of any forged, counterfeited, or false certificates, or aids in or connives at any of the foregoing offences, shall be guilty of a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour.

Local au-
thority to
enforce Act.
Ib. s. 18.

It shall be the duty of the local authority to enforce within their jurisdictions the provisions of this Act, so far as relates to any powers or authorities conferred on the local authority by this Act, and all expenses incurred by them in enforcing the same may be defrayed out of any funds in their hands, or any rates leviable by them and applicable to any purpose relating to the improvement, paving, cleansing, or management of the places within their jurisdiction, or, in cases where the local authority is in the receipt of any poor rate, out of any such rate.

Provision as
to pleading

Where the proceedings are taken against any person in respect of any offence under this Act committed in or relating to

a workshop, it shall not be competent for the defendant to prove that workshop is a factory within the meaning of any Act for regulating factories, unless he has previously given notice of its being a factory to the inspector of factories in manner required by any Act of Parliament in that behalf.

Every inspector or sub-inspector of factories shall be furnished with such certificate of his appointment as the Secretary of State may direct; and on applying for admission to any workshop, such inspector or sub-inspector shall, if required, produce to the occupier the said certificate; every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or falsely pretends to be an inspector or sub-inspector of factories, shall be guilty of a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour.

factory.
30 & 31 Vict.
c. 146, s. 19.

Inspector or
sub-inspector
to be fur-
nished with
certificate of
his appoint-
ment.
Ib. s. 20.

CHAPTER XXVI.

STIPENDIARY MAGISTRATES.

Short title. THE STIPENDIARY MAGISTRATES ACT, 26 & 27 Vict. c. 97, enabling cities, towns, and boroughs of twenty-five thousand inhabitants and upwards to appoint stipendiary magistrates, recites that—

Whereas the execution of the office of justice of the peace within populous cities and places in England and Wales has become difficult and burdensome, the great and increasing extent of the populations therein, and the difficult and important legal questions that arise under various public and local Acts, creating unreasonable demands upon the time of justices : and whereas there is reason to believe that such cities and places would secure the services of stipendiary magistrates for the more speedy and effectual execution of the said office, the better protection of the persons and properties of the inhabitants, and the advantage of the public, if provision were made by authority of Parliament for the appointment of such magistrates.

Local Board
to make bye-
law as to
salary when
Crown may
appoint a
justice.
26 & 27 Vict.
c. 97, s. 3.

It enacts that if any such Local Board of any city or place shall, by a majority of not less than two-thirds of the number of such Board, think it expedient that a stipendiary magistrate should be appointed to execute the office of a justice of the peace within the district, the Local Board is empowered, by a like majority, to make a bye-law or minute fixing the amount of the salary which he is to receive in that behalf, subject to the approval of one of Her Majesty's principal Secretaries of State. Such bye-law or minute shall be transmitted to one of Her Majesty's principal Secretaries of State, and it shall be lawful thereupon for Her Majesty, if she shall think fit, to appoint a fit person, being a barrister-at-law of not less than five years' standing, to be, during Her Majesty's pleasure, police magistrate and a justice of the peace for such city or place, and to order that such sum shall be paid quarterly out of the local improvement rate of such city or place as will be sufficient to pay such yearly salary to the justice so assigned, not exceeding in the whole the salary mentioned in the bye-law or minute so approved, clear of all fees or deductions, as to Her Majesty shall seem fit. The treasurer of the Local Board shall pay to the justice so assigned, out of the local improvement rates, the salary so directed to be paid, by four equal quarterly payments, and in the same proportion up to the time of the

death of such justice, or his ceasing to act under such assignment: Provided that in every case of vacancy of the office of police magistrate in any such city or place no new appointment of police magistrate shall be made until the Local Board, in manner before referred to, shall again make application to one of Her Majesty's principal Secretaries of State in that behalf, and as in the case of the first appointment of a police magistrate in the city or place.

The Local Board are authorized and required to provide and furnish a fit and suitable office, to be called the police-office of the city or place, for the purpose of transacting the business of the justices of the city or place, and to pay from time to time, out of the local improvement rates, such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such police-office, provided that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police-office.

Local Board to provide and furnish a police-office. 26 & 27 Vict. c. 97, s. 4.

Such magistrate is here required to appoint one fit and proper person, being an attorney-at-law, in actual practice, as a clerk, to be removable at his pleasure, and as often as there shall be a vacancy in the office of clerk to the magistrate by death, resignation, removal, or otherwise. Such clerk shall attend (except when prevented by illness or some other sufficient cause, to be allowed by the magistrate, who shall appoint a temporary deputy) at all official meetings, and do all such work and transact all such business as is usually done and transacted by justices' clerks; and he and his successors shall be paid such yearly salary as the Local Board shall appoint, subject to an appeal to the Secretary of State, who is empowered finally to determine the amount of the salary, for his time, trouble, attendance, and expenses in the execution of his office, by the Local Board, in four quarterly payments, as directed with reference to the payment of the salary of the magistrate; but he shall not be concerned, either by himself or partner, in any matter before the said magistrate, or arising out of or consequent thereupon in any other court, on pain of dismissal. He shall receive and take all such fees as are authorized to be taken by the clerks to the justices acting for the county within which the city or place is locally situate: Provided that a copy of the table of fees shall be affixed in the public office of every magistrate appointed under the Act, who may remit any fees, in part or in whole, for reasonable cause, and award such costs as to him shall seem meet to be paid to or by either of the parties to any charge or complaint, whether or not a warrant or summons shall have issued.

Magistrate to appoint a clerk, being an attorney-at-law. Ib. s. 6.

When disqualified from acting as attorney. As to fees to be taken. Ib.

Power to remit fees and award costs. Ib.

The clerk shall pay over all fees to the treasurer of the Local Board once every quarter of a year, and shall keep accounts of them in writing, and shall at the same time render to the Local Board an account thereof. All such fees, together with all the fines, penalties, and forfeitures hereinafter referred

Clerk to pay over fees to treasurer. Ib. s. 7.

Fees received to form one general fund. 26 & 27 Vict. c. 97, s. 7.
Power to Local Board to make rates for payment of magistrates, etc.
Ib.

Application of fines and penalties.
Ib.

As to penalties appropriated under Local Acts.
Ib.

Interpretation of terms.
Ib. s. 2.

to, shall be carried by the treasurer to the credit of the local improvement rate: Provided that it shall be lawful for the Local Board, if it should become necessary so to do, from time to time to make a rate or assessment, not exceeding one penny in the pound in any one year, upon all property rateable to the improvement rate within the city or place for the purpose of raising as much money as, together with the fees, fines, penalties, and forfeitures, shall be sufficient to pay the salaries of the magistrate and his clerk, the rent and all other expenses of the offices, and of law or other books, printing, and stationery, and of all other charges and expenses connected with or incidental to the duties of the magistrate or his clerk, such rate or assessment to be made, levied, and enforced either with and as part of such improvement rate, or to be separately assessed, levied, and enforced, and with the same powers and in the same manner as the improvement rate. All fines, penalties, and forfeitures imposed by such magistrate, save and except those made payable to the informer who shall sue for the same, or any party aggrieved, and those recoverable under any Act relating to the customs, excise, or post-office, or to trade or navigation, or any branch of Her Majesty's revenue, shall be recovered for and adjudged to be paid to the treasurer of the Local Board, and shall be by him carried to the credit of the improvement rate, and be applied as part thereof: Provided that, if under any Local Watch Act such fines, penalties, and forfeitures shall have been already appropriated, the same shall be applied as directed by such Local Act.

In the construction of the Act the words "city" or "place" shall mean any city or place, not a municipal corporation, wherein the Public Health Act, Local Government Act, or Local Improvement Act, is or shall be in operation, and shall comprise the whole area to which the Public Health Act, Local Government Act, or Local Improvement Act shall extend, provided there is a population within such area of twenty-five thousand persons; and provided such place is not included in any district for which a stipendiary magistrate is acting by virtue of any Act of Parliament.

The expression "Local Board" shall mean the Board appointed under any such Acts.

The word "county" shall mean county, riding, parts, liberty, or division.

The word "jurisdiction" shall include the entire area of a city or place to which any of such Acts shall extend.

This Act shall not extend to the city of London, or to any city or place which is now incorporated or shall be incorporated under the provisions of the Municipal Corporations Act, 5 & 6 Will. IV. c. 76.

CHAPTER XXVII.

FREE PUBLIC LIBRARIES.

THE PUBLIC LIBRARIES ACT, 1855, 18 & 19 Vict. c. 70, for further promoting the establishment of free public libraries and museums in municipal towns, and for extending it to towns governed under Local Improvement Acts, repealed that of 1850, 13 & 14 Vict. c. 65, but the repeal does not invalidate or affect anything already done in pursuance of the latter Act; and all libraries and museums established under that Act, or the Act thereby repealed, shall be considered as having been established under the Act of 1855, and the Council of any borough which may have adopted the Act of 1850, or established a museum under the Act thereby repealed, shall have and may use and exercise all the benefits, privileges, and powers given by the Act of 1855; and all moneys which have been borrowed by virtue of the repealed Acts, or either of them, and still remaining unpaid, and the interest thereof, shall be charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of the Act of 1855

In the construction of the Act of 1855, the following words and expressions shall, unless there be something in the subject or context repugnant to such construction, have the following meanings assigned to them respectively; that is to say, "parish" shall mean every place maintaining its own poor; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under the 59 Geo. III. c. 12, or under the 1 & 2 Will. IV. c. 60, or under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry; "ratepayers" shall mean all persons for the time being assessed to rates for the relief of the poor of the parish; "overseers of the poor" shall mean also any persons authorized and required to make and collect the rate for the relief of the poor of the parish, and acting instead of overseers of the poor; "Board" shall mean the Commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office, and acting in the execution of any Improvement Act, being an Act for draining, cleansing, paving, lighting, watching, or otherwise improving a place, or for any of those purposes; "improvement

Interpreta-
tion of terms.
18 & 19 Vict.
c. 70, s. 3.

rates" shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such Improvement Act shall be applicable for the general purposes of such Act.

Adoption of,
in boroughs.
18 & 19 Vict.
c. 70, s. 4.

The mayor of any municipal borough shall, on the request of the Town Council (or on the request in writing of ten ratepayers residing within the borough, 29 & 30 Vict. c. 114, s. 3), convene a public meeting of the burgesses of the borough, in order to determine whether the Act shall be adopted for the municipal borough, and ten days' notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting. If at such meeting two-thirds of such persons then present shall determine that the Act ought to be adopted for the borough, the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws for the time being in force relating to the municipal corporation of such borough. The mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat.

The votes should be taken by a poll of the burgesses present at the meeting; and the poll should be checked by the burgess list made by the overseers under 5 & 6 Will. IV. c. 76, s. 15.

29 & 30 Vict.
c. 114, s. 4.

Any parish, of whatever population, adjoining any borough, district, or parish which shall have adopted or shall contemplate the adoption of the said Public Libraries Act, 1855, may, with the consent of more than one-half of the ratepayers thereof present at a meeting to be convened in manner directed by the said Act with reference to meetings of ratepayers, and with the consent also of the Town Council of such borough, or the Board of such district, or the Commissioners of such parish, as the case may be, determine that such adjoining parish shall for the purposes of the said Act form part of such borough, district, or parish, and thereupon the vestry of such adjoining parish shall forthwith appoint three ratepayers Commissioners for such parish, one-third of whom shall go out of office, and the vacancies be filled up as provided by the said Act with respect to the Commissioners of a parish, and such Commissioners for the time being shall for the purposes of the said Act be considered as part of such Town Council, Board, or Commissioners, as the case may be; and the expenses of calling the meeting, and the proportion of the expenses of such adjoining parish of carrying the said Act into execution, shall be paid out of the

poor rates thereof to such person as the Commissioners of the said adjoining parish shall appoint to receive the same.

The Public Libraries Act, 1855, shall be applicable to any borough, district, or parish or burgh, of whatever population.

The expenses incurred in calling and holding the meeting, whether the Act shall be adopted or not, and the expenses of carrying the Act into execution in any municipal borough, may be paid out of the borough rate of such borough, or by and out of a rate to be made and recovered in such borough, in like manner as a borough rate may be made and recovered therein; but the amount so paid in such borough in any one year shall not exceed the sum of one penny in the pound upon the annual value of the property in such borough rateable to a borough rate: Provided always, that nothing in this Act shall interfere with the operation of the 28 & 29 Vict. c. 108 (as to which see *post*, p. 351), so far as it relates to the collection of a rate for a public library in the city of Oxford.

Distinct accounts shall be kept of the receipts, payments, and liabilities of the Council with reference to the execution of the Act.

The Board of any district, being a place within the limits of any Improvement Act, shall, upon the requisition in writing of at least ten persons assessed to and paying the improvement rate, appoint a time not less than ten days nor more than twenty days from the time of receiving such requisition for a public meeting of the persons assessed to and paying such rate in order to determine whether the Act shall be adopted for such district, and ten days' notice at least of the time, place, and object of such meeting shall be given by affixing the same on or near the door of every church and chapel within the district, and also by advertising the same in one or more of the newspapers published or circulated within the district, seven days at least before the day appointed for the meeting. If at such meeting two-thirds of such persons then present shall determine that the Act ought to be adopted for the district, the same shall thenceforth take effect and come into operation in such district, and shall be carried into effect according to the laws for the time being in force relating to such Board.

The expenses incurred in calling and holding the meeting, whether the Act shall be adopted or not, and the expenses of carrying the Act into execution in any such district, shall be paid out of the improvement rate, and the Board may levy as part of the improvement rate, or by a separate rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses; and the Board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of the Act, which accounts shall be audited in the same way as accounts are directed to be audited under the Improvement Act.

The amount of the rate to be levied in any borough, district,

Act may be adopted whatever amount of population. 29 & 30 Vict. c. 114, s. 6. Expenses of executing Act in boroughs to be paid out of borough fund. *Ib.* s. 2.

Accounts. 18 & 19 Vict. c. 70, s. 5. Adoption of in district within limits of Improvement Act. *Ib.* s. 6, and 29 & 30 Vict. c. 114, s. 6.

Expenses of carrying Act into execution by Improvement Commissioners. 18 & 19 Vict. c. 70, s. 7.

Rates levied
not to exceed
one penny
in the pound.
18 & 19 Vict.
c. 70, s. 15, and
29 & 30 Vict.
c. 114, s. 1.
Accounts.
18 & 19 Vict.
c. 70, s. 15.

or parish in any one year for the purposes of the Public Libraries Act, 1855, shall not exceed the sum of one penny in the pound. The accounts of the Board with reference to the execution of the Act shall at all reasonable times be open, without charge, to the inspection of every person rated to the improvement rate, who may make copies of or extracts from such accounts, without paying for the same. In case the Board, or any of their officers or servants having the custody of such accounts, shall not permit the same accounts to be inspected, or copies of or extracts from the same to be made, every person so offending shall for every such offence forfeit any sum not exceeding £5.

Power to
borrow on
mortgage.
Ib. s. 16.

For carrying the Act into execution, the Council, Board, or Commissioners respectively may, with the approval of Her Majesty's Treasury, from time to time borrow at interest, on the security of a mortgage or bond of the borough fund, or of the rates levied in pursuance of this Act, such sums of money as may be by them respectively required; and the Commissioners for carrying into execution the Act 9 & 10 Vict. c. 80, may from time to time advance and lend any such sums of money.

Ib. s. 17.

The clauses and provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money on mortgage or bond, and the accountability of officers, and the recovery of damages and penalties, so far as such provisions may respectively be applicable to the purposes of the Act, shall be respectively incorporated with the Act.

Lands, etc.,
may be
appropriated
purchased,
or rented for
the purposes
of this Act.
Ib. s. 18.

The Council of any borough and the Board of any district respectively may from time to time, with the approval of Her Majesty's Treasury, appropriate for the purposes of the Act any lands vested, as the case may be, in a borough, in the mayor, aldermen, and burgesses, and in a district in the Board. The Council, Board, and Commissioners respectively may also, with such approval, purchase or rent any lands or any suitable buildings; and the Council and Board respectively may, upon any lands so appropriated, purchased or rented respectively, erect any buildings suitable for public libraries or museums, or both, or for schools for science or art, and may apply, take down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Ib. s. 19.

The Lands Clauses Consolidation Act, 1845, shall be incorporated with the Act; but the Council, or Board, respectively shall not purchase or take any lands otherwise than by agreement.

Lands, etc.,
may be sold
or exchanged.
Ib. s. 20.

The Council, or Board, respectively may, with the like approval as is required for the purchase of lands, sell any lands vested in the mayor, aldermen, and burgesses, or Board respectively, for the purposes of the Act, or exchange the same for any lands better adapted for the purposes. The moneys to arise from such sale, or to be received for equality of exchange,

or a sufficient part thereof, shall be applied in or towards the purchase of other lands better adapted for such purposes.

The general management, regulation, and control of such libraries and museums, schools for science and art, shall be, as to any borough, vested in and exercised by the Council, and as to any district in and by the Board, or such Committee as such Council or Board may from time to time appoint, the members whereof need not be members of the Council or Board, who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science, for the use of the library or museum, or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public.

General
management.
18 & 19 Vict.
c. 70, s. 21.

Wherever a public museum or library has been established under any Act relating to public libraries or museums, or shall hereafter be established under either of the Acts, a public library or museum, as the case may be, may at any time be established in connection therewith without any further proceedings being taken under the said Acts.

A library or
museum may
be established
in connection
with any
museum or
library.

The lands and buildings so to be appropriated, purchased, or rented as aforesaid, and all other real and personal property whatever presented to or purchased for any library or museum established under the Act, or school, shall be vested, in the case of a borough, in the mayor, aldermen, and burgesses, and in the case of a district in the Board.

29 & 30 Vict.
c. 114, s. 10.
Property of
library, etc.,
how to be
vested.
18 & 19 Vict.
c. 70, s. 22.

If any meeting, called as aforesaid to determine as to the adoption of the Act for any borough, or district, shall determine against the adoption, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting.

How if meet-
ing deter-
mine against
adoption of
Act.

Lastly, the admission to all libraries and museums established under this Act shall be open to the public free of all charge.

Ib. s. 23.

The custody, care, and management of the public library in the city of Oxford shall be vested in the Local Board, in accordance with the provisions in that behalf of the Acts from time to time in force with respect to public libraries managed by Local Boards for the purpose of their districts. All the expenses of and incident to the custody, care, and management thereof, and the adding to and maintaining of the same, shall from time to time be paid by the Local Board out of moneys raised by the general district rate as if the Public Libraries Act, 1855, had been duly adopted for the whole of the Oxford district as from time to time constituted, and the public library had been established thereunder. The amount expended by the Local Board in any one year for the purposes of the public library shall not exceed the amount which might be raised by them by a rate for the purpose made under that Act.

Museums to
be free.
Ib. s. 25.
The public
library in
the city of
Oxford vested
in the Local
Board.
28 & 29 Vict.
c. 108, s. 22.

Limit of the
amount to be
raised for the
public library.
Ib.

P A R T I I I .

CHAPTER I.

DISTRICT FUND AND RATES.

§ 1. DISTRICT FUND.

- District fund account.
11 & 12 Vict.
c. 63, s. 87. THE treasurer of the Local Board is to keep a separate account, to be called the "District Fund Account," and the moneys carried to such account, under the directions of the Act, shall be applied by the Local Board of Health in defraying such of the expenses incurred, or to be incurred by the Local Board in carrying the Act into execution, and not otherwise expressly provided for, as they may think proper.
- The moneys to be carried to the district fund account are those arising—
- Ib. s. 73. From the re-sale of premises purchased for the purpose of widening, opening, enlarging, or otherwise improving any street, which shall not be wanted for that purpose.
- Ib. s. 117. From surplus of arrears of highway rates paid by the Local Board to their treasurer.
- Ib. s. 133. From all penalties or sums recovered on account of any penalty paid over to the treasurer of the Local Board.
- 21 & 22 Vict.
c. 98, s. 67. From all penalties incurred in any corporate borough, and made payable to the Local Board of Health by the Public Health Act, 1848, or any Acts incorporated therewith, or any Act of which the powers are to be executed by a Local Board.
- Ib. s. 32 (1). From profits made by the Local Board in the sale of house-refuse, &c., and of all matters collected by the Local Board or contractor in the whole or any part of their district.
- Ib. c. 91, s. 47;
29 & 30 Vict.
c. 90, s. 43. From receipts by the Local Board under the Acts for the establishment of public baths and wash-houses.
- 14 & 15 Vict.
c. 34, s. 8. Income arising from the lodging-houses provided under Labouring Classes Lodging-houses Act, 1851.
- Charges on district fund. The charges to be defrayed out of the district fund are as stated *supra*, and also the expenses of and incident to exe-

cuting the Common Lodging-houses Act within the district of the Local Board, as well as the expenses of carrying into execution the Labouring Classes Lodging-houses Act, 1851.

14 & 15 Vict.
c. 28, s. 4 (2).
14 & 15 Vict.
c. 34, s. 8.

§ 2. GENERAL DISTRICT RATES.

The Local Board shall, from time to time, and as often as occasion may require, make and levy, in addition to any other rate, a rate or rates to be called "general district rates," for defraying such expenses as are charged upon that rate by the Act, and such other expenses of executing the Act as are not provided for by any other rate, or defrayed out of the district fund account.

General district rate.
11 & 12 Vict.
c. 63, s. 87.

The expenses charged upon the general district rates are the following: preliminary inquiries (sect. 11); election expenses (sect. 30); salaries (ss. 37, 40); surveys, etc. (sect. 42); draining ditches, etc. (sect. 58); public conveniences (sect. 57); altering and examining gas-pipes, etc. (ss. 71, 80); compensation for damage (sect. 144); lighting streets, etc. (12 & 13 Vict. c. 94, s. 8); repair of highways (21 & 22 Vict. c. 98, s. 37). Under Public Baths and Wash-houses Acts (21 & 22 Vict. c. 98, s. 47; 29 & 30 Vict. c. 90, s. 43). Under Labouring Classes Lodging-houses Act, 1851 (14 & 15 Vict. c. 34, s. 8). Under the Act to provide Better Dwellings for Artizans and Labourers (31 & 32 Vict. c. 130, s. 31, and Schedule I.). See *ante*, p. 282.

Expenses charged thereon.

With regard to other expenses which may be properly defrayed out of a general district rate, it has been held that the expenses of a Chancery suit, *bonâ fide* and necessarily incurred, might properly be defrayed from the produce of the rate; but that the expenses of defraying *quo warranto* proceedings, incurred in the merely personal affair of individual members of the Local Board, could not lawfully be charged to the ratepayers of the district, and that consequently the rate was bad, as it appeared by the estimate to have been made for the purpose of defraying those costs. The Court also held that the Local Board were not justified in opposing the bill of a Gas and Coke Light Company in Parliament, either by the result or by any anterior prospect of advantage to be gained to the ratepayers, if the opposition had been successful. (1)

Costs of legal and parliamentary proceedings.

In delivering judgment, Lord Campbell, C.J., said, "The Act of Parliament is a most beneficial one, but it is liable to great abuse. This is an Act under which there may be great jobbing, and while it is the duty of the Court to assist Local Boards in carrying out the Act for the public benefit, it is also our duty to guard the ratepayers from a misapplication of the

(1) *Workson v. Marris*, 28 L. T. 266.

Costs of legal
and parlia-
mentary
proceedings.

funds. If the expense of opposing bills in Parliament is to be charged upon the rate, it may lead to great abuse. I do not say that a case may not arise where it would be a very good thing for the ratepayers that a private bill should be opposed in Parliament, and for the expenses of which the rate might be liable; but it should clearly appear that such opposition is for the benefit of the ratepayers, and above all, it is advisable that the Local Board should, in the first instance, call a meeting of the ratepayers, and have their previous assent to the opposition." See, however, *Reg. v. Street* (1) on the latter point.

Subsequently the person employed in preparing statistics and giving evidence before a Committee of the House of Commons on behalf of the Local Board in opposition to the Gas Company's bill, sued four members of the Local Board who were parties to the resolution authorizing the opposition to the bill, and it was held that they were not liable. (2) On the same point the following cases may be referred to—viz., *Brighton v. North*, (3) and *Attorney-General v. Wigan*, (4) which related to proceedings taken in opposition to bills introduced to Parliament by other parties; and *Attorney-General v. Norwich*, (5) and *Attorney-General v. Southampton*, (6) which related to bills proposed to be introduced to Parliament by the public authorities of those places. In the first an injunction was granted to restrain a municipal corporation from applying the borough fund towards defraying the expenses of a bill before Parliament for improvements and increased powers, it being alleged that there was no surplus of the borough fund. The Court does not justify applications to Parliament by trustees at the expense of the trust fund in the first instance; but if the Court authorize the application, it will also authorize the payment of the expenses out of the trust fund. In the Southampton case, the Court refused to allow money raised for poor rates under a local Act to be applied in payment of the expenses of a bill in Parliament, promoted by the guardians, but rejected.

In a late case it was held that a Highway Board have no power to incur expenses in opposing a turnpike trust bill in Parliament, even though the bill should affect some of the parishes in the district, and the opposition should be successful. (7)

There are cases, however, in which it seems that the costs of proceedings in Parliament may be paid out of local rates. (8) A peremptory mandamus went to compel certain Commissioners to make a rate for the purpose of paying the costs of their clerk

(1) 18 Q. B. 682; 22 L. J. (N. S.)
M. C. 29.

(2) *Bailey v. Cuckson*, 32 L. T.
124.

(3) 16 L. J. (N. S.) Ch. 255; 2
Phillips, 216.

(4) 5 De G. Mac. & G. 52;

18 Jur. 299; 23 L. J. (N. S.) Ch. 429.

(5) 12 Jur. 424.

(6) 13 Jur. 669.

(7) *Reg. v. Kingsbridge*, 18 L. T.
(N. S.) 554; 32 J. P. 372, 502.

(8) *Reg. v. Norfolk Commissioners
of Sewers*, 15 Q. B. 549.

in opposing a bill in Parliament, which, if it had passed in its then state, would have injuriously affected the lands of the Commissioners. The Court said that it was clear that the proceedings in Parliament were properly taken, and that the Commissioners would not have done their duty if they had allowed the bill to pass as originally intended without opposition. But, the Court added, this decision must not be considered as a precedent that expenses are to be rashly incurred in Parliament, and discharged out of a rate.

Costs of legal
and parlia-
mentary
proceedings.

In the case of *Attorney-General v. Wigan*, ante, p. 354, Wood, V.C., said, one of the provisions of this Act is for the general government of the whole borough, and for the suppression of all nuisances which are not already punishable. Now it seems to me very strange to say, if it be a corporate duty to prevent nuisances, and to prevent them by bye-laws, yet if an enormous and gigantic nuisance was about to be perpetrated, and the corporation were to take steps by applying to this Court, through the medium of the Attorney-General, for an injunction to restrain such nuisance, that they would not be allowed the costs of such a proceeding: if they (the promoters) were about to abstract 800,000 gallons of water a day from the town, or if there had been a perfectly pure stream used for the purpose of drinking, and they had brought down an enormous mass of foul water which rendered the river perfectly inapplicable for the use of the inhabitants, it seems to me it would be a very strange thing to say, in the case of a continued nuisance of that description, although the corporation are under at least a moral obligation to protect the town from all petty nuisances, yet that they shall not lay out a farthing to prevent a large nuisance like that to all the inhabitants of the borough. It seems to me that a case of that kind would be within the words "all other expenses necessarily incurred for carrying into effect the provisions of the Act," which as Lord Cottenham says; in *Attorney-General v. Mayor of Norwich*, does not mean mere expenses of meetings, but expenses of duties imposed upon them. But if they would be justified in applying by injunction to restrain the nuisance, they are equally justified in offering their opposition to an Act of Parliament to prevent that nuisance being legalized. Commissioners of Sewers were held entitled to levy a rate for costs *bonâ fide* and prudently incurred in opposing a bill likely to injure a level, this being a litigation arising out of their duties. (1)

In a case which occurred in Ireland, an application was made to the Court of Queen's Bench in Ireland for a certiorari against the Corporation of Dublin, who had applied borough funds to oppose a bill before a Committee of the House of Lords. It being shown that the provisions of the bill would have the effect of reducing the income of the corporation, that Court refused

(1) *Attorney-General v. Andrews*, 14 Jur. 905.

Costs of legal and parliamentary proceedings.

the certiorari, as the corporation were justified in opposing the bill, and applying the borough funds for that purpose. (1)

As regards a municipal corporation charging upon the borough fund the costs of an action brought against individuals, and where, in the particular case, piles had been driven into a river-bank by a former occupier of the riparian soil, the corporation claiming the right to the soil, and an action being brought on their behalf, it was held that costs of litigation, undertaken *bonâ fide* and on reasonable grounds for the defence of corporate rights, may be paid out of the borough fund, though such litigation is eventually unsuccessful. (2)

Generally it may be added to the foregoing that, if any injury is likely to be caused to the district or to property of the Local Board by works to be executed under the authority of parliamentary powers, a Local Board would be justified in taking all such steps as owners of private property usually resort to in opposing bills introduced into Parliament which affect their property, and in paying the reasonable costs incurred in the opposition out of their funds. As, however, proceedings in Parliament are generally very costly, they should not be undertaken without good and sufficient grounds.

A municipal corporation is not liable for the costs of an attorney conducting on their behalf an opposition to a bill in Parliament affecting their privileges, unless the retainer is under the common seal of the corporation. (3)

Application of rates.

Rates levied under the Public Health and Local Government Acts constitute a statutable fund, which can only be legally applied to the purposes contemplated by the statute, and not to any other. On this point the following passage from the judgment of the Court of Queen's Bench in the case of *Reg. v. Stewart*, (4) which, though referring to the poor rate, appears to be equally applicable to Public Health rates, may be quoted: "In the present case we are thrown necessarily on the statute of Elizabeth; the overseer is a statutable officer, dealing with a statutable fund, and accountable for its application to statutable purposes. The language of that statute leaves no doubt. The relief and employment of the chargeable poor are its objects; the fund is created for them, and cannot be diverted from them, unless to objects specifically engrafted on them by subsequent statutes, of which this is not one. No usage, however proper in itself, or however uninterrupted, can prevail against that which the plain construction of a statute forbids."

Where a rate was appealed against, and one of the grounds of appeal was "that the said rate or assessment appears upon the face of it to have been made, and was in fact made for

(1) *Reg. v. Dublin Town Council*, 9 L. T. (N. S.) 123.

(2) *Reg. v. Tamworth* (Mayor of), 19 L. T. (N. S.) 433.

(3) *Sutton v. Spectacle-makers' Company*, 10 L. T. (N. S.) 411.

(4) 12 A. & E. 777.

(amongst other purposes) the purpose of defraying the expenses of an accountant and his assistant in examining the accounts of the Board, and for which purpose the said Board had no power, by the Public Health Act or otherwise, to make a rate," and the Sessions quashed the rate, subject to the opinion of the Court of Queen's Bench on a case, that Court, whilst confirming the judgment of the Sessions, said, "There may be, no doubt, circumstances under which it would be perfectly legal to employ an accountant; but of these circumstances the Sessions are to judge. Here it appears that the Sessions inquired into all these circumstances, and heard evidence on both sides. The result of their inquiry is, that in their judgment the charge could not be justifiably imposed upon the ratepayers. If it were for us we should concur in their judgment." (1)

The Local Board may make and levy general district rates prospectively, in order to raise money for the payment of future charges and expenses, or retrospectively, in order to raise money for the payment of charges and expenses which may have been incurred at any time within six months before the making of the rate.

Rates may be prospective or retrospective.
11 & 12 Vict. c. 63, s. 89.

When, however, any rate is appealed against, or the validity of any rate is disputed, the time during which the appeal remains undecided, or any legal proceedings concerning the rate are pending, is to be excluded in calculating the period of six months within which the rate may be made retrospectively.

Saving when rate is appealed against
21 & 22 Vict. c. 98, s. 54.

If the money is intended to be applied in payment of debts incurred more than six months previously to the making of the rate, that would probably be a good ground of appeal against the rate, as no validity is given to payments in respect of debts incurred beyond that time, except where the charges are expressly authorized by the Act; on this point see the case of *Waddington v. City of London Union*. (2)

But in a case in which the plaintiff in an action claiming a writ of mandamus to be directed to the Local Board of Moss-side, to make and levy a district rate for the payment of a judgment obtained by the plaintiff against the Local Board, it was held that a rate may be made retrospectively by a Local Board in order to raise money for the payment of charges and expenses that may have been incurred more than six months previously, notwithstanding the 11 & 12 Vict. c. 63, s. 89, provided that under the circumstances the delay is excusable and not to be undue. (3)

With reference to the costs of a writ of mandamus, Cockburn, C.J., in *Reg. v. Kent JJ.*, (4) said, "the application for the costs of the mandamus must be made within a reason-

(1) *Reg. v. Worksop*, 21 J. P. 451. Jur. (N. S.) 84; 35 L. J. (Q. B.) 61; 13 L. T. (N. S.) 463; L. R. 1 Q. B. 63; 6 B. & S. 943.

(2) 28 L. J. (N. S.) M. C. 113; 1 E. B. & E. 370.

(4) 7 B. & S. 399.

(3) *Worthington v. Hulton*, 11

able time; and looking to the analogy of the statute 11 & 12 Vict. c. 63, s. 89, which enables a Local Board to make a retrospective rate for the payment of expenses incurred within six months before the making of the rate, six months is a reasonable time. We cannot apply that analogy strictly, but we approximate to it as nearly as we can by laying down the rule that such applications should be made within two terms after the writ has been obeyed."

Subsequently, in Trinity Term, 1867, the following *Regula Generalis* was made by the Court:—It is ordered that for the future application for costs of mandamus shall be made within two terms of the obeying of such writ. (1)

It will be seen from *Rowell v. Hartlepool*, ante, p. 99, that a mandamus will lie to compel a Local Board to levy a rate to satisfy damages sustained by reason of a sewer having been made by the Local Board.

Charges on
rates.

Where Commissioners under a Local Act became indebted to their architect for work and labour and plans, and the district for which they acted was afterwards placed under a Local Board of Health, and the Local Board substituted for the Commissioners, it being provided that if the property and estate of the Commissioners should be insufficient to discharge their liabilities, the deficiency should be charged upon the rates leviable under the Public Health Act, it was held that the provisions in 11 & 12 Vict. c. 63, s. 89, did not apply to the liabilities of the Commissioners, which were made a charge upon the rates. (2) Lord Campbell, C.J., in that case said that sect. 89 of the Public Health Act, 1848, does not contemplate such a charge as the one which was in question, but only such as might be incurred by the Board of Health in carrying out that Act, and not such as are charged on the rates. He added, the expression "charged on the rates" impliedly gives a power to make a rate to pay such debts. Error having been brought to review the judgment of the Court of Queen's Bench in this case, it was held by the Court of Error that a plea that the cause of action did not accrue within six months before the action was brought, and that the said debts were not nor are a charge or expense incurred by the said Local Board within six months before suit, or within six months before demand for the said rate, was no answer to the claim, as the six months' limitation in sect. 89 of the Public Health Act, 1848, for levying a retrospective rate, did not apply to a debt or claim like that of the plaintiff's made chargeable by Act of Parliament. (3) The same case seems to show that a plea that the alleged causes of action did not accrue within six years is a bad plea to a declaration for a mandamus, as the Statute of Limitations does not bar an application for such a writ; and that a declaration for a

(1) 7 B. & S. 399.

(2) *Ward v. Lowndes*, 5 Jur. (N. S.) 1124; 33 L. T. 181.

(3) Id. 29 L. J. (N. S.) Q. B. 40; 6 Jur. (N. S.) 247; 1 L. T. (N. S.) 268; 1 E. & E. 940.

mandamus to levy a rate to pay a debt is good, though it does not state the amount of the debt. Charges on rates.

In another case a rule had been obtained to show cause why the Local Board should not make a rate for the purpose of paying a debt due to a contractor. The work, it appeared, was done in 1857, and concluded in April of that year, and the writ was issued on the 2nd June, and the following July a verdict was obtained, but judgment was not signed till February, 1858, and the question was whether the six months within which the rate must be made was to date from the time the debt was contracted, or from the date of the judgment. The rule was thereupon made absolute, on the ground that there was no wilful delay, and that the judgment was delayed by misfortune. (1)

A question as to what are expenses incurred within six months before the making a rate came before the Court in a case where a Local Board of Health had entered into a contract for the execution of certain works, which were not paid for in full at the termination of the contract, and for the recovery of which an action was brought. The nature of the case will be best understood from the following statement of the principal facts connected with it, and dates of the several transactions. On the 21st of June, 1856, the works having been completed, there was due to the contractor a balance of £1013 16s. 8d.; and upon an action being commenced for the recovery of that sum, an agreement was entered into between the plaintiffs and the Local Board, by which the former agreed to receive £1000, with interest and costs, and the Local Board, on their part, agreed to a judge's order that immediate judgment should be had for such sum, interest, and costs, and that payment should be made on the 27th of December, 1856, in default of which judgment should issue, and a judge's order was accordingly obtained. The Local Board having failed to make the payment in accordance with the agreement, the plaintiffs put in execution, which only realized £75 15s. 6d.; and afterwards, on the 7th of May, 1857, gave notice to the Local Board that they required them to make a rate for the purpose of raising the money due to them, and also that they would apply to the Queen's Bench for a mandamus to compel them to do so. Application for a mandamus was accordingly made, and it issued on the 12th of June, 1857, which was within six months after the 27th of December, when the money was agreed to be paid. On behalf of the Local Board it was contended that the charges for which they could make a rate, under sect. 89, were charges made so by the Act, and that a rate could only be made within six months from the time the money were due under the contract, and consequently that they could not be compelled to make a rate, as they had no power to do so. But putting a Mandamus to levy a rate.

(1) *Swire v. Burley*, 33 L. T. 222.

Mandamus to
levy a rate.

reasonable construction upon the statute, so as to do justice to all parties, the Court held that a new charge was created after the 27th of December, 1856, and therefore gave judgment for the Crown, that a mandamus should issue compelling the Local Board to make a rate to pay the claim. (1) Where, however, through the delay of a plaintiff in enforcing his demand against a Local Board, it becomes necessary for the Board to have the authority of a mandamus to justify them in paying a sum of money, the Court will not make a rule absolute calling on the Board to pay the costs of the mandamus. (2)

In an action against a Local Board, the declaration alleged that the plaintiffs paid a rate in 1856 to which they had been assessed for works of a public nature executed by the Local Board; that it was admitted that the money had been received by the Board erroneously, but they had no funds out of which they could repay it, and they could not levy a rate to repay it as more than six months had elapsed; that an action was brought in January, 1862, and judgment recovered; that plaintiffs had demanded repayment, and the Local Board had refused; and concluded by demanding a mandamus under the Common Law Procedure Act. The Court, however, refused the mandamus, as the declaration showed that more than six months had elapsed before the claim was enforced by action. Per Cockburn, C.J.: "If the action had been brought within six months, and judgment afterwards obtained, the Rotherham case would apply; and I should have held, on the authority of that case, although it is not free from doubt, that it was a charge within section 89; but inasmuch as the claim was not sought to be enforced within six months, it is now too late. The Rotherham case shows that when the action is brought within six months the judgment may be treated as the period from which the prescribed time begins to run. I protest," he said, "against the doctrine that any judgment against the Local Board will give this Court authority to award a mandamus. We must see on the face of the declaration whether this is a case within section 89. This might have been a charge within the section if the claim had been enforced within six months, but I cannot think that the statute intended that the rate-payers posterior to the time when the charge was incurred were to be made liable whenever the Local Board might choose to suffer judgment by default." (3)

Where a plaintiff in his declaration prayed a writ of mandamus to compel a Local Board of Health to levy a rate, and pay him the amount for damage awarded, and which occurred more than six months before the application, but the award

(1) *Reg. v. Rotherham*, 27 L. J. (N. S.) Q. B. 156; 8 E. & B. 906; 4 Jur. (N. S.) 261.

(2) *Reg. v. Burleigh*, 1 L. T. (N. S.) 92.

(3) *Burland v. Kingston-upon-Hull*, 32 L. J. (N. S.) Q. B. 17; 9 Jur. (N. S.) 275; 7 L. T. (N. S.) 316; 3 B. & S. 271.

was not made within those six months, it was held that the plaintiff was entitled to his writ, for that the six months under section 89 of the 11 & 12 Vict. c. 63, must be reckoned from the time that the award was made. It would be no answer to an application for a writ of mandamus to levy a rate in such a case that the Board might possibly have funds to pay the amount required, and that a fresh rate might not be necessary. (1)

If at the time of making a general rate any premises are unoccupied, they are to be included in the rate, but the rate is not to be charged upon any person in respect thereof whilst they continue to be unoccupied; if, however, they are afterwards occupied during any part of the period for which the rate was made, and before it has been fully paid, the name of the incoming tenant is to be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the period is to be collected in the same manner as if the premises had been occupied at the time when the rate was made.

If, on the other hand, any owner or occupier assessed or liable to any rate cease to be owner or occupier of the premises before the end of the period for which the rate was made, and before it is fully paid, he is liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be owner or occupier; if any person afterwards become owner or occupier of the premises during part of the period, he is to pay such part of the rate as shall be in proportion to the time during which he continues to be owner or occupier, to be recovered from him in the same manner as if he had been originally assessed or liable.

The Local Board may from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the purposes of the Act, and make a separate assessment upon any such part, for and in respect of all or any of the purposes for which the same is formed; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under the Act. If any expenses are incurred in respect of two or more parts of a district in common, they shall be apportioned between them in a fair and equitable manner.

By part of a district is intended not a house or tenement, but a division of territory within the jurisdiction of the Local Board. And the Local Board may divide the district under 11 & 12 Vict. c. 63, s. 82, so as to allow a separate highway rate being made under 21 & 22 Vict. c. 98, s. 37 (2), upon part of the district which is not benefited by works of sewerage, &c.

(1) *Ringland v. Lowndes*, 33 L. J. (N. S.) C. P. 25; 10 Jur. (N. S.) 48; 15 C. B. (N. S.) 189.

Assessment
on part of
district.

Per Blackburn, J., "The language of the 89th section is as comprehensive as the English language can make it. The words are, 'for all, or any, or either of the purposes of this Act.'" (1)

The power given to Local Boards "from time to time to divide their districts or any street therein into one or more parts, for all or any or either of the purposes of the Act, and make a separate assessment upon any such part for or in respect of all or any of the purposes for which the same is formed," is a discretionary power, and if the Board do not divide the district, the rate under section 89 of the 11 & 12 Vict. c. 63, is to be laid on the whole district, even though the premises rated receive no direct or indirect improvement from the works in respect of which the rate is made. It is sufficient that the district or part of the district within which the premises are situated, and of which they form part, is benefited by the works executed. (2)

This decision proceeds not only on the ground that the word "may" implies a discretionary power, but also on the ground that the owner and the occupier of the premises may receive both personally and indirectly, in a pecuniary point of view, benefit from the execution of the works; for an estate may be improved in saleable value from the sanitary improvement in the immediate neighbourhood of which it is situated, and the occupier of it may derive benefit from the improved roads along which he passes in his daily avocations, and the reduction of poor rates owing to the general health of the district having been improved, even though the particular premises may not have derived a direct benefit.

Mode of as-
sessment of
general dis-
trict rates.
21 & 22 Vict.
c. 98, s. 56.

General district rates shall be made and levied upon the occupier of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property, ascertained by the rate (if any) for the relief of the poor made next before the making of the assessments under the Act (subject to certain exceptions to be after mentioned *post*, p. 367).

As an option is given by sect. 56 of the Local Government Act, 1858, to a Local Board to have an assessment of their own made, the general district rates are not "required" to be based on the poor rate, and are therefore not within sect. 28 of the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103). (3)

Poor rate
books to be

For the purpose of assessing the general district rate, any person appointed by the Local Board may inspect, take copies

(1) *Farr v. Boston* (MS.)

(2) *Dorling v. Epsom*, 5 E. & B. 471; 24 L. J. (N. S.) M. C. 152; 1 Jur. (N. S.) 956.

(3) *North Eastern Railway Company, apps., Scarborough, resp.*, W. N. 1868, p. 286.

of, or make extracts from, any poor rate within the district, or books relating to such rate; and if any officer having the custody thereof refuses to admit inspection, or taking of any copies or extracts, for each offence he incurs a penalty not exceeding £5. If there should be no such assessment, or if it be, in the judgment of the Local Board, an unfit criterion for making a general district rate, a valuation is to be made by a person appointed by the Local Board for that purpose, in manner, as near as circumstances will permit, prescribed by the Parochial Assessments Act, 6 & 7 Will. IV. c. 96, or any other Act for the time being in force for regulating parochial assessments; and the net annual value of the property is to be ascertained by reference to such valuation and assessment.

accessible for rating under Public Health Acts. 21 & 22 Vict. c. 98, s. 56. Power of valuation as prescribed by 6 & 7 Will. IV. c. 96, in case there should be no assessment. *Ib.*

The Local Board, before proceeding to make any general district rate under the Public Health Act, are to cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing the several sums required for each purpose, the rateable value of the property assessable, and the amount of rate which for each purpose it is necessary to make in the pound; and the estimate so made is forthwith, after being approved of by the Local Board, to be entered in the rate-book, and be kept at the office of the Board, and be open to public inspection.

Estimate to be prepared before making rates. 11 & 12 Vict. c. 63, s. 98.

The estimate which is required to be made is analogous to the title of the poor rate, and if the estimate contains any illegal purposes it is bad. (1) It has been held that a poor rate is bad if the heading is omitted, (2) and therefore general district or private improvement rates must also be bad if the estimate be omitted. It may be added that general district rates levied by the Local Board of Health would be a subject of deduction in ascertaining the net annual value of the premises, in accordance with the 6 & 7 Will. IV. c. 96, s. 1.

One general district rate may, it seems, be made to include both past and future expenses, if the amount of each is distinguished in the estimate; (3) and per Cockburn, C.J., we see no objection to past and future expenses being provided for, so long as they are sufficiently specified in the estimate, in one and the same rate.

Public notice of the time and intention to make any general district rate, and of the place where a statement of the proposed rate is deposited for inspection, is to be given by the Local Board in the week immediately before the day on which the rate is intended to be made, and at least seven days previously;

Notice of rate. *Ib.* s. 99.

(1) *Reg. v. Worksop*, 21 J. P. 451.

(2) *Ex parte Moulton Overseers*, 25 L. J. (N. S.) M. C. 49.

(3) *Reg. v. Worksop*, 11 Jur. (N. S.) 1015; 34 L. J. (M. C.) 220; 29 J. P. 407, 759; 5 B. & S. 951.

Notice of rate. but in case of proceedings to levy or recover any rate, it is not
11 & 12 Vict. necessary to prove that notice was so given.
c. 63, s. 99.

The statute requires the notice to be given "at least seven days previously." The seven days are therefore exclusive of the day when notice was given, and the day when the rate is to be made. (1)

Rates to be
open to in-
spection.
Ib. s. 100.

Any person interested in or assessed to any rate may inspect it as well as the estimate, and may take copies of or extracts from them without payment, and if obstructed in so doing by the person having the custody of the rate or documents, such person is liable to a penalty not exceeding £5.

Parish
defined.
29 & 30 Vict.
c. 113, s. 18.

By the Poor Law Amendment Act, 1866, in all statutes, except where there shall be something in the context inconsistent therewith, the word "parish" shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Mode of
assessment.

In order to facilitate the making of the district rates by Local Boards, it would be a convenient arrangement if the assessment committee of the union in which the particular parish may be comprised were to have the valuation list of the parish so arranged as to keep together the properties comprised within the part of the parish which composes the district of the Local Board's jurisdiction. The valuation list, however, in such a case, must be one document, and not a separate list for each part of the parish within and without the district of the Local Board.

The person rated must have such an occupation of the premises as would make him liable to the poor rate in respect thereof; the word "occupiers" in section 88 of the 11 & 12 Vict. c. 63, being used in the same sense as in the 43 Eliz. c. 2. (2)

The enactment in 11 & 12 Vict. c. 63, s. 149, that whenever the consent, sanction, approval or authority of the Local Board of Health is required by the provisions of the Act the same shall (in the case of a non-corporate district) be in writing under their seal and the hands of five or more of them, applies to a general district rate made by the Local Board, and the want of the seal and signatures would be fatal to the validity of the rate. (3)

In the case of a corporate district the common seal only is required by section 149. By the Sanitary Act, 1866, all Local Boards are, however, now incorporated.

In the case of the Local Sanitary Act of Liverpool a person

(1) *Reg. v. Salop JJ.*, 8 A. & E. 173.

(2) *Hodgson v. Carlisle*, 8 E. & B. 116; 4 Jur. (N. S.) 160.

(3) *Reg. v. Workson*, 5 B. & S. 951; 34 L. J. (M. C.) 220; 29 J. P. 759.

was rated in respect of his property within the borough, and appealed to the Quarter Sessions of the borough on the ground that he was rated at too large a sum. The Local Act provided that the net annual value of the property in respect of which the person was liable to be rated was to be ascertained according to the meaning of the words "net annual value" in the 6 & 7 Will. IV. c. 96, s. 1; and that it should in all cases for the purposes of the Sanitary Act, "be taken and estimated according to such value as the same was or should be rated or assessed in the rate or assessment for the relief of the poor in the year preceding." The assessment in the rate appealed against was made according to the poor rate of the preceding year, and on the appeal the appellant proposed to show that the assessment, although according to the poor rate, was too high; but the Recorder decided that under section 156 of the Local Act he could not go into evidence as to the value, and dismissed the appeal. A rule nisi having been obtained commanding the Recorder to enter continuance and hear the appeal, the Court of Queen's Bench refused to grant a mandamus to compel the Recorder to hear the appeal, on the ground that the dismissal was not a declining of jurisdiction by him, but a decision on the appeal; and that therefore the Court had no power to issue the mandamus whether the construction which the Recorder had put upon the Act were right or wrong. The Court further held that the decision of the Recorder was right, and that under section 156 the poor rate of the preceding year was, on an appeal against the rate under the Local Act, conclusive as to the value of the property assessed. (1)

Assessment
of general
district rates.

In the Banbury district, the rates are not, inclusive of all highway rates, in any one year to exceed 3s. 6d. in the pound upon the net annual value of the property in the corporate part, and 2s. in the pound in the non-corporate part; in the case of land used as arable, meadow, or pasture-ground only, woodlands, market-gardens, etc., canals or railways, the rate is not to exceed in any one year 6d. in the pound. Again, in the district of Barnsley, the rates leviable within the district, inclusive of all highway rates, are not in any one year to exceed in the whole the sum of 4s. in the pound upon the net annual value of property assessable to such rates within the district. So also in the borough of Middlesborough, where the rate is likewise not to exceed 4s. in the pound upon the net annual value of property assessable thereto; except property consisting of land used as arable, meadow, or pasture-ground only, or as woodland, market-gardens, or nursery-grounds, land covered with water, or used only as a canal or towing-path, or as a railway. In the case of such excepted property, the rates are not in any one year to exceed in the whole the sum of 9d. in the pound upon the net annual value.

Banbury
district.
15 & 16 Vict.
c. 42, s. 4.

Barnsley
district.
16 & 17 Vict.
c. 24, s. 5.

Middles-
borough
district.
18 & 19 Vict.
c. 125, s. 82.

(1) *Reg. v. Recorder of Liverpool*, 20 L. J. (N. S.) M. C. 35.

Weston-super-Mare district.
24 & 25 Vict.
c. 128, s. 2.

The following provision regarding the Weston-super-Mare district is contained in the 24 & 25 Vict. c. 182, s. 2. The Weston-super-Mare Improvement Commissioners, acting as the Local Board within the district, shall have power and authority to levy rates or assessments within their district to an amount not exceeding in the whole in any one year the sum of 3*s.* 6*d.* in the pound on the annual value of houses, buildings, and property, other than land within the district; provided that if it shall at any time appear that the sum of 3*s.* 6*d.* in the pound is not sufficient, it shall be lawful for the Commissioners, with the consent of the majority of ratepayers present at the annual meeting for the settlement of accounts, to be expressed in the same manner as consent to the adoption of the Local Government Act, to increase the rates beyond the sum of 3*s.* 6*d.* Notice of the intention of the Commissioners to make any such increase must, however, be given by them one month previous to such annual meeting by advertisement in some newspaper printed or circulated within the district of the Local Board.

Limitation
of rates in
Portsmouth.
27 & 28 Vict.
c. 83, s. 2.

The general district rate leviable in the borough of Portsmouth shall not exceed in any one year the sum of 2*s.* 6*d.* in the pound sterling upon the net annual value of property assessable thereto within the borough.

Limitation
of rates in
Canterbury.
29 Vict.
c. 24, s. 2.

The rates leviable within the district of the city and borough of Canterbury, under the provisions of the Local Government Act, 1858, for all the purposes of that Act, shall not in any one year exceed the amount of 3*s.* in the pound sterling upon all house property within such district assessable to such rates under the said Act, nor the sum of 6*d.* in the pound sterling upon all lands within such district used for agricultural purposes only.

Limitation
of rates in
Ramsgate.
29 & 30 Vict.
c. 107, s. 2.

The general district rate leviable within the district of Ramsgate shall not exceed in any one year the sum of 1*s.* in the pound sterling upon the net annual value of property assessable thereto within the district; but if that sum should not be sufficient the Commissioners for the parish acting as the Local Board, with the consent of the ratepayers in vestry assembled, may increase the rate from 1*s.* to 1*s.* 6*d.* in the pound upon the net annual value.

Definition of
rates in Tun-
bridge Wells.
27 & 28 Vict.
c. 83, s. 3.

In the unrepealed sections of the Tunbridge Wells Improvement Act, 1846, where there is reference made to rates made or leviable by virtue of that Act, the same in future shall in every case be held to mean the general district rate leviable under the Local Government Act, 1858.

As to making
of estimate
required
under 72nd
section of the
Tunbridge
Wells Water
Act, 1865.

By 30 & 31 Vict. c. 83, s. 12, in ascertaining or settling from time to time the sums to be included pursuant to the section 72 of the Tunbridge Wells Water Act, 1865, in the amount of the general district rate, and of the estimates of the money required for the purposes thereof, regard shall be had to, and proper allowances or deductions shall be made in respect of, ascertained or estimated balances of the waterworks fund

for the time being applicable to the payment of the mortgage moneys and the interest thereon and the sinking fund for the discharge thereof in the section 72 respectively mentioned.

The owner, instead of the occupier, may, at the option of the Local Board, be rated in cases—

Where the rateable value of the premises liable to assessment does not exceed the sum of £10; or

Where any premises liable to an assessment are let to weekly or monthly tenants; or

Where any premises so liable are let in separate apartments, or where the rents become payable, or are collected at any shorter period than quarterly.

In cases where the owner is rated instead of the occupier, he is, however, to be assessed upon such reduced estimate as the Local Board deems reasonable of the net annual value, not being less than two-thirds nor more than four-fifths thereof; and where the reduced estimate is in respect of tenements, whether occupied or unoccupied, it may be made on one-half of the amount at which the tenements would be liable to be rated if they were occupied and the rate were levied on the occupiers.

Rating owner instead of occupier of small tenements.
21 & 22 Vict. c. 98, s. 55.

Rating owner instead of occupier.
Ib.

The owner of any tithes, or of any tithe commutation rent-charge, or the occupier of the land used as arable, meadow, or pasture-ground only, or as woodlands, market-gardens, or nursery-grounds, and the occupier of any land covered with water, or used only as a canal or towing-path, or as a railway constructed under the powers of any Act of Parliament for public conveyance, is to be assessed in the proportion of one-fourth part only of the net annual value.

Certain kinds of property assessable on one-fourth of their net annual value.
Ib.

Provided that if within any district or part of a district any kind of property be exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made, the same kind of property is in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but no further or otherwise, exempt from assessment to any general district rates, unless a provisional order obtained and confirmed by Parliament shall otherwise direct.

Exemptions from rating under Local Acts.
Ib.

The word "exempt" does not imply that a tax has once been put on and then taken off again, and that a subject of rating cannot be exempt except it was once liable to the rate. The word "exempt" is used quite correctly where the subject was never before liable, and is intended not to be so, and it is the most proper word to be used for the purpose. (1)

By the Tithe Rent Charge Assessment Act, 14 & 15 Vict. c. 50, tithes, tithe rent charges, moduses, compositions, real, and other payments in lieu of tithe, shall be assessed under the Public Health Act as and in the same proportion of their

(1) *Reg. v. East London Waterworks Company*, 24 J. P. 52.

annual value as land used as arable, meadow, or pasture-ground only.

Burial-
grounds.
18 & 19 Vict.
c. 128, s. 15.

No land purchased or acquired under the Burial Acts for the purpose of a burial-ground (with or without any building erected or to be erected thereon) shall, while used for such purposes, be assessed to any local rate at a higher value or more improved rent than the value or rent at which the same was assessed at the time of the purchase or acquisition of the ground.

As to rates on land acquired under the Defence of the Realm Act, see 23 & 24 Vict. c. 112, s. 33.

Rating docks.

A wet dock is "land covered with water" within the meaning of section 55 of 21 & 22 Vict. c. 98, and is therefore rateable at one-fourth of the rate for houses, &c. But the land adjacent, including landing places, coal hoists, machinery, &c., is not part of the dock, and therefore not rateable on the lower scale. (1)

A local Act provided that "the occupiers of any land covered with water or used only as a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be rated in respect of the same to the rates authorized to be levied by the Act at one-fourth part only of the net annual value," and it was held that a reservoir within a borough of a waterworks company to supply the borough with water was rateable to the borough rate at only one-fourth part of its net annual value; but that the pipes and mains of the company within the borough were rateable to the full extent, and not merely to one-fourth part of their net annual value as "land covered with water." (2)

In another case, however, where the occupiers of docks covering an area of 165 acres, of which 95 formed a wet dock or tidal basin, in the parish in which the provisions of the General Lighting Act, 3 & 4 Will. IV. c. 90, had been adopted, were rated as "occupiers of houses, buildings, and property other than land," with sect. 33 of that Act, at a rate three times greater than that at which the occupiers of land were rated, it was held per Lord Campbell, C.J., Wightman and Crampton, JJ., that the dock or basin was property *ejusdem generis* with houses and buildings, and therefore that the occupiers of the docks were rateable at the higher rate; but per Erle, J., that they were rateable at the lower rate, as the area of 95 acres was "land." (3)

Exemptions.

The repealed proviso in sect. 88 of the 11 & 12 Vict. c. 63, that if any kind of property before the passing of that Act has been exempt from rating by any local Act in respect of purposes for which district rates may be levied under the Public Health Act, 1848, the same kind of property, in respect of the

(1) *Newport Dock Company v. Newport*, 2 B. & S. 641; 9 Jur. (N. S.) 73; 31 L. J. (N. S.) M. C. 266; 6 L. T. (N. S.) 456.

(2) *Reg. v. Birmingham Water-*

works Company, 1 B. & S. 84.

(3) *Reg. v. Peto*, 5 Jur. (N. S.) 1209; *S. C. Peto v. West Ham*, 28 L. J. (M. C.) 240.

same purposes, and to the same extent, is exempt from district rates under that Act, was held to apply only to exemptions in respect of the nature of the property, and not to property exempt under a local Act in respect merely of its locality, although the property so locally situate was exempt from poor rate. (1) The exemption therefore applies to kind and not to locality. Again, the exemption in sect. 88 of the 11 & 12 Vict. c. 63, was held not to extend to property exempted by a local statute in respect of its locality, but only to property exempted in respect of its kind. (2) In *Reg. v. Luscombe*, Erle, J., said that the object of the local Act was to confer benefit on town property, and the burden was therefore conferred upon town property, the residue of the borough being by implication exempted. Rateability therefore was not imposed upon one fixed area and exemption conferred upon another, but the limits of rateability shifted as the value of the property was changed by the growth of the town. Though therefore local bounds were defined for the purpose of ascertaining rateability, the kind of property to be rated within these local bounds was limited, some being rateable, some exempt.

A union workhouse locally situated within the district of the Local Board of Health was also held not to come within the exception to sect. 88 of the Public Health Act, 1848, and therefore not to be exempt from assessment to a general district rate made by the Local Board of Health. (3) So also where a township was partly within, and partly without the district of the Local Board, and the workhouse of the township, situated in the part of the township within the district of the Local Board, having been assessed by the Local Board to a general district rate, it was held that the guardians were liable to pay the rate, though it was not in fact assessed to the poor rate of the township. (4)

Where a municipal corporation were by their Town Council constituted the Local Board of Health of a district co-extensive with the borough, and the Local Board occupied a yard situate in a parish partly within the district, solely for the purposes of repairing the highways in the district of which they as the Local Board were the surveyors, it was held that the Local Board of Health were rateable to the relief of the poor of such parish as occupiers of the yard, their occupation not being for such public purposes as to exempt them from rateability. (5)

In reference to the words in the proviso to 11 & 12 Vict. c. 63, s. 88, that the occupier of lands "used only as a rail-

Exemptions.

Rating union workhouse.

Assessment of railways.

(1) *Tait v. Carlisle*, 2 E. & B. 492; 18 Jur. 374.

(2) *Reg. v. Luscombe*, *Reg. v. Shortland*, *Reg. v. Pontey*, E. B. & E. 691; 27 L. J. (N. S.) M. C. 299; 4 Jur. (N. S.) 1234; 31 L. T. 314.

(3) *Chelmsford v. Chelmsford*, 2 E. & B. 500; 18 Jur. (N. S.) 576.

(4) *Reg. v. Toxteth Park*, 30 L. J. (N. S.) M. C. 154; 4 L. T. (N. S.) 283; 7 Jur. (N. S.) 860; 1 E. B. & S. 167.

(5) *Reg. v. Hull JJ.*, 4 E. & B. 29.

Assessment
of railways.

way," is to be assessed at one-fourth only of the net annual value, it was held that this partial exemption extended to the line of railway and so much of any platform, etc., as constitutes the side of the railway, and to land used as sidings, turn-tables, etc.; but that adjuncts, such as stations, offices, and warehouses which are ancillary to the railway properly so called, although necessary for the working of traffic, are not part of the railway within the meaning of the proviso; and therefore that land used for those purposes must be assessed at its full annual value. (1) So a railway company receiving wharfage dues in respect of a piece of land between the actual line of rails and a navigable river, was thereby stopped from having the piece of land rated at one-fourth of the net annual value, on the ground that it was land used for a railway. (2)

By a Borough Improvement Act, authorizing a rate to be levied, it was enacted "that the occupiers of any land used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament, should be rated at one-fourth part only of the net annual value." Certain sidings and turn-tables, occupying about ten acres of land, were used for loading trucks and carriages with goods, and also as a standing place for laden and unladen carriages, and were found in the special case to be necessary for conducting the traffic of the railway. On appeal against a rate made on the railway in respect of such land, it was held that it was rateable at one-fourth only of the net annual value. (3)

Further with respect to the rateability of railways at a lesser amount, see *North Eastern Railway Co.*, apps., *Tynemouth*, resp. (4), *ante*, p. 9.

Exemptions.
17 & 18 Vict.
c. 104, s. 430.

The following are exempted from rates:—"All lighthouses, buoys, beacons, and light dues, and all other rates, fees, or payments, accruing to or forming part of the said fund (Mercantile Marine Fund), and all premises or property belonging to or occupied by any of the said General Lighthouse authorities or the Board of Trade, which are used or applied for the purposes of any of the services for which such dues, rates, fees, and payments are received, * * * shall be exempted from all public, parochial, and local taxes, duties, and rates of every kind." So volunteer store-houses are exempt from all county, parochial, or other local rates and assessments.

26 & 27 Vict.
c. 65, s. 26.

It has been held, with reference to a poor rate assessed upon tenants in common, that a distress warrant may issue against any one of the tenants in common, (5) and the same would doubtless be held to apply to rates assessed under the Public Health Act.

(1) *South Wales Railway Company v. Swansea*, 4 E. & B. 189; 24 L. J. (N. S.) M. C. 30.

(2) *Reg. v. Taff Vale Railway Company*, 22 J. P. 21.

(3) *Midland Railway Company v. Birmingham*, 13 L. T. (N. S.) 404.

(4) 37 L. T. (M. C.) 183.

(5) *Paynter v. The Queen*, 16 L. J. (N. S.) M. C. 136.

In making the rate, whenever the name of any owner or occupier liable to be rated is not known to the Local Board, it is sufficient to assess and designate him in the rate as "the owner" or "occupier" of the premises without further description.

The Local Board may, from time to time, amend any rate by inserting in it the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appear to them that such person has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of the Act; and no amendment so made is to avoid the rate. Any person who may feel himself aggrieved by any amendment is, however, to have the same right of appeal as he would have had if the amendment had appeared on the rate originally made. In the case of any person the amount of whose rate is increased by the amendment, or whose name is newly inserted, the rate is not to be payable by him until seven days after notice of the amendment shall have been given to him.

All general district rates are to be published in the same manner as poor rates; that is to say, by affixing on the Sunday next after making the rate a notice, either in writing or print, or partly in writing or partly in print, previously to the commencement of divine service, on or near to the doors of all the churches and chapels within the district. A publication on the principal or most usual doors of all the churches and chapels of the Church of England in the district will suffice. (1) The allowance of the justices is not necessary in the case of any rate made by the Board. Though general district rates are to be published in the same manner as poor rates, it has been held that non-publication does not render a rate made by the Local Board void, and that on a summons to enforce the rate which had not been published, but had not been appealed against, the justices were right in disregarding the fact of non-publication, and that their warrant was a protection to the officer distraining under it. (2)

Poor rates are declared by express enactment (17 Geo. II. c. 3) to be null and void unless published, but no such declaration is contained in the Public Health and Local Government Acts; and per Coleridge, J., in *Le Feuvre v. Miller*, when an Act of Parliament requires something to be done which is not in itself essential to the validity of the thing to be done, the omission is not, in the opinion of the Court, a ground of avoidance, unless the legislature expressly directs that it shall be so.

(1) *Omerod v. Chadwick*, 16 L. J. (N. S.) M. C. 143; 16 M. & W. 367; *Reg. v. Whipp*, 4 Q. B. 141; 12 L. J. (N. S.) M. C. 64.

(2) *Le Feuvre v. Miller*, 26 L. J. (N. S.) M. C. 175; 3 Jur. (N. S.) 1255; 8 E. & B. 321.

Description of owner or occupier in rates if his name be unknown.
11 & 12 Vict. c. 63, s. 101.
Rates may be amended. Ib. s. 102.
Rates to be published, and collected as Local Board shall appoint. Ib. s. 103.
17 Geo. II. c. 3, s. 1.
7 Will. IV. & 1 Vict. c. 45, s. 2.
Publication of rates. 11 & 12 Vict. c. 63, s. 117.

Collection of rates.
11 & 12 Vict.
c. 63, s. 103.

Justices may summon persons for non-payment, and in default may recover by distress.
Ib.

Proceedings for the recovery of rates.
25 & 26 Vict.
c. 82, s. 1.

As to the signature of the rate and affixing the seal of the Board to it, see *ante*, page 364.

All the rates are to commence and be payable at such time or times, and be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the Local Board may appoint. It was held that no ratepayer is liable to pay upon a rate which is erroneously calculated at any greater sum than the rate correctly calculated would amount to; (1) but a later decision shows that the rate in such case should be appealed against. (2)

If any person assessed fail to pay the rate when due, and for the space of fourteen days after it has been lawfully demanded in writing, any justice is empowered to summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid. In case the defaulter fail to appear according to the exigency of the summons, or in case no sufficient cause for non-payment be shown, the justice may, by warrant, cause the rate to be levied by distress.

By the Act 25 & 26 Vict. c. 82, for the more economical recovery of poor rates and other local rates and taxes, it is provided that:

Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before justices or to be issued by justices, and every such document as aforesaid shall, as respects each rate or tax comprised in it, be construed as a separate document, and its invalidity as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it.

No costs shall be allowed in respect of several informations, complaints, summonses, orders, warrants, or other such documents as aforesaid, in cases where, in the opinion of the justices or Court having jurisdiction over the said costs, one information, complaint, summons, order, warrant, or other document as aforesaid might have sufficed, regard being had to the provisions of this Act.

This enactment in terms applies to rates levied under the Public Health Act, but nevertheless its practical application to such rates is by no means clear.

Upon an application for a warrant of distress the justices are not required to draw up any formal order, but may at once issue the warrant. Therefore where the clerk of the justices

(1) *Morton v. Bramner*, 8 C. B. (N. s.) 791; 29 L. J. (N. s.) M. C. 218; 7 Jur. (N. s.) 211; 2 L. T. (N. s.) 600. (N. s.) 504; 31 L. J. (N. s.) M. C. 229. See also *Reg. v. Liverpool*, 8 Jur. (N. s.) 642; and *Hutchins v. Chambers*, 1 Burr. 580.

(2) *Bavin v. Hutchinson*, 6 L. T.

deciding upon the application for a warrant, as an act of courtesy handed the defendant a memorandum of the decision without the knowledge of the justices and without their signatures attached, this was held to be an inoperative document, and not a judicial proceeding which could do either good or harm. (1)

If no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom the warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the warrant may be indorsed or backed, and thereupon the amount to be levied, or so much as may be unsatisfied, is to be levied in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction. If, on the other hand, any person quits or be about to quit any premises without payment of any rate due from him in respect of the premises, and refuses to pay the rate after lawful demand in writing, any justice having jurisdiction where the person resides or his goods are found, is empowered to summon him to show cause why the rate should not be paid; and in case the defaulter fail to appear, or no sufficient cause for non-payment be shown, the justice may, by warrant under his hand and seal, cause the same to be levied by distress. *Hutchins v. Chambers* (2) shows that if a rate made by a Local Board is bad, the persons who deem themselves aggrieved by it must appeal against it.

Recovery of rates.
11 & 12 Vict.
c. 63, s. 103.

If a rate be good upon its face the justices ought to enforce it; unless in the cases, first, of the person assessed not having any assessable property; or secondly, unless some formalities in making the rate have not been duly observed, rendering the rate an absolute nullity. Where, therefore, a person was assessed to a special district rate, and not having appealed against it, he was summoned for non-payment, whereupon he alleged that the rate was bad, inasmuch as it was made to repay expenses to which it was not applicable, it was held, in a case stated under the 20 & 21 Vict. c. 43, that this was not an objection to which the justices ought to have given effect; but that the rate being good upon its face and unappealed against, they ought to have issued their warrant to levy it. (3)

It has been held that the issue of a distress warrant to levy a rate made under a local Act is not within the limitation as to time laid down in the 11 & 12 Vict. c. 43, s. 11, *sed quære* whether upon application to justices for such a distress warrant they have power to state a case for the opinion of a superior Court under 20 & 21 Vict. c. 43, s. 2. (4)

On an application for a distress warrant to enforce payment

(1) *Reg. v. Tottenham, Ex parte Perry*, 1 L. J. (N. S.) 413. 172; 6 Jur. (N. S.) 580; 29 L. J. (N. S.) M. C. 173; 2 E. & E. 678.

(2) 1 Burr. 580.

(3) *Luton v. Davis*, 2 L. T. (N. S.)

(4) *Sweetman v. Guest*, 18 L. T. (N. S.) 52; 37 L. J. (M. C.) 59.

Recovery
of rates.
11 & 12 Vict.
c. 63, s. 103.

of a general district rate made under the Public Health Act, 1848, the defendant contended that the justices had no jurisdiction, because (1.) the Local Board had not been duly elected, because under a local Act the notice of vestry was signed by a clerk to the local Commissioners instead of by a rector, churchwarden, etc., and not affixed on a church door; (2.) that a poll was allowed when no poll had been formally demanded; (3.) that no minute was made in the vestry book of a meeting being summoned for election of Commissioners. These objections the Court of Queen's Bench held were cured by the 29th section of 11 & 12 Vict. c. 63, *ante*, p. 35, and the justices were upheld in issuing their distress warrant. (1)

In the case of a poor rate the question of occupation or non-occupation of premises rated to that rate may be raised before the justices on application for a distress warrant; but if the person who is the visible occupier objects that his occupation is not beneficial, that is matter for appeal to the Quarter Sessions. (2) So ratepayers liable under a local Act to the payment of rates in respect of houses and gardens, cannot when summoned before the justices for non-payment, resist the issue of distress warrants because at the making of the rate warehouses and other property not rateable under the Act were improperly included in the assessment. In such case the proper remedy is by appeal to the Sessions where the error can be corrected. (3)

Recovery of
demands
under £20 in
County
Court.
24 & 25 Vict.
c. 61, s. 24.

Proceedings for the recovery of demands (and therefore, it is presumed, for the recovery of rates) below £20, which Local Boards are now empowered by law to recover in a summary manner, may, at the option of the Local Board, be taken in the County Court as if such demands were debts within the cognizance of such County Courts.

Recovery of
rates from
bankrupts.
1b. c. 134, s.
156.

By the Bankruptcy Act, 1861, the Court, out of the estate and effects of the bankrupt, shall order payment of all such parochial rates as may be due from him at the time of his being adjudicated a bankrupt; provided such rates have become due during the twelve months immediately preceding the bankruptcy. The Act does not anywhere define what is meant by "parochial rates." Under the above enactment, however, Mr. Commissioner Goulburn, upon the application of the solicitors for the assignees of the bankrupt, ordered that one year's special district rate and one year's highway rate (claimed by the Local Board of Health), due at the date of the bankruptcy, should be paid in full out of the estate and effects of the bankrupt. (4)

(1) *Bowling v. Bailey*, 31 J. P. 358.

9 Bing. 595.

(2) *Reg. v. Bradshaw*, 29 L. J. (N. S.) M. C. 176. S. C. nom. *Reg. v. Warwickshire JJ.*, 2 L. T. (N. S.) 233. See also *Marshall v. Pitman*,

(3) *Reg. v. Twopenny*, 17 L. T. (N. S.) 266.

(4) *Re Saberton*, 9 L. T. (N. S.) 267.

The Local Board of Health for the city of York, so often as they shall have occasion to make and levy a rate or rates under the Public Health Act, 1848, or the provisional order under which the Board is constituted, shall and may order such rate or rates to be made, levied, and collected within the city as a rate in the nature of a county rate, and in the same manner in all respects as the Council of the city is authorized to order a borough rate to be made, levied, and collected under the 5 & 6 Will. IV. c. 76.

Rates in the city of York. 13 & 14 Vict. c. 32, s. 6.

Warrants of distress for the recovery of rates may be in the form contained in the Schedule (D) annexed to the Public Health Act, 1848, or to the like effect. The following is the form of distress warrant:—

To A. B., Collector of Rates, and to all Constables and Peace Officers.

Form of distress warrant.

County of [or Borough, etc.] to wit. } Whereas complaint hath been duly made by A. B., one of the collectors for the district of , under and by virtue of the Public Health Act, 1848, that C. D., of, etc., hath not paid and hath refused to pay the sum of , duly assessed upon him in and by a certain rate bearing date on or about the day of , in the year of our Lord one thousand eight hundred and , although the same hath been duly demanded of him; and whereas it appears to me, E. F., Esquire, one of Her Majesty's justices of the peace in and for the said county [or borough, etc.] as well upon the oath of the said A. B. as otherwise, that the said sum of hath been duly demanded in writing by him from the said C. D., and that the said hath refused to pay the same for the space of fourteen days after such demand made, and doth refuse to pay the same: and whereas the said C. D. hath been duly summoned to appear before me to show cause why the said sum should not be paid by him, and not having shown to me any sufficient cause why the same should not be paid; these are therefore in Her Majesty's name, to command you to levy the said sum of , and also the sum of , the cost of proceedings to obtain this warrant, by distress and sale of the goods and chattels of the said C. D., and your reasonable charges of taking, keeping, and selling the said distress, rendering to him the overplus (if any), on demand; and if sufficient distress cannot be found of the goods and chattels of the said C. D., that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein, as to the law doth appertain.

11 & 12 Vict. c. 63, s. 104: Sch.

Given under my hand and seal the day of in the year of our Lord.

(Signed) E. F. (L. S.)

Any constable authorized by the warrant who neglects or refuses to make distress or sale pursuant to the warrant, after being required so to do by a collector of the district in which the rate in arrear was made, is liable to a penalty not exceeding £5.

Penalty upon constables refusing to levy. 11 & 12 Vict. c. 63, s. 104.

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

Costs. 21 & 22 Vict. c. 98, s. 54.

Notice of demand of rates may be served in the same way as a notice is directed to be served by a Local Board before putting in force the powers for the taking of land otherwise than by agreement; namely, by delivering it personally on the person

Service of notice of demand. Ib. s. 75.

required to be served, or, if such person is absent abroad, to his agent; or, by leaving it at the usual or last known place of abode of such person; or, by forwarding it by post in a registered letter addressed to his usual or last known place of abode.

Oxford and
Cambridge.
11 & 12 Vict.
c. 63, s. 105.
21 & 22 Vict.
c. 98, s. 2.

The Public Health Act does not affect the quota of rates to be paid by the Universities of Oxford and Cambridge under the Local Acts under which the Oxford and Cambridge Commissioners respectively act; but in case any difference should arise between either of the Universities and the Local Board of Health with respect to the proportion and manner in which the University is to contribute towards any expenses under the Public Health and Local Government Acts, and to which the University is not liable under the Local Act, the matter in dispute is to be settled by arbitration in the manner provided by the Public Health Act; and all rates, etc., which may become payable under the Public Health Act by the Universities, and their respective halls and colleges, may be recovered in the same manner in all respects as rates are recoverable by virtue of the Local Act.

Public build-
ings (except
churches)
in Oxford
shall be
assessable to
the general
district rates.
28 & 29 Vict.
c. 108, s. 8.

But by the Local Government Supplemental Act, 1865, (No. 5), all public buildings of the University and city of Oxford, and any lands, tenements, and hereditaments within the Oxford district not now assessed or assessable to rates for the relief of the poor, except for all such as belong to or are held by the county, and except churches and other public places of religious worship, shall be assessable on a fair valuation thereof by an equal pound rate to the general district rates, to be from time to time made and levied by the Local Board.

Who to be
rated to the
general dis-
trict rates of
the Oxford
Local Board.
Ib. s. 20.

With respect to the general district rate from time to time made and levied by the Oxford Local Board:

- (a.) All rateable property belonging to the chancellor, masters, and scholars of the University shall be rated in the name of the vice-chancellor of the University.
- (b.) All rateable property belonging to the mayor, aldermen, and citizens of Oxford shall be rated in the name of the mayor of the city.
- (c.) All rateable property belonging to the dean and chapter of Christ Church and to the other colleges and the halls in the University shall respectively be rated in the names of the treasurer of Christ Church, and of the senior bursar or treasurer of the several other colleges, and of the principals of the several halls respectively.
- (d.) All rateable property belonging to feoffees or trustees of charities or public buildings shall respectively be rated in the names of the feoffees and trustees respectively.

Rates on the
University
and colleges

The general district rate from time to time made by the Oxford Local Board, and payable by the University and Christ Church and the other colleges and the halls respectively, shall

be collected and paid to the Local Board by the vice-chancellor; and halls of provided that this arrangement may at any time be determined by notice in writing in that behalf given by the vice-chancellor to the Local Board, or by the Local Board to the vice-chancellor, and if notice be so given, and be not withdrawn within twelve months after the service thereof, then from and after the expiration of that period the general district rate payable by the University and Christ Church, and the several other colleges and the halls respectively, shall be collected by the Local Board.

and halls of
Oxford to be
collected and
paid by the
vice-chancellor.
28 & 29 Vict.
c. 108, s. 21.
Power to
determine
that arrange-
ment.
Ib.

The Local Government Supplemental Act, 1865 (No. 5), s. 14 (as to which see *post*, p. 402), enables the Oxford Local Board to appoint an assessment committee for the purposes of the general district rates.

The following are the local Acts under which the Oxford and Cambridge Commissioners respectively act:—Oxford city—11 Geo. III. c. xix.; 21 Geo. III. c. xlvii.; 52 Geo. III. c. lxxii.; 5 & 6 Will. IV. c. lxix.; and 11 & 12 Vict. c. xxxvii. Cambridge borough—28 Geo. III. c. lxiv.; 34 Geo. III. c. civ.; 9 & 10 Vict. c. cccxlv., and 13 & 14 Vict. c. xxxvii.

Oxford and
Cambridge
local Acts.

The production of the books purporting to contain any rate or assessment made under the Public Health Act, 1848, shall alone, and without any other evidence whatsoever, be received as *prima facie* evidence of the making and validity of the rates mentioned in such books; but no rate made under the Act can be vacated, quashed, or set aside for want of form.

Evidence of
rates.
11 & 12 Vict.
c. 63, s. 106.
Ib. s. 137.

The Local Board may reduce or remit the payment of any rate levied under the Act, on account of the poverty of any person liable to the payment of any such rate; but the excuse of the payment of the rate cannot be considered as relief, or as subjecting the person excused to any disqualification on account of the excusal; for it has been held that an excusal of poor rates under the 54 Geo. III. c. 170, s. 11, is not parochial relief disqualifying a person from being registered as a parliamentary voter. (1)

Power to
reduce or
remit rates
on account
of poverty.
Ib. s. 96.

Nothing in the Public Health Act is to alter, interfere with, or affect any lease, contract, or agreement made or entered into between landlord and tenant before the Act is applied to the district in which the premises in respect of which the lease, contract, or agreement was made, are situated.

Act not to
affect exist-
ing agree-
ments
between land-
lord and
tenant.
Ib. s. 97.

The case of *Sweet, app., Seager, resp.*, (2) may be referred to as illustrating the construction of a covenant in a lease to pay future rates and taxes. And as regards the right of the owner to recover from his tenant under the covenants of a lease money paid by the owner to local authorities in respect of works under their statutory power, see *Thompson v. Lapworth*. (3)

(1) *Mashiter's Appeal*. 6 C. B. 30.

(2) 2 C. B. (N. s.) 119.

(3) 37 L. J. C. P. 74; 17 L. T.

(N. s.) 507; L. R. 3 C. P. 149.

§ 3. SPECIAL DISTRICT RATES.

Power to
levy special
district rate
repealed.
21 & 22 Vict.
c. 98, s. 54.
Existing
debts and
contracts to
be enforced.
Ib.

The provision in the Public Health Act, 1848, as to the levying of special district rates, in respect of works of a permanent nature, is repealed, and whenever "special district rate" is mentioned in that Act, it is to be read as if no such rate were mentioned in it. All debts incurred and contracts and engagements entered into by or to any Local Board previously to the passing of the Local Government Act are, however, to be enforced, and all powers vested in any Local Board of raising money by rates, tolls, or other means, for the purpose of satisfying such of the said debts, contracts, and engagements as were incurred or entered into by such Local Board, are to be exercised in the same manner as if the Local Government Act had not been passed. This provision is not free from ambiguity; but it seems to have been intended that the Local Board should still possess the power of levying special district rates in respect of works already executed at the time of the passing of the Local Government Act, 1858, and in respect of which a charge on those rates had been executed by the Board.

Special dis-
trict rates
leviable over
same area as
general dis-
trict rates
may be levied
as part, and
under the
name of such
rates.
24 & 25 Vict.
c. 61, s. 12.
Debts due on
special dis-
trict rates.
Ib. s. 13.

It has, however, since been enacted that where in any district special district rates are levied over the same area as general district rates, the Local Board may make and levy such special district rates: Provided that the levying of such rates by the means aforesaid shall in no way prejudicially affect any mortgages now or hereafter to be made upon such special district rates.

Where any Local Board of Health have incurred expenses in or about any works of a permanent nature, and have made and levied a special district rate upon or in respect of the premises situate in part of their district, and have borrowed and taken up at interest on the credit of the said special district rate any sums of money necessary for defraying such expenses, it shall be lawful for such Local Board, with the sanction of one of Her Majesty's principal Secretaries of State, and with the consent of all persons having advanced money on the security of the said special district rate, and with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect to resolutions for the adoption of the Local Government Act, to pay off and discharge the sums so borrowed and taken up at interest on the credit of the special district rate, or such part thereof as shall then remain due, and to re-borrow and take up at interest on the credit of the general district rates of the Local Board any sums of money which shall have been so paid off and discharged. For the purpose of securing the repayment of any sums so borrowed, together with interest thereon, the Local Board may mortgage the general district rates to the persons by or on behalf of whom such sums are advanced, subject to the regulations prescribed by the 57th section of the Local Government Act, 1858.

§ 4. PRIVATE IMPROVEMENT EXPENSES.

Whenever the Local Board have incurred or become liable to any expenses which are by the Public Health Act, or by the Local Board, declared to be private improvement expenses, the Local Board may make and levy upon the occupier of the premises in respect of which the expenses were incurred, in addition to all other rates, private improvement rates of such amount as will be sufficient to discharge such expenses and interest at a rate not exceeding five per cent., in such period, not exceeding thirty years, as the Local Board may in each case determine. Whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before it is fully paid off, it is to become a charge upon and be paid by the owner of the premises so long as they continue to be unoccupied.

Private improvement rates.
11 & 12 Vict.
c. 63, s. 90.

In like manner as in the case of a general district rate (as to which see *ante*, p. 364), the Local Board, before proceeding to make any private improvement rate under the Act, are to cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing the several sums required for each of such purposes, the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value, and the estimate so made shall forthwith, after being approved by the Local Board, be entered in the rate book, and be kept at their office open to public inspection during office hours thereat.

Estimate of rate.
Ib. s. 98.

If a Local Board elect to proceed under sect. 90 of 11 & 12 Vict. c. 63, by an improvement rate upon the occupier, it is not competent to the Board afterwards to turn round and take proceedings summarily under sect. 129; per Williams, J. (1)

No publication shall be required of any private improvement rate.

21 & 22 Vict.
c. 98, s. 54.

In any case in which the Local Board may have incurred expenses for the repayment whereof an owner is made liable, they may allow such an owner time for repayment, and receive the same by annual instalments, not being less than one-thirtieth part of the entire sum, together with interest at the rate of five per cent. upon the sum from time to time remaining unpaid, as they under the circumstances of each case may consider to be just; but although time for repayment be allowed, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed. (See *post*, p. 437, Chapter VI., "Legal Proceedings.")

Local Board may allow owners time for repayment of expenses.
11 & 12 Vict.
c. 63, s. 146.

(1) *Eddleston v. Francis*, 7 C. B. (N. S.) 586; 3 L. T. (N. S.) 270.

Rent-charge may be granted for advances made to meet first cost of private improvements. 21 & 22 Vict. c. 98, s. 58.

But with regard to private improvement expenses, it has subsequently been enacted that where any person shall advance money for expenses which, by the Public Health Act, 1848, are, or by the Local Board shall be, declared to be private improvement expenses, the Local Board, on being satisfied by the report of their surveyor or otherwise that the money advanced has been duly expended, may issue a grant to such person, in the Form (B) in the schedule annexed to the Local Government Act, of a yearly rent-charge to be issuable out of the premises in respect whereof the advance has been made, or out of such part thereof, to be specified in the grant, as the Local Board shall think proper and sufficient. The following is the form of grant above referred to:—

Form.

By virtue of the Public Health Act, 1848, the Local Board of Health for the district of do hereby declare, and absolutely order, that the inheritance of the [dwelling-house, shop, lands, and premises, *as the case may be*], situate in street, in the parish of , within the said district, and now in the occupation of , shall be absolutely charged with the sum of pounds, paid by , of , for the improvement, by drainage and water supply [*as the case may be*], of the same dwelling-house, shop, lands, and premises [*as the case may be*], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said , his executors, administrators, or assigns, until this security shall be fully paid and satisfied; and we hereby further declare that the said principal and interest money shall be paid and payable by the owner or occupier of the said premises to the said , his executors, administrators, and assigns in manner following, (that is to say), the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments, whilst payable, on the day of and the day of in every year, the first payment thereof to be made on the day of next; and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of , in each of the next succeeding years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

Payment of rent-charge. 21 & 22 Vict. c. 98, s. 58.

The rent-charge so granted is to be personal estate, and to begin to accrue from the day of completion of the works on which money has been expended, and to be payable by equal half-yearly payments, during a term not exceeding thirty years, in such manner that the whole of the sum advanced, with the costs of preparing the grant, together with interest at a rate not exceeding six per cent. per annum upon the sum from time to time remaining unpaid, shall be repaid at the end of the term. Further provision however is made with regard to such charges by the 24 & 25 Vict. c. 61, s. 23. The grantee of rent-charge, for the recovery of it, has all the powers, authorities, rights, and remedies of the Local Board with respect to private improvement rates, and the provisions of the 91st and 92nd sections of the Public Health Act, 1848 are to be applicable to such rent-charge.

All rent-charges so made, and transfers thereof, are to be registered in the same manner respectively as mortgages and transfers are required to be registered under the 111th and 112th sections of the Public Health Act, 1848.

Where the Local Board have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable, either by application of or agreement with the owner, or by the Public Health Act, 1848, or any Act incorporated therewith, or the Local Government Act, the same may be recovered from the person who is owner of such premises when the works are completed for which such expenses have been incurred, in the manner provided by the Public Health Act, 1848, and such expenses shall be a charge on the premises in respect of which they were incurred, and shall bear interest at the rate of five pounds per centum per annum, till payment thereof. In all summary proceedings by a Local Board for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

With reference to the last provision, Erle, C.J., in *Eddleston*, app., *Francis*, resp., (1) said that he was clearly of opinion that it applies only to proceedings commenced after the passing of the 21 & 22 Vict. c. 98.

Notwithstanding anything in the Public Health Act contained, in all cases where by such Act the Local Board shall have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by the Public Health Act, 1848, or any Act incorporated therewith, or by the Local Government Act, and such expenses have been settled and apportioned by the surveyors as payable by such owner, such appointment shall be binding and conclusive upon such owner, unless within the expiration of three months from the time of notice being given by the Local Board or their surveyor of the amount of the proportion so settled by the said surveyor to be due from such owner, he shall by written notice dispute the same.

The expenses which have been incurred by any Local Board of Health as and for private improvement expenses under the Public Health Act, 1848, as also the expenses stated in the 62nd section of the Local Government Act, 1858, to be a charge on the premises, with interest after the rate of five per centum per annum, may, by order of the Local Board of Health, be declared payable by annual instalments, with interest after the rate aforesaid, during a period not exceeding thirty years, until the whole amount be paid; and any such instalments and interest, or any part thereof, may be recovered from the owner or occupier of such premises in the same manner as general

Rent-charges to be registered. 21 & 22 Vict. c. 98, s. 59. Expenses due from owners to be a charge on premises. *Ib.* s. 62.

Apportionment of expenses payable by owners to be conclusive after three months from notice given to them of the amount. *Ib.* s. 63.

Provision for recovery of charges for private improvements. 24 & 25 Vict. c. 61, s. 23.

district rates, and may be deducted from the rent of such premises in the same proportions as are allowed in the case of private improvement rates under the 91st section of the Public Health Act, 1848.

Proportion of private improvement rate may be deducted from rent.
11 & 12 Vict. c. 63, s. 91.

If the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, he is entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable to his landlord; if he hold at a rent less than the rackrent, he is entitled to deduct from the rent so payable such proportion of three-fourths of the rate as his rent bears to the rackrent. If, on the other hand, the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises, and holds them for a term of which less than twenty years is unexpired, but not otherwise, he may deduct from the rent payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him; and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises, both receiving and liable to pay rent; but no person is entitled to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

Redemption of special district and private improvement rates.
Ib. s. 92.

At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed may redeem such rate by paying to the Local Board the expenses in respect of which the rate was made, or such part of them as may not have been defrayed by sums already levied.

The 21 & 22 Vict. c. 98, s. 57, enables Local Boards to borrow, on the credit of the charges and rates authorized by the Acts, money for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Acts. In the case of private improvement expenses, it does not seem that they are compelled to borrow the money; apparently they have a discretion whether or not they will do so; or, in the first instance, whether they will pay out of the general district rates the expenses which they declare to be private improvement expenses, and afterwards apply in aid of the general district rates the money paid as private improvement rates.

Appeal to Secretary of State.
Ib. s. 120.

21 & 22 Vict. c. 98, s. 65.

In any case in which the Local Board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improvement expenses, any person deeming himself to be aggrieved by the decision of the Local Board thereupon may, within seven days after notice of such decision, address a memorial to a Secretary of State, stating the grounds of his complaint; who may make such order in the matter as to him may seem equitable, and the order so made is to be binding and conclusive upon the Local Board. The decision of the Secretary of State both as to the amount of

the original claims and any claim for interest thereon is final, and the interest upon any expenses claimed runs from the time the amount due is ascertained by the Secretary of State, and not from the time of the first demand of the amount claimed. (1) If the Board shall have proceeded to recover such expenses in a summary manner, the Secretary of State may, if he think fit, direct the Board to pay to the person proceeded against such sum as he may consider to be just compensation for the loss, damage, or grievance sustained by him. As regards appeals to and orders of the Secretary of State, see the Introductory Chapter, *ante*, p. 4.

The Secretary of State may make order as to the payment of the costs of such appeal to him, and as to the parties by whom they are to be borne; and his order so made may be made a rule of Court on the application of any party named in it.

Costs.
21 & 22 Vict.
c. 98, s. 81.

§ 5. WATER RATES.

Whenever and so long as any premises are supplied with water by the Local Board, for purposes of domestic use, cleanliness, or drainage, they are to make and levy, in addition to any other rate, a water rate upon the occupier; and the rate so made is to be assessed upon the net annual value of the premises, ascertained in the manner prescribed with respect to general district rates (see page 363). When several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses are to be charged with the payment of water rates in the same manner as if each house had been supplied with water by a separate pipe. In the Oxford or Cambridge district, however, the Local Board may supply water to any hall, college, or premises of the University within such district, upon such terms with respect to the mode of paying for the supply as shall from time to time be agreed upon between the University, or any hall or college thereof, and the Local Board.

Water rates.
11 & 12 Vict.
c. 63, s. 93.

Agreements
with
Universities.
Ib.

In districts where no water companies are established, Local Boards may make agreements for the supply of water to persons on such terms as may be agreed upon, and shall have the same powers for recovering water rents under such agreements as they have for the recovery of water rates.

Water rents.
24 & 25 Vict.
c. 61, s. 20.

The water rates are payable in advance; and whenever any person supplied with water neglects to pay the water rate due from him, upon demand, the Local Board may prevent the water from coming into the premises of the defaulter, and may recover the arrears due, together with the expenses of stopping the supply. But the stopping or cutting off the supply of water

Water rate
payable in
advance.
11 & 12 Vict.
c. 63, s. 94.
Power to
stop water

(1) *Wallington, app., v. Willes*, (N. S.) 906; 33 L. J. (N. S.) M. C. resp., 10 L. T. (N. S.) 784; 10 Jur. 233.

in case of
non-payment
of rates.
11 & 12 Vict.
c. 63, s. 94.
Local Board
may require
that houses
be supplied
with water.
Ib. s. 76.

will not relieve persons from any penalties or liabilities which they may otherwise incur.

If upon the report of the surveyor it appear to the Local Board that any house is without a proper supply of water, and that a proper supply can be furnished at a rate not exceeding twopence per week, the Local Board is to give notice in writing to the occupier, requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose. If the notice be not complied with the Local Board may then do such works and obtain such supply accordingly, and make and levy water rates upon the premises, not exceeding in the whole the rate of twopence per week, as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water rates. The expenses incurred by the Board in doing the necessary works are to be private improvement expenses, and to be recoverable as such (as to which see *ante*, p. 226).

21 & 22 Vict.
c. 98, s. 51.

These powers extend to any house within the district to which a supply of water can be provided at an expense not exceeding the water rate authorized by the Public Health Act, 1848, or any local Act in force in the district, and the notices are to be served on owners of houses so supplied instead of occupiers, and the expenses incurred are recoverable from such owners.

It will be seen (*ante*, p. 226) that the expenses may also be recovered from the owners in a summary manner.

The following decisions do not bear directly upon water rates levied under the Public Health and Local Government Acts, but it is considered nevertheless desirable that they should be here inserted, as they have an important bearing upon the provisions of many Local Improvement Acts regarding water supply.

Liability of
owner.

By a local Act the rates at which water is to be supplied for domestic purposes are to be assessed upon the "annual value" of the premises; and if the owner of any dwelling house, the yearly rent or value whereof shall not exceed £13, or which, whatever may be the annual value thereof, shall be let to weekly or monthly tenants, or in separate apartments, shall be desirous of paying a reduced water rent by the year for the same, whether occupied or not, the Council may compound with such owner for the payment of water rents at any sum not less than three-fourths of the annual water rent payable for the premises. By a composition paper, the owner of certain dwelling-houses let to weekly tenants agreed with the corporation to compound for the water rates, and in a schedule thereto stated the "rental to be 4s. 6d. per week, and 3s. 6d. per week respectively." The composition contained a stipulation that "if at any time it should be ascertained that the rental of such houses was not truly and correctly set forth in the schedule, the corporation might be at liberty to amend the same by in-

serting therein the true and correct amounts of such rental." The rents of the houses were in point of fact 6*d.* per week more than the sums stated in the schedule, the appellant claiming to deduct that sum in respect of poor and other rates, which by agreement with the tenants were paid by him. Liability of owner.

On a case stated for the opinion of the Court of Common Pleas under the 20 & 21 Vict. c. 43, it was held that the owner was not entitled to make such deduction; but that the corporation were entitled under the agreement to receive the composition upon the amount of *rent* paid by the tenants; and also that the production of the composition paper, and proof that no demand of water rates had been made upon the tenants, was sufficient evidence that the composition had been made, without showing that any entry thereof had been made in the books of the Council pursuant to a provision in the local Act in that behalf. (1)

Again, a private Act bound a water company to supply water on request at the following rates:—Where the annual rack-rent or value of premises is under £5, at a rate not exceeding 5*s.*; where the premises were above £5, and under £15, at a rate not exceeding 15*s.*; and so on with a scale up to an annual value of £100. By another section of the Act the water rates were to be payable according to the annual value at which the premises were assessed to the poor rates. Where premises were assessed to the poor rate at £11, and the occupier claimed to pay a water rate of only 11*s.* and not 15*s.* as demanded, it was held that the company were entitled to demand the maximum rate for the class of houses under which the one in question came, and the justices were right in so deciding. (2) Liability of occupier.

§ 6. HIGHWAY RATES.

Highway rates are to be levied by Local Boards of Health, to defray the costs of the repair of highways within their districts in the cases stated, *ante*, p. 185. The Public Health and Local Government Acts do not contain any specific directions for the levying of highway rates by Local Boards, except that it shall not be necessary for any Local Board in the case of any highway rate to be made by them to do the following acts, or any of them; that is to say,— Acts not required to be done in making a highway rate.

To lay the rate before any justices, or obtain their allowance;

To annex thereto the signature of the Local Board;

To lay the rate before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of highway rates.

21 & 22 Vict.
c. 98, s. 37.

(1) *Rook v. Liverpool* (Mayor of), 7 C. B. (N. S.) 240.

(2) *Gwatkin, app., Chepstow Waterworks Company, resps.*, 25 J. P. 180.

The following are the provisions of the law with regard to highway rates generally:—

The Highway Act of 1835 is not incorporated with the Public Health and Local Government Acts, still by 11 & 12 Vict. c. 63, s. 117, the Local Board, as surveyors of the highways, "have all such powers, authorities, duties and liabilities as any surveyor of highways in England is now or may hereafter be vested with, or be liable to, by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act."

In respect of
what pro-
perty rate
to be made.
5 & 6 Will.
IV. c. 50,
s. 27.

In order to raise money for carrying the several purposes of the Highway Act, 1835, into execution, a rate is to be made, assessed, and levied by the surveyor upon all property now liable to be rated and assessed to the relief of the poor; provided that the same rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments as have heretofore been usually rated to the highways.

Ib. c. 76,
s. 11.

In every borough any person occupying any house warehouse, counting-house or shop, may claim to be rated to the relief of the poor in respect of such premises, whether the landlord be or be not liable to be rated to the relief of the poor in respect thereof. This enables not only the occupier of a house, but the occupier of part of a house, as of a counting-house or shop, to be rated at his pleasure, and for the sake of conferring the borough franchise upon him; and if he be so rated to the poor rate, he will also be liable to be assessed to the highway rate.

23 & 24 Vict.
c. 112, s. 33.

Under the Defence of the Realm Act, all lands vested in the Secretary of State for War, in pursuance of that Act, which previously thereto were liable to be charged with poor or other rates, shall continue chargeable therewith, but shall not be assessed at a higher value or amount than that at which such lands were assessed at the time of such vesting.

Form of
highway
rate.
5 & 6 Will.
IV. c. 50,
s. 29.

Every highway rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of the premises or property, and shall also specify the sum in the pound at which it is made, and the Act, schedule 4, gives the form of the highway rate as follows:—

Names of Occupiers or Persons rated.	Description of the Premises and Pro- perty rated.	Annual Value.	Sum assessed at in the pound. <i>d.</i>

By the Union Assessment Committee Act, 1862, in every parish where a valuation list under that Act has been approved and delivered to the overseers, no rate for the relief of the poor, or other rate which by law is required to be based upon the poor rate, shall be of any force unless the hereditaments included in such rate be rated according to the annual value thereof appearing in the valuation list in force in such parish.

No highway rate shall exceed at any one time the sum of 10*d.* in the pound, or the sum of 2*s.* 6*d.* in the pound in the whole in any one year; unless with the consent of four-fifths of the ratepayers assembled at a meeting specially called for that purpose, ten days' previous notice of which must be given by the surveyor, when the rate may be increased to such sum as the inhabitants so assembled may think proper. The above restriction as to the amount of the highway rate applies also to highway rates in South Wales.

With regard to the former Highway Act, it was held that in pleading a surveyor's assessment made on occupiers of lands under 13 Geo. III. c. 78, ss. 30, 45, it was necessary to aver that the assessment did not exceed 9*d.* in the pound on the yearly value of the lands; although the limitation as to value annexed to ss. 30 and 40 is contained in a distinct proviso; and although the form of an order of justices in schedule No. 15 of the Act, adapted to these sections, makes no mention of yearly value. (1)

By a local Act certain Commissioners were invested with the "powers, provisions, and authorities" contained in the 13 Geo. III. c. 78 (the Highway Act), and by a subsequent section were enabled to make a rate of not more than 8*d.* in the pound in any one year. A subsequent local Act recited the rate of 8*d.*, and empowered the Commissioners to raise it to 1*s.* and 1*s.* 6*d.*; and it was held that under the "powers," etc., the justices for the borough had no authority to order and allow a rate under the provisions of the 45th section of the 13 Geo. III. c. 78. (2)

It will be proper to include in the highway rate any property which may be subject to it, though such property may not appear to have been rated to the relief of the poor.

The rate shall be made, assessed, and levied upon all property which on the 31st August, 1835, was liable to be rated and assessed to the relief of the poor. The exemption from poor rates of personal property by the 3 & 4 Vict. c. 89, and 5 Vict. c. 7, does not extend to highway rates.

The provisions in section 27 of the 5 & 6 Will. IV. c. 50, which extends the liability to highway rates to "such woods, mines, and quarries, etc., as have heretofore been usually rated to the highways," is not limited to the identical mines before

(1) *Morell v. Harvey*, 4 Ad. & E. 684; 6 Nev. & M. 35.

(2) *Higgins v. Green*, 10 Mee & W. 703; 12 L. J. (M. C.) 27.

Rating
woods,
mines, and
quarries.

actually rated, but applies to mines of the same class and description as those usually rated before, though open and worked for the first time since the passing of the Act. In the case in which this point was decided the appellants were rated for "an underground stone quarry, crane, and engine." (1) Again, the words "usually rated" must be construed to mean such woods, mines, and quarries, etc., as have been usually *actually* rated in the parish for which the rate is made; and the sessions will only inquire whether such woods, etc., were usually rated in point of fact at the time of the passing of the 5 & 6 Will. IV. c. 50, and not whether such woods were *rateable*, or whether they were usually rated in other parishes. (2)

South Wales.
23 & 24 Vict.
c. 68, s. 22.

In the six counties in South Wales the rate is to extend to such woods, mines, quarries of stone, or other hereditaments as were before the 5 & 6 Will. IV. c. 50, usually rated to the highways.

Tithe rent-charge.

Tithe commutation rent-charge being rateable to the poor rate, is also rateable to the highway rate; and the undermentioned cases on the subject may be consulted. (3)

Rating tithes.
6 & 7 Will.
IV. c. 71,
s. 69.

With regard to the rating of tithes to the highway rate it is necessary to add that it is enacted, by the Act for the Commutation of Tithes in England and Wales, that every rent-charge payable instead of tithes shall be subject to all parliamentary, parochial, and county and other rates, charges and assessments, in like manner as the tithes commuted for such rent-charge have heretofore been subject. All rates and charges to which any such rent-charge is liable shall be assessed upon the occupier of the lands out of which such rent-charge shall issue; and, in case the same shall not be sooner paid by the owner of the rent-charge for the time being, may be recovered from such occupier in like manner as any poor rate assessed on him in respect of such lands; and any occupier holding such lands under any landlord who shall have paid any such rate or charge in respect of any such rent-charge shall be entitled to deduct the amount thereof from the rent next payable by him to his landlord for the time being, and shall be allowed the same in account with his landlord; and any landlord or owner in possession who shall have paid any such rate or charge, or from whose rent the amount of any such rate or charge in respect of any such rent-charge shall have been so deducted, or who shall have allowed the same in account with any tenant paying the same, shall be entitled to deduct the amount thereof from the rent-charge, or by all other lawful ways and means to recover the same from the owner of the rent-charge, his

Ib. s. 70.

(1) *Reg. v. Saunders*, 4 El. & Bl. 564; 24 L. J. (M. C.) 57; 1 Jur. (N. S.) 255.

(2) *Reg. v. Rose*, 6 Q. B. 153; 13 L. J. (M. C.) 155; 8 Jur. 777; 1 Dav. & M. 300; 1 N. S. C. 272.

(3) *Chanter v. Glubb*, 4 M. & R. 334; 9 B. & C. 479; *Rex v. Buckinghamshire Justices*, 1 B. & C. 485; 2 D. & R. 689; *King v. Lacy*, 5 B. & C. 702; 8 D. & R. 457; *Rex v. Devon Justices*, 1 M. & S. 411.

executors and administrators: provided that the owner of every such rent-charge shall have and be entitled to the like right of demanding, inspecting, and taking copies of every assessment containing such rate or charge, and of appeal against the same, and the like power of prosecuting such appeal and the like remedies in respect thereof, as any occupier or ratepayer has or may have in the case of poor rates, although such rate or charge is made assessable upon the occupier, and the owner of the rent-charge is not mentioned by name in the assessment. None of the above provisions however extend to any Easter offerings, mortuaries, or surplice fees, or to the tithes of fish or fishing, or to any personal tithes other than the tithes of mills or any minerals, or to any payment instead of tithes arising or growing due within the City of London, or to any permanent rent-charge or other rent or payment in lieu of tithes, calculated according to any rate or proportion in the pound on the rent or value of any houses or lands in any city or town under any custom or private Act. of Parliament, or to any lands or tenements the tithes whereof, previous to the passing of the Tithe Commutation Act (13th August, 1836), have been perpetually commuted or extinguished under any Act of Parliament theretofore made.

It has, however, been held that the proprietors of fish titheable by custom are liable to be rated to the poor rate, (1) and that payments in lieu of tithes settled under a compromise between a parson and his parish, and confirmed by Act of Parliament, and also a modus, are rateable. (2) Again, a sum of money payable annually by the owners of land in lieu of tithes, by Act of Parliament, with a clause of distress annexed, is liable to be rated (3).

By a subsequent Act all rates and charges to which any rent-charge payable in lieu of tithes shall be liable may be assessed upon the owner of the rent-charge, and the whole or any part thereof may be recovered from any one or more of the occupiers of the lands out of which such rent-charge shall issue, in case the same shall not be sooner paid by the owner of the rent-charge, upon whom the same shall be assessed, in like manner as any poor rate assessed on such occupier or occupiers in respect of such lands may be recovered, upon giving to such occupier twenty-one days' notice in writing previous to any one of the half-yearly days of payment of the rent-charge, and the collector's receipt for the payment of such rates and charges, or of any part thereof, shall be received in satisfaction of so much of the rent-charge by the owner thereof; but no occupier shall be liable to pay at any one time, in respect of such rates and charges, any greater sum than the rent-charge payable in respect of the lands occupied by him in the said parish shall

Rating tithes.
6 & 7 Will.
IV. c. 71,
s. 70.

Ib. s. 90.

Tithe rent-charge.
7 Will. IV.
and 1 Vict.
c. 69, s. 8.

(1) *Rex v. Carlyon*, 3 T. R. 385.

(2) *Rann v. Pickin*, Cald. 196; Doug. 406, n.

(3) *Lowndes v. Horne*, 2 W. Bl. 1252.

2 & 3 Vict.
c. 62, s. 3.

Exemption
of churches,
etc.
3 & 4 Will.
IV. c. 30,
s. 1.

Of premises
used for
science or
fine arts.
6 & 7 Vict.
c. 36, s. 1.
Of toll-houses
and tolls.
3 Geo. IV.
c. 126, s. 104.
Omission to
rate.

Concurrent
rates.

amount to for the current half-year in which such notice shall have been given. It is further provided that the assessor or collector of any rate or tax shall, within forty days after the receipt of a notice in writing, signed by any landowner or titheowner interested therein, specify in his assessment of such rate or tax the names of the several occupiers of tithes, lands, and tenements subject to such tax, as well as the sum assessed on the tithes, lands, or tenements held by each such occupier.

By statute, no person or persons shall be rated, or shall be liable to be rated or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provisions of any Act of Parliament. The exception, however, does not extend to any part of such churches, etc., which are not so exclusively appropriated, and from which are derived any rent, profit, or advantage; but it continues though part of the premises may be used for Sunday or infant schools, or for the charitable education of the poor.

It has been decided with reference to the Metropolis Local Management Act that a church, together with the land appurtenant to it, is not rateable either as a house or land to the expenses of paving a new street under the powers of that Act. (1)

The premises of certain societies instituted for purposes of science, literature, or of the fine arts exclusively, are also exempt from county, borough, parochial, or other local rates or cesses.

No collector or other person is rateable to any public or parochial levy whatever in respect of any toll-house or tolls taken at any turnpike gate.

Where certain farms in a district of a parish claimed exemption from the highway rate by reason of a custom whereby they were alleged never to have paid the rate before, but the district had no officer of its own, who could be made to do the repairs for the district, it was held that the omission to rate the district must have arisen through ignorance, and no ground for continuing the exemption was shown. (2)

Concurrent rates for repairs of highways are invalid if made for the same period of time; (3) but a second rate may be made where a former rate for the same purpose has not been wholly collected. Where, however, rates are merely co-existent, the Court will not presume that they are made for the same period of time, and therefore invalid. (4)

(1) *Angell, app., Paddington, resp.*, 37 L. J. (M. C.) 171.

(2) *Great Western Railway Company v. Denchworth*, 25 J. P. 342.

(3) *Reg. v. Fordham*, 11 A. & E. 73.

(4) *Reg. v. Best*, or *Reg. v. Surrey JJ.*, 2 N. S. C. 655; 11 Jur. 489; 16 L. J. (M. C.) 102; 5 Dowl. & L. 40.

Where a local Act for the improvement of a particular portion of a parish provided that every inhabitant or owner who should be assessed for the rates made under that Act for any lands or tenements within the limits of the Act should be released and free from all rates and assessments towards the paving and lighting any other street, road, or place within the parish in respect of such lands or tenements, it was held that this did not exempt an occupier of premises assessed within the local district from being assessed in a general highway rate imposed upon the parish under the 5 & 6 Will. IV. c. 50, although a portion of such rate might be expended in paving parts of the parish out of the district. (1)

Exemption from highway rates.

Where justices of the peace refuse to enforce payment of a highway rate on the ground of exemption from the rate, it is not competent to have a case stated under the statute 20 & 21 Vict. c. 43, for the opinion of a superior Court. (2)

When a case cannot be stated for opinion of superior Court.

A rule under the 11 & 12 Vict. c. 44, is not the proper remedy to try the validity of an exemption from the highway rate. (3) Where a person rated to the highway rate neglected to appeal against it in time, and, upon being summoned to appear before a justice for not paying it, showed a seemingly good ground of exemption, and the justice therefore refused to issue a distress warrant against him, the Court held, upon an application for a rule that the justice should issue his warrant, that the party was liable to the rate, as he had not appealed against it; and therefore made the rule absolute, commanding the justice to issue a distress warrant for its recovery. (4)

Validity of exemption, how tried.

As the highway rate for the most part follows the poor rate, it has not been considered necessary to enlarge further upon the subject in this work; the various questions in regard to the incidence and enforcement of the poor rate are more appropriately treated of in works upon poor laws, and those works may therefore be consulted upon questions involving the incidence and enforcement of the highway rates.

Enforcement of highway rate.

In parishes in which the overseers of the poor have power by local Acts to compound with or require compensation for poor rates from the landlords of certain houses, tenements, or hereditaments, and, in case of refusal to compound, to rate such landlords as the occupiers, the surveyor has the same powers, remedies, and privileges as to highway rates. This provision, it will be seen, only applied to parishes in which, under local Acts, the overseers could compound for poor rates; but as none of the provisions of the Small Tenements Rating Act, to be presently mentioned, apply to any place where owners are made liable to be rated to the relief of the poor under the pro-

Composition for highway rates. 5 & 6 Will. IV. c. 50, s. 30.

(1) *Richardson v. Tubbs*, 4 M. G. & S. 304.

(3) *Reg. v. Shropshire JJ.*, 3 N. S. C. 641.

(2) *Walker v. Great Western Railway Company*, 29 L. J. (M. C.) 107.

(4) *Reg. v. Oxfordshire JJ.*, 18 L. J. (M. C.) 222; 6 Dowl. & L. 288; 14 Jur. 575.

visions of any local Act, the above-mentioned provision still remains in force.

Rating small
tenements to
highway rate.
13 & 14 Vict.
c. 99.

A list of the places to which local Acts for the rating of small tenements apply will be found in the fourth edition of Glen's Small Tenements Rating Acts. In parliamentary burghs these Acts by the Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 7, have no force as regards the poor rate, but they remain in force as regards the highway rate.

The law relating to the assessing and collecting the highway rates in respect of small tenements it will be convenient to introduce in this place.

Ib. s. 1.

The vestry of any parish, from time to time and at all times hereafter, may declare and order that the owners of tenements in such parish the yearly rateable value whereof shall not exceed £6 shall be rated and assessed to the rates for the relief of the poor in respect of such tenements instead of the occupiers thereof, and the order so made shall remain in force until rescinded by the vestry in the manner provided for by the Act.

Ib. s. 3.

Whilst the order is in force, the respective owners of such tenements shall be rated and assessed (instead of the occupiers) to the rates for the repairs of the highways, which otherwise such occupiers might by law be rated to; and they have the same right of appeal (subject to the same conditions) against rates, and the same right to vote in vestry, as if they were occupiers duly rated in respect of the same tenement.

Owners to
have the
privileges of
occupiers.

Ib. s. 6.

Owner to be
rated on a
reduced scale.
Ib. s. 4.

The owner of every tenement, the yearly rateable value whereof shall not exceed £6, is to be assessed to the rates for the repairs of the highways, in respect of such tenement, at three-fourths of the amount at which the tenement would otherwise be liable to be rated; and if any owner of one or more such tenements should be desirous of paying a rate for one year in respect of all such tenements in any parish, whether they be occupied or unoccupied, and give notice in writing of such his desire to the overseers of the poor and the surveyors of the highways within fourteen days next after the 25th March in any year, he shall be assessed to the rates for the repair of the highways, in respect of such tenement or tenements respectively, whether the same be occupied or unoccupied from thenceforth till the 25th March following, at a sum not being less than one-half of the amount at which the tenement or tenements respectively would otherwise be liable to be rated if occupied.

Rating small
tenements.
Remedies for
recovering
rates.

Ib. s. 5.

The rates so assessed, together with the costs and charges of levying and recovering them, may be levied on the goods of, and recovered from the respective owners of the tenements by distress, action, suit, or other proceeding, in the same way as rates lawfully assessed on the occupiers might by law be levied on the goods of or recovered from the occupiers; the goods and chattels of the occupiers are, however, liable to be distrained and sold for payment of the rates accruing due during their

respective occupations, in the same way as if the rates were assessed on the occupiers.

The word "tenement" in the foregoing provisions relating to the rating of small tenements is to be construed to include any land, house, cottage, apartment, or corporeal hereditament, and any "house, cottage, apartment, or building (and land in the same parish held with the same or any of them, but shall not include any other land or corporeal hereditament)" 14 & 15 Vict. c. 39, s. 2. The word "owner" to mean any person receiving or claiming the rent of any such tenement for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessor who shall be minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which the tenement shall be situated; the word "person" to include any corporation or public company as well as any individual; the word "parish" to include any parish, township, vill, or place maintaining its own poor separately; the word "vestry" to include any meeting of the inhabitants of any such parish, township, vill, or place, to be held after due notice for carrying into execution the laws for the relief of the poor.

Interpretation of terms.
13 & 14 Vict.
c. 99, s. 9.

Whenever it shall appear to the surveyor that there has been any omission or error in the rate in the name of any person, parson, or vicar, or of any house, shop, warehouse, coach-house, stable, cellar, vault, building, workshop, manufactory, garden-ground, land, tenement, wood, tithe, mines, pits or quarries of any mineral, stone, or other matter whatsoever, or hereditament, liable to be rated, the surveyor, with the consent and approbation of the justices at a special sessions, may cause to be added or corrected in the rate the name of the person, parson, or vicar omitted or erroneously stated, and a description of the property in respect of which he ought to be rated; and every addition or correction made in any of the rates, and signed by the justices, shall be as valid and effectual as if it had been part of the original rate.

Errors in rates may be rectified.
5 & 6 Will.
IV. c. 50,
s. 31.

The justices at special sessions, on application made to them by any person rated to any highway rate to be discharged therefrom, on proof of inability through poverty to pay the rate (the surveyor having been first summoned to appear on the part of the parish), may order and direct that such person shall be excused from the payment of the rate; and the justices' order is to be final with respect to the rate. It will be perceived that, as in the correlative provision in regard to the excusal of poor rates on the ground of poverty, the surveyor of the highways is not required to take the initiative in obtaining the excusal; all that he is required to do is to appear at the sessions when summoned to appear on the part of the parish, when it will be open to him to show cause why the excusal should not be granted.

Excusal of highway rates on account of poverty.
Ib. s. 32.

54 Geo. III.
c. 170, s. 11.

Exemptions
from high-
way rates in
respect of
property
exempt from
statute duty.
5 & 6 Will.
IV. c. 50,
s. 33.

Exemptions
from rates.
25 & 26 Vict.
c. 103, s. 36.

Rates how to
be recovered.
5 & 6 Will.
IV. c. 50,
s. 34.
23 & 24 Vict.
c. 68, s. 22.

Apportion-
ment of
highway
rates between
outgoing and
incoming
tenants.

Property which, previous to the 31st August, 1835, has been legally exempt from the performance of statute duty, or from the payment of any composition in lieu thereof, or of highway rate, continues exempt from the payment of highway rate.

By sect. 36 of the Union Assessment Act, 1862, exemptions from rating theretofore existing are saved; that is to say, in the case of the poor rate or other rate, which by law is required to be based on the poor rate.

With reference to 5 & 6 Will. IV. c. 50, s. 23, it has been held that 25 & 26 Vict. c. 61, does not alter the liability to highway maintenance, nor do away with existing exemptions to the payment of highway rates. (1)

The occupier of land in a parish rated under the Highway Act, in a rate good on the face of it, and unappealed against, cannot, after the time for appealing has elapsed, resist the payment of the rate, although the land is exempt. (2) A particular township exempt from statute duty, whether by Act of Parliament or by a valid prescription, will continue free from highway rates; and exemptions in favour of particular persons or particular kinds of property given by the express words of local Acts will also continue. (3)

For levying and recovering the highway rate, the surveyor has the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor.

The following are the statutes relating to the recovery of poor rates:—43 Eliz. c. 2, s. 4; 17 Geo. II. c. 38, ss. 7, 8, 9, 10, 11, 12; 41 Geo. III. c. 23, ss. 1, 2, 3, 7; 54 Geo. III. c. 170, s. 12; 57 Geo. III. c. 93; 7 & 8 Geo. IV. c. 17; 12 Vict. c. 14; and they will be found in vol. I. of Glen's Poor Law Statutes.

The 17 Geo. II. c. 38, s. 12, obviously confers upon the surveyor the same powers as to the apportionment of highway rates between outgoing and incoming tenants as on overseers with respect to the poor rate.

Before any steps can be taken to enforce payment of a rate there must be a lawful demand of the rate, (4) and a demand of a highway rate by one only of two surveyors, acting under the 5 & 6 Will. IV. c. 50, has been held to be a valid demand of the rate. (5)

It has been held that on a summons before justices to enforce

(1) *Reg. v. Heath*, 13 L. T. (N. S.) 669; 35 L. J. (M. C.) 113; L. R. 1 Q. B. 218.

(2) *Blechingdon v. Dand*, 3 N. S. C. 640.

(3) *Wheeler v. Cooper*, 1 W. Bl. 603; *Fawcett v. Foulis*, 7 B. & C. 394; 1 Moo. & R. 102; *Holford v. Copeland*, 3 B. & P. 129; *Rex v. Morley*, 2 B. & C. 226; *Rex v. Man-*

chester Waterworks Company, 1 B. & C. 630; *Downing Coll. v. Purchas*, 3 B. & Ad. 162; *Rex v. Shrewsbury Paving Trustees*, 3 B. & Ad. 216.

(4) *East India Company v. Skinner*, 1 Bott. 249.

(5) *Morrell v. Martin*, 8 Scott, 688; 6 Bing. N. C. 373; 4 Jur. 891.

a poor rate, as soon as the person summoned is shown to be in the visible occupation of the property rated within the parish, the justices are bound to issue a warrant of distress, and cannot go into the question of whether or not the occupation be beneficial, which is a matter only for the quarter sessions on appeal. (1)

Enforcement
of rate.

An appeal under 20 & 21 Vict. c. 43, does not lie upon the refusal of justices to issue a summons to enforce payment of a highway rate, on the ground that the land assessed was not liable to highway rates. (2)

In replevin for seizing the plaintiff's goods, the defendant pleaded in justification that after the passing of the 5 & 6 Will. IV. c. 50, two justices made their warrant (setting it out) addressed to the surveyors of the highways of H. and to the constable of H., reciting that M., an occupier of lands in H., was duly rated to the repair of the highways of the parish in a certain sum therein mentioned, which had been demanded and refused, and that he had been summoned and had not appeared, and therefore the warrant commanded them to levy the amount by distress and sale. The plea then averred that the defendant was constable of H., that certain persons mentioned in the warrant were surveyors of the highways, and that M. in the warrant named was the plaintiff, and so justified, under the warrant, in acting in aid and assistance of the surveyor. On demurrer it was held that the plea was neither in form nor in substance a plea under the statute, nor was it a good plea at common law, inasmuch as it did not show that the justices had jurisdiction over the subject-matter upon which the warrant was granted. (3)

Under the 27 Geo. II. c. 20, s. 2, the overplus, after satisfying a distress, was to be returned on demand to the owner of the goods and chattels distrained; where, therefore, a collector of highway rates had in his hands a balance arising from the sale of goods distrained for non-payment of rates; and after the distress was satisfied a person came to him and demanded the balance, and on being asked if he had authority to demand it, said he had a written authority in his pocket, but refused to produce it, it was held that this was not a sufficient demand within the statute to entitle the former owner of the goods to sue the collector for the balance. (4)

No provision was made by the 5 & 6 Will. IV. c. 50, for levying the costs and expenses incurred by surveyors of highways in the recovery of highway rates; but it is now enacted that the justices may in their discretion in any warrant of distress for the levying of any sum to which any person is rated for the highways in England or Wales, or in any warrant for

Costs of
warrant of
distress.
12 Vict.
c. 14, s. 1.

(1) *Reg. v. Bradshaw*, 29 L. J. (M. C.) 176.

(2) *Walker v. Great Western Railway Company*, 2 E. & E. 325.

(3) *Morrell v. Martin*, 4 C. B. (N. S.) 300.

(4) *Charinton v. Johnson*, 14 L. J. Exch. 299.

Costs of
warrant of
distress.
12 Vict. c. 14,
s. 1.

the levying of any arrears of the same, order that a sum such as they may deem reasonable for the costs and expenses which the surveyors or the persons applying for the warrant shall have incurred in obtaining the same shall also be levied of the goods and chattels of the person against whom the warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the distress.

Imprison-
ment in
default of
distress.
Ib. s. 2.

When to any warrant of distress for the levying of any highway rate it shall be returned by the constable or person having the execution of the warrant that he could find no goods or chattels, or no sufficient goods or chattels whereon to levy, any two or more justices before whom the warrant shall be returned, or any two or more justices of the peace for the same county, etc., if in their discretion they shall so think fit, may issue their warrant of commitment against the person with relation to whom such return shall be so made in the form (D) in the schedule to the Act annexed, or in any form to the like effect, and thereby order the person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums shall be sooner paid; every warrant of commitment is to be made as well for the non-payment of the costs and expenses in obtaining the warrant of distress, if they shall be so ordered, and the costs attending the distress, and also the costs and charges of taking and conveying the party to prison (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the non-payment of the sum or sums alleged to be due for the rates respectively.

One warrant
may be issued
against several
ratepayers.
Ib. s. 3.

For the saving of expense in the levying of any sum or sums for the rate and costs one warrant of distress may issue against any number of persons neglecting or refusing to pay; but the justices cannot in like manner issue one warrant of commitment against several persons in default of distress.

To whom to
be directed.
Ib. s. 4.

The warrants may be directed to the surveyors of the highways, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them as by the justices shall be deemed fit.

Summons.
Ib. s. 5.

Every summons for non-payment of any highway rate is to be directed to the person in default, and may be in the form (B) in the schedule to the Act, or in any form to the like effect; and may be served by any surveyor of the highways, or constable or other person to whom it shall be delivered for that purpose, upon the person to whom it is directed, by delivering it to the party personally, or by leaving it with some person for him or her at his or her last place of abode; the person who shall serve the summons must attend at the time and place and before the justices in the summons mentioned, to depose, if necessary, to the service of it; and if upon the day and at the place appointed the party fail to appear, and if it be proved upon oath or affirmation to the justices then present that the

If not obeyed,
the justices
may proceed
ex parte.

summons was duly served a reasonable time before the time appointed for the appearance of the party, the justices in their discretion may proceed *ex parte* as if the party had personally appeared before them in obedience to the summons.

In all cases where any proceedings are taken to compel payment of any sum for which any person is rated, if at any time before such person shall be committed to and lodged in prison for non-payment, or for or by reason of its being returned to the warrant of distress that there are no goods or chattels, or not sufficient goods or chattels whereon the sum may be levied, such person shall pay or tender to the surveyor of highways, or other person authorized to collect or receive the rate, the sum sought to be recovered, together with the amount of all costs and expenses up to that time incurred, the person to whom such sum and costs shall be paid or tendered is to receive the amount, and thereupon no further proceedings are to be had or taken.

On payment or tender of rate and costs proceedings to cease. 12 Vict. c. 14, s. 6.

The forms in the schedule to the Act, or forms to the same or the like effect, are to be deemed good, valid, and sufficient in law.

Forms. Ib. s. 8.

The appeal will be to the justices in special sessions, of which at least four are to be held in every year, and the justices are to cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church twenty-eight days at the least before the holding of the same.

Special sessions. 6 & 7 Will. IV. c. 96, s. 6.

Any person objecting to the rate must give notice of his objections seven days at least previous to the sessions to the person by whom the rate has been made; but no provision is made for notice to other persons who may be prejudicially affected by the decision, and who, in the case of an appeal to quarter sessions, would be entitled to notice. The justices at the special sessions are to hear and determine all objections to any rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included in it, but are not to inquire into the liability of any hereditament to be rated. The justices have all the powers in other respects which the Court of Quarter Sessions would have upon appeal against the same rate. Their order is not to be removed by *certiorari* or otherwise into any of the Queen's Courts at Westminster, and is to be conclusive on all parties, unless it be appealed against to quarter sessions.

Appeals to special sessions.

But if either of the parties impugn the decision of the special sessions, he may, upon giving fourteen days' notice in writing, and upon entering into a recognizance with sureties for trying the appeal, and for payment of costs, appeal from the decision of the petty sessions to the quarter sessions; thereupon the justices at quarter sessions are to receive, hear, and determine the appeal, and may award costs, according to their discretion—and their determination is conclusive upon all parties.

Appeals to
special
sessions.

It is to be observed that this appeal to special sessions, and thence to quarter sessions, in no wise interferes with the right of the party to appeal originally, exactly upon the same grounds, to the quarter sessions.

This appeal to special sessions is given in terms which apply to all rates made for parishes and districts contained within divisions of petty sessions, and before subject of appeal to quarter sessions. Therefore the appeal would apply to the highway rates and other rates as well as to the poor rate. It is not generally understood that the appeal to special sessions is as applicable to other rates as to the poor rate; but on reference to the Act, it will be seen that the appeal has this extensive application.

§ 7. BURIAL RATES.

Rate to be
made as a
general
district rate,
21 & 22 Vict.
c. 98, s. 49.

Where a Local Board becomes a Burial Board for any one or more parish or place in the manner stated, *ante*, p. 322, all expenses incurred by the Board in carrying into execution the powers given to them by the 20 & 21 Vict. c. 81, shall be defrayed out of rates to be levied on such parish or parishes, place or places, in the same manner as general district rates are to be levied under the 21 & 22 Vict. c. 98; and receipts by them by reason of the exercise of such powers shall be carried to the credit of such parish or parishes, place or places respectively.

By 23 & 24 Vict. c. 64, ss. 1, 2, Local Boards and Improvement Commissioners when constituted Burial Boards are to levy as part of the general district rate or improvement rate, as the case may be, or by a separate rate under the name and designation of a "Burial Rate," to be assessed and recovered in like manner as a general district rate or improvement rate, as the case may be, within the district for which they act, such sums of money as shall be from time to time necessary for their purposes as a Burial Board.

All the enactments regarding a general district rate will apply to rates or additional rates made by Local Boards or Commissioners under the foregoing enactments.

§ 8. APPEALS AGAINST RATES.

Appeal to
Court of
General or
Quarter
Sessions.
11 & 12 Vict.
c. 63, s. 135.

Any person who shall think himself aggrieved by any rate made under the Act, may appeal to the Court of General or Quarter Sessions holden next after the making of the rate objected to, or accrual of the cause of complaint. The appellant, however, cannot be heard in support of the appeal unless within fourteen days after the making and publication of the rate appealed against he give to the Local Board notice in writing stating his intention to appeal, together with a state-

ment in writing of the grounds of appeal. The Court, upon Appeal to hearing and finally determining the matter of the appeal, may, Court of according to its discretion, award such costs to the party ap- General or pealing or appealed against as they may think proper, and its Quarter Sessions. determination is to be conclusive and binding on all persons. 11 & 12 Vict. c. 63, s. 135. If there be not time to give such notice and enter into a recog- nizance (the purport of which however is not stated in the Act) before the sessions holden as last mentioned, then the appeal may be made to, and the notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard. On the hearing of the appeal, no grounds of appeal can be gone into or entertained other than those set forth the statement of the grounds of appeal.

Where a statute requires "ten days notice" of an appeal to the sessions, it means one day inclusive and the other exclusive. (1)

For the purposes of the Public Health, &c., Act, by 11 & 12 Vict. c. 63, s. 2, "the Court of General or Quarter Sessions" means such Court having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of the Court arises, and therefore if the district of the Local Board comprises parts of two or more counties, the Court of Quarter Sessions of each county would seem to have concurrent jurisdiction over the whole district.

The notice and grounds of appeal may be stated as follows, according to the facts as they may be in the particular case:—

To the Local Board of Health of the district of _____ or in the _____
county of _____ . Notice and grounds of appeal.

Take notice that I _____, of _____, being rated as an occupier of certain lands and tenements situate and being within your said district in a certain rate or assessment made by you the said Local Board of Health on or about the _____, and intituled _____, do intend at the General Quarter Sessions of the Peace, to be holden at _____, in and for the county of _____, on the _____, to appeal against the said rate or assessment, and that the causes and grounds for such appeal are as follows:

That the said rate has not been made, allowed, and published according to law.

That the said rate is not in the form required by law, and it is also bad and void on the face of it.

That I am assessed at and charged a greater sum in the said rate than I ought to be assessed and charged.

That the said rate is made for purposes in respect of which a general district rate cannot lawfully be made by you the said Local Board of Health upon lands and tenements within your said district.

That the said rate is made for the _____ district of the said district to defray charges and expenses which, if lawful charges and expenses, are chargeable upon and payable out of a general district rate to be levied by you the said Local Board of Health upon the whole of your said Local Board of Health district and not upon a part only of such district.

That the said rate is in other respects illegal, unequal, unfair, incorrect, and unjust.

(1) *Reg. v. Yorkshire (W.R.) JJ.*, 4 B. & Ad. 685.

Notice and grounds of appeal.

And take notice, that at the trial of the said appeal, I mean to avail myself of all or some one or more of the said causes or grounds of appeal in respect of the said appeal.

And I do hereby give you further notice to produce at the hearing of the said appeal the said rate or assessment, and also all valuations, statutes, or Acts and documents on which the said rate or assessment has been made or which in any wise relate to or show the annual value of the rateable property in the said district, or any part thereof, or which in any wise relate to the said rate or assessment.

Dated this

Writ of prohibition.

An application was made to the Court for a prohibition to issue to a Court of Quarter Sessions, who quashed an order under 11 & 12 Vict. c. 63, s. 103, for payment of rates, with costs to be paid by the Local Board, on the ground that the appeal to the quarter sessions did not lie, because it contained an express adjudication that the appellant was liable to the rate (which was disputed). The Court, however, refused the application, as a writ of prohibition will not be granted after judgment, unless it be perfectly clear that there has been an excess of jurisdiction; and *semble*, that the "sum adjudged" in sect. 135 means the sum in respect of which the adjudication is made; and therefore that the order of justices was a matter or thing done by them in which the sum adjudged exceeded 20s. within the meaning of the section, and therefore the order might be appealed against. (1)

The 2nd section of 11 & 12 Vict. c. 63, defines a justice to be "a justice acting for the place in which the matter requiring the cognizance of the justice arises," and this, in a county, means a justice acting within the petty sessional division in which the matter arises; therefore justices for the county not acting within the petty sessional division of it in which an offence under the 148th section of the Act may be committed, would have no jurisdiction to convict under the 129th section. (2)

Enforcement of rates.

The following is important with regard to the enforcement of a rate. A person who had been summoned by the Commissioners of the Cheltenham Improvement Act before justices, to show cause why a distress warrant should not be issued to compel payment of a rate under the Act in respect to certain sewerage works, contended before the justices that he was not liable, because he was not benefited by the works; the justices having decided against him, and, on being applied to, having refused to grant a case under the 20 & 21 Vict. c. 43, and gave a certificate under sect. 4 that the application was a frivolous one, a rule nisi was obtained, calling upon them to state a case under the Act, it was held that they could not be called upon to do so where an appeal against the rate lies to the quarter sessions, and the only objection raised is as to the validity of

(1) *Ricardo v. Maidenhead*, 2 H. & N. 257; 27 L. J. (N. S.) M. C. 73. See also *Reg. v. Warwickshire JJ.*, 6 E. & B. 837.

(2) *Reg. v. Brodhurst*, 32 L. J. (N. S.) M. C. 168.

the rate on the ground that the party derives no benefit from the works for which it was made. (1) See also *Reg. v. Bradshaw*, (2) which, however, related to a poor rate.

The Court of General or Quarter Sessions upon appeals against rates have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as in the case of appeals with respect to poor rates; and the costs awarded by the Court may be recovered in the same manner as costs awarded upon the appeals against poor rates. But notwithstanding the quashing of any rate appealed against, all moneys charged by such rate, if the Court before whom the appeal is heard think fit so to order, are to be levied as if no appeal had been made, and, when paid, are to be taken as payment on account of the next effective rate. If the Court do not so order, apparently no part of the quashed rate can be collected.

Power of sessions upon appeals against rates. 11 & 12 Vict. c. 63, s. 136.

In respect of any of the foregoing matters, it is further provided that no rate can be vacated, quashed, or set aside for want of form, or be removed or removable by *certiorari* or other writ or process into any of the superior Courts. With reference to a somewhat similar provision in the Municipal Corporations Act, 5 & 6 Will. IV. c. 76, s. 132, it has been held that the Court of Queen's Bench cannot review the decision of the Court of Quarter Sessions quashing a borough rate imposed under that Act, as the *certiorari* is taken away by the Act.

No rate or proceeding to be quashed for want of form, etc. *Ib.* s. 137.

But nevertheless, the Court quashed a conviction on *certiorari* in a case where a justice had acted without jurisdiction in convicting under an illegal bye-law made by a Local Board of Health. (3) So, also, a case granted at sessions, on confirming an appeal against a rate, cannot be removed by *certiorari*, unless some want of jurisdiction exists to prevent the application of this section. Sect. 135 of the 11 & 12 Vict. c. 63, is also a bar to such removal, as it makes the determination of the quarter sessions on an appeal conclusive and binding. (4)

Certiorari.

Per Cockburn, C.J.: (5) "The 11 & 12 Vict. c. 63, s. 137, does not apply if the Local Board have acted without jurisdiction. If they have done anything irregularly, which is nevertheless within their jurisdiction, the section would apply; but here it is said they have made a rate when they had no right to make it."

The Oxford Local Board, within fourteen days after their yearly election, shall appoint for the current year a committee of their own number to be the assessment committee, and shall determine their number, quorum, and procedure, and shall, when requisite, supply vacancies in their number:

Assessment committee to be appointed by the Oxford

(1) *Reg. v. Gloucester JJ.*, 29 L. J. (N. S.) M. C. 117; 6 Jur. (N. S.) 293; 1 L. T. (N. S.) 294; 2 E. & E. 420.

(2) 29 L. J. (N. S.) M. C. 176.

(3) *Reg. v. Wood*, 5 E. & B. 49;

S. C. nom. *Reg. v. Rose*, 24 L. J. (N. S.) M. C. 130; 1 Jur. (N. S.) 802.

(4) *Reg. v. Fielding*, 17 J. P. 343.

(5) *Broughton*, L. B. H., 12 L. T. (N. S.) 310.

Local Board.
28 & 29 Vict.
c. 108, s. 14.

- (a.) All objections to the general district rates shall be heard and considered by the assessment committee.
- (b.) And if and when the assessment to the rate for the relief of the poor of all or any part of the property assessable to the general district rate to be made and levied by the Local Board is in the judgment of the Local Board an unfit criterion for making a general district rate, or there is no such assessment, the net annual value of the property shall be ascertained by the assessment committee.

Oxford Court
of Appeal for
objections to
assessments.
Ib. s. 15.

The mayor and recorder of the city of Oxford, and the vice-chancellor of the University of Oxford, instead of the Court of Quarter Sessions, shall be the Court of Appeal for all purposes of appeals from assessments and rates of the Local Board :

- (a.) Provided that during the absence of the recorder the deputy recorder, and during the absence of the vice-chancellor one of the pro vice-chancellors, to be appointed by the vice-chancellor by writing under his hand delivered to the clerk to the Local Board, and during the absence of the mayor the deputy-mayor of the city, shall act in the place of and shall accordingly represent the recorder, or, as the case shall be, the vice-chancellor or the mayor.

Appeal
against the
assessment
committee's
decision.
Ib. s. 16.

When any person liable to be rated to the general district rate levied by the Oxford Local Board is dissatisfied with the amount at which he or any other person is assessed, he may give to the Local Board notice in that behalf, and the matter shall be referred by the Board to the assessment committee, and shall be heard and considered by them, and the objector and his agent, if any, shall be entitled to appear and be heard before the assessment committee :

- (a.) If within twenty-one days next after the delivery of the notice to the Local Board the assessment committee do not alter the assessment so as to remove the objector's ground of complaint, he may give to the Local Board and also to the Court of Appeal notice of his intention to appeal against the decision of the assessment committee.

- (b.) At a time and place appointed by the Court of Appeal, which, if not the time for holding the quarter sessions for the city, shall be not less than fourteen days after the delivery of that notice, the Court shall meet and hear the appeal, giving to the Local Board and the appellant at least seven clear days' notice of the time and place of meeting.

Notices how
to be given.
Ib.

- (c.) The notices shall be in writing, and the first notice to the Local Board shall state the objections and the grounds thereof, and the second notice to the Local Board, and the notice to the Court of Appeal, shall state such of the objections as are not removed and

the grounds thereof, and shall not state any objection or ground of objection which was not stated in the first notice.

- (d.) The notices shall be served on the Local Board and the Court of Appeal respectively by being delivered for them respectively to the clerk to the Local Board, and the notices to the appellant shall be served on him personally, or by leaving the same at his place of abode or business.

Notices how to be served.
28 & 29 Vict.
c. 108, s. 16.

The Court of Appeal may and shall hear and consider the appeal, and, as they think fit, may either confirm or quash or alter the decision of the assessment committee, and may determine the costs of the appeal, and by whom the same shall be paid, and may make such orders in the premises as they think fit; and every order so made by them shall be binding on all parties interested, and, where requisite, the assessment shall be altered accordingly.

Proceedings of Court of Appeal.
Ib. s. 17.

The Court of Appeal shall meet at the times for holding the quarter sessions for the city of Oxford, or at such other times, and at such places, and on such notice, and shall conduct their proceedings in such manner, as they think best adapted for carrying into effect these provisions, and shall have full jurisdiction, power, and authority for the purposes of their appointment as if they were a Court of Quarter Sessions.

Time of holding Court of Appeal and conducting proceedings.
Ib. s. 18.

The expenses of the assessment committee and of the Court of Appeal shall be paid by the Oxford Local Board, and the clerk to the said Local Board shall be the clerk to the Court of Appeal.

Expenses of assessment committee and of Court of Appeal.
Ib. s. 19.

§ 9. MORTGAGE OF RATES.

The Local Board, or any Board of Improvement Commissioners exercising the borrowing powers of the Public Health Act, 1848, may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Local Government Act, or of any Act incorporated therewith, or of any Act incorporating the powers of the Public Health Act, 1848, borrow and take up at interest, on the credit of the charges and rates authorized to be made or collected under those Acts, the sums of money necessary for defraying such costs, charges, and expenses. For the purpose of securing the repayment of the sums so borrowed, together with interest, the Local Board may mortgage to the persons by or on behalf of whom such sums are advanced the charges and rates or any of them. The exercise of this power however is subject to the following regulations:—

Borrowing money on credit of rates.
21 & 22 Vict.
c. 98, s. 57.

- (1.) The money shall not be borrowed except for permanent works, nor without the sanction of a Secretary of State.

- (2.) The money borrowed shall not, except as after men-

Borrowing
money on
credit of rates.
21 & 22 Vict.
c. 98, s. 57.

tioned, at any time exceed in the whole the assessable value for one year of the premises assessable within the district, in respect of which the money may be borrowed.

- (3.) The money may be borrowed for such time, not exceeding thirty years, as the Local Board, with the sanction of a Secretary of State, may determine in each case. The Local Board may either pay off the money borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing in the purchase of Exchequer bills or other Government securities, such sum as will be sufficient to pay off the moneys borrowed, or a part thereof, at such time as the Local Board may determine.

Private
expenses.
Ib.

In cases where the Local Board borrow money for the purpose of defraying private expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be their duty, as between the ratepayers of the district, to make good, as far as they can, the money borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in the part of the district determined to be liable.

The sanction
of the
Secretary of
State with
respect to
borrowing
and other
powers.
24 & 25 Vict.
c. 61, s. 14.

In all cases in which prior to the passing of the Local Government Act all or any of the powers or provisions of the Public Health Act, 1848, relative to the borrowing of money or the mortgaging of rates, are repeated in any local Act of Parliament, or in which it is declared in and by such Local Act that the same shall be read and construed as if all or any of such powers and provisions had been repeated therein, so as to confer thereunder upon any such Local Board of Health or Board of Improvement Commissioners powers corresponding with all or any of the borrowing or mortgaging powers contained in the Public Health Act, 1848, and where the sanction, consent, direction, or approval of the General Board of Health is rendered requisite in or by any such local Act to the due exercise of any of the powers vested thereby in any Local Board of Health or Board of Improvement Commissioners, such powers or any of them shall and may be henceforth exercised with and under the sanction, consent, direction, and approval of one of Her Majesty's principal Secretaries of State, in lieu of the sanction, consent, direction, and approval of the General Board of Health aforesaid and not otherwise.

Commis-
sioners of
Public
Works may
make
advances to
Local Boards.
11 & 12 Vict.
c. 63, s. 108.

The Commissioners of Public Works are empowered to make advances to the Local Board of any district for the purpose of the Public Health and Local Government Acts, upon the security of the rates, and without requiring any further or other security than a mortgage of such rates.

The Public Works Loan Act of 16 & 17 Vict. c. 40, s. 1, empowered those Commissioners to advance loans to Local

Boards, to be repaid by instalments within twenty years, instead of by a sinking fund in thirty years. The provisions of that Act, as well as those of the 24 & 25 Vict. c. 80, will be found in the Appendix to this work.

By a minute of the Lords of the Treasury, dated 26th October, 1859, (1) their lordships decide that the rate of interest on advances by the Public Works Loan Commissioners shall remain fixed at the uniform rate of five per cent., and that in future no reduction from that rate of interest shall be made. Further on this subject see *ante*, p. 269.

With regard to the deduction of income tax on the interest of loans secured on the rates under the Public Health Act, by the Income Tax Act, 5 & 6 Vict. c. 35, s. 102, it is provided that where any creditor on any rates or assessments not chargeable by that Act as profits shall be entitled to such interest, it shall be lawful to charge the proper officer having the management of the accounts with the duty payable on such interest, and every such officer shall be answerable for doing all acts, matters, and things necessary to a due assessment of the said duties and payments thereof, as if such rates or assessments were profits chargeable under the Act, and such officer shall be in like manner indemnified for all such acts as if the said rates and assessments were chargeable.

Income tax
on interest
on loans.
5 & 6 Vict.
c. 35, s. 102.

In the case contemplated by this Act the charge on account of income tax will only be made by the Income Tax Commissioners when the loan is obtained from private sources or from any company. If however without any such charge having been made the lender of the money on receiving payment of his annual interest should allow a deduction on account of income tax, the Local Board would be considered as having received the money on behalf of the Crown and would accordingly be bound to pay it over to the Receiver-General of Inland Revenue.

If the Local Board can at any time borrow at a lower rate of interest than that secured by any previous mortgage, they may borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorized to mortgage with payment of the sum so borrowed, together with the interest in the manner and subject to the regulation with respect to other moneys borrowed upon mortgage.

Money may
be borrowed
at lower rate
of interest
to pay off
securities
bearing a
higher rate.
11 & 12 Vict.
c. 63, s. 109.

If at the time appointed by any mortgage deed for payment of the principal money secured thereby the Local Board are unable to pay off the mortgage, they may borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the principal money borrowed, and may secure the repayment of such money and interest, in the same manner in all respects as in the case of money borrowed for

Loans to pay
off former
mortgages.
Ib. s. 110.

defraying costs, charges, and expenses incurred by the Local Board in the execution of their powers.

Extension of borrowing powers in certain cases. 21 & 22 Vict. c. 98, s. 78.

Where a Local Board or any Board of Improvement Commissioners, exercising the borrowing powers of the Public Health or Local Government Act, or of any local Act, has contributed to, purchased, or executed works of sewerage and water supply, or proposes to contribute to, purchase, or execute such works, and where the cost of such works exceeds or is estimated to exceed one year's assessable value of the premises assessable within the district in respect of which the money may be borrowed, the Board may present a petition to a Secretary of State praying for powers to borrow or re-borrow for such works, on mortgage of the rates leviable by them, an amount not exceeding two years' assessable value of the premises assessable within the district in respect of which the money may be borrowed or re-borrowed. The amount so borrowed or re-borrowed is to be repaid within such period, not exceeding fifty years, as the Board, with the sanction of the Secretary of State, may in each case determine; who may direct inquiry on such petition, and issue a provisional order thereupon, and take steps for the confirmation of the provisional order by Act of Parliament.

Extension of such powers. Cases in which Local Boards incur expenses for permanent works, etc. 24 & 25 Vict. c. 61, s. 19.

The powers granted by the 78th section of the Local Government Act, 1858, may be exercised in any case where any Local Board or Board of Improvement Commissioners exercising the borrowing powers of the Public Health Act, 1848, or the Local Government Act, 1858, or of any local Act, has contributed to, purchased, or executed any permanent works, or proposes to contribute to, purchase, or execute such works, at a cost exceeding or estimated to exceed one year's assessable value of the premises assessable within the district in respect of which the money for such works may be borrowed.

Form of mortgage. 11 & 12 Vict. c. 63, s. 111.

Every mortgage is to be by deed, truly stating the date, consideration, and the time and place of payment, and (in the case of a non-corporate district) is to be sealed with the seal of the Local Board by or on the part of whom it is executed, and signed by five or more members, or in the case of a corporate district is to be sealed with the common seal, and may be made according to the form contained in the schedule (B) to the Public Health Act, or to the like effect. The following is the form of mortgage:—

By virtue of the Public Health Act, 1848, the Local Board of Health for the district of _____, in consideration of the sum of _____, paid to the Treasurer of the said district by A. B. of _____, for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of _____ does or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, from the day of the date hereof until the said sum of _____ with interest at the rate of _____

per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared, that the said principal sum shall be repaid on the day of at [place of payment]. Dated this day of one thousand eight hundred and

Form of mortgage.
11 & 12 Vict.
c. 63, s. 111.

[In case of a non-corporate district, to be signed by five members at least of the Local Board of Health, and sealed with their seal; in case of a corporate district, to be sealed with the common seal. (1)]

A register of the mortgages upon each rate is to be kept at the office of the Local Board; and within fourteen days after the date of any mortgage an entry is to be made in the register of the number and date thereof, and of the names and description of the parties, as stated in the deed; every register is to be open to public inspection during office hours, without fee or reward; and any clerk or other person having the custody of the register, refusing to allow inspection, is liable to a penalty not exceeding £5.

Register of mortgages.
Ib.

Any mortgagee or other person entitled to any mortgage may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer. Such transfers may be according to the form contained in the schedule (C) to the Public Health Act, or to the like effect. The following is the form of transfer of mortgages:—

Transfer of mortgages.
Ib.

I, A. B., of , in consideration of the sum of , paid to me by C. D., of , do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage bearing date the day of , and made by the Local Board of Health for the district of , for securing the sum of , and interest thereon at per centum per annum [or if such transfer be by indorsement on the mortgage, insert instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and .

A. B. (L. s.)

A register of the transfer of mortgages charged upon each kind of rate is to be kept at the office of the Local Board of Health; and within thirty days after the date of the deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, it must be produced to the clerk, who, upon payment of the sum of 5s., is to cause an entry to be made in the register of its date, and of the names and description of the parties as stated in the transfer. Upon any transfer being so registered, the transferee, his executors, administrators, or assigns, is entitled to the full benefit of the original mortgage, and the principal and interest secured thereby; and every transferee may in like manner transfer his estate and interest

Register of transfers.
11 & 12 Vict.
c. 63, s. 111.

(1) See, however, *ante*, p. 2, as to the incorporation of Local Boards of Health.

in the mortgage. No person except the person to whom it has been last transferred, his executors, administrators, or assigns, is entitled to release or discharge any mortgage, or any money secured thereby.

Borrowing
powers of
Local Board.

The following case may be instanced as illustrating the borrowing powers of Local Boards in certain cases.

By an Act a corporation were authorized to purchase messuages, etc., for the erection of a market-house, etc., and they were required within seven years after the passing of the Act, to sell any of such hereditaments as should not be required for the purposes of the Act, and to apply the proceeds to the purposes of the Act. They were also empowered to borrow money on debentures without any priority amongst the holders, and also to borrow money on mortgage of the property of the corporation, or to sell any of their property and to apply the moneys for the purposes of the Act; and the corporation were directed to apply all the money raised under the Act, and the rents of their general property, and the tolls of the markets, after erecting the said markets and paying the various charges therein mentioned, in discharging the moneys borrowed under the Act. By a clause of the Act, the corporation were prohibited from taking, using, selling, mortgaging, or alienating for the purposes of the Act, without the approbation of the Lords of the Treasury, any messuages, etc., which they could have done without such approbation before the passing of the Act. On a bill being filed it was held that the corporation could not grant a mortgage of any of the messuages purchased under the powers of the Act, but that they were bound to sell any which were not required for the purposes of the Act, and apply the proceeds in discharge of the moneys borrowed as prescribed by the Act. (1)

Receiver may
be appointed
in certain
cases.

11 & 12 Vict.
c. 63, s. 114.

If, at the expiration of six months from the time when any principal, money, or interest has become due upon any mortgage of rates, and after demand in writing the same be not paid, the mortgagee or other person entitled may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are empowered, after hearing the parties, to appoint in writing, under their hands and seals, some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application, and the costs of collection, are fully paid. Upon such appointment being made, all rates or such competent part of them are to be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees, and be rateably apportioned between them. No application for the appointment of

(1) *De Winton v. Brecon* (Mayor of), 28 L. J. (N. S.) Ch. 598; 33 L. T. 296.

a receiver can be entertained unless the sum or sums due and owing to the applicant amount to £1000, or unless a joint application be made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as above mentioned, moneys collectively amounting to that sum.

The above powers for the appointment of a receiver may be exercised in the event of a failure to elect a Local Board, or of the lapse of a Local Board from death, resignation, disqualification, or otherwise, of the persons elected to serve on the Local Board; and in case of failure or lapse, the receiver may make as well as collect and receive the rates, or such rates as are required to satisfy all liabilities of the Local Board, and may receive and recover all arrears due to the Local Board, and apply the same to meet such liabilities. The receiver, in such case, has the same powers with respect to other creditors of the Local Board as he has with regard to mortgages.

How in event of failure to elect a Local Board.
21 & 22 Vict. c. 98, s. 10.

With regard to the priority of assignments or mortgages already granted by the Improvement Commissioners of Weston-super-Mare, in pursuance of the local Acts recited in the provisional order in the schedule to the 24 & 25 Vict. c. 128, relating to the district, the 3rd section of that Act enacts that all such shall, during the continuance thereof, have priority over all mortgages created by virtue of the Local Government Act, 1858.

Priority of mortgages in district of Weston-super-Mare.
24 & 25 Vict. c. 128, s. 3.

It will be seen, *ante*, p. 405, that a Local Board can only re-borrow money for the purpose of paying off mortgages in the case of either of the two events there mentioned occurring. In any other case they must make provision for the repayment of the loan in the manner provided for by the 21 & 22 Vict. c. 98, sect. 57, *ante*, p. 404. If instead of doing so they repay the loan at once out of the general district rates, their borrowing powers in respect of the works for which the mortgage was originally created will apparently have been exhausted, and they cannot afterwards create a fresh mortgage in respect of the same works. If, however, attention be paid to the creation of a sinking fund for the redemption of the mortgage, no difficulty in this respect need arise; and in justice to future ratepayers and owners of property in the district, no Local Board should neglect to provide such a fund for the redemption of the mortgages.

Re-borrowing money.

Doubts having arisen whether under the provisions in 23 & 24 Vict. c. 64, s. 2, as to which see *ante*, p. 325, the improvement rate or burial rate could be legally mortgaged or assigned as a security for the payment of the sums referred to in the Act, it has been enacted by the 25 & 26 Vict. c. 100, s. 1, that any Commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a Burial Board for any district, may, with

Mortgage of improvement and burial rates.
25 & 26 Vict. c. 100, s. 1.

Mortgage of
improve-
ment and
burial rates.
25 & 26 Vict.
c. 100, s. 1.

the approval of the Commissioners of her Majesty's Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the Burial Board for the purposes of the Burial Acts within the district.

Ib. s. 2.

The clauses and provisions of the Commissioners' Clauses Act, 1847, with respect to mortgages to be executed by the Commissioners, are incorporated with the 25 & 26 Vict. c. 100, and are made applicable to all mortgages created under the provisions thereof.

The Commissioners' Clauses Act, 1847, so far as it applies to mortgages, will be found in the Appendix.

CHAPTER II.

PURCHASE OF LANDS.

THE LOCAL BOARD, by agreement, may purchase, or take upon lease, sell, or exchange any lands or premises for the purposes of the Acts; and all lands and premises which shall be purchased, hired, or taken on lease by the Local Board of any non-corporate district are to be conveyed, demised, and assured to the Local Board and their successors, in trust for the purposes of the Acts, and be accepted, taken, and held by them as a body corporate.

Power to
Local Boards
to purchase
lands, etc.
11 & 12 Vict.
c. 63, s. 84.

By the Sanitary Act, 1866, s. 47, the above, however, is to be construed as if the words "by agreement" had been expressly repealed by 21 & 22 Vict. c. 98, sect. 75, *post*, p. 413.

In *Ex parte Llanelly*, *post*, p. 455, Kindersley, V.C., said that a Local Board of Health, if other than a corporate borough, is not made a corporation by the Public Health Act, 1848. But now, by the Sanitary Act, 1866, s. 46, Local Boards are incorporated with power to hold lands for the purposes of the several Acts conferring powers upon them.

The words "lands" and "premises," as used in the Act, include messuages, buildings, lands, and hereditaments of any tenure. By the 13 Vict. c. 21, s. 4, the word "land" includes messuages, tenements, and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure; but the 11 & 12 Vict. c. 63, s. 2, is general, and extends the term to hereditaments of any tenure. A right of fishing is within the term "land," according to the interpretation clause of the 11 & 12 Vict. c. 63. (1) But per Turner, L.J., "although I agree that it is difficult to suppose that the legislature would intend to protect land which might be of little value and not to extend the same protection to a fishery the value of which might be ten times as great; there is so much ambiguity arising from the context of the section that the question cannot, I think, be represented otherwise than as open to very serious doubt."

As regards leaseholds see *Harris v. Davison*, (2) which was upon the construction of the Act 1 & 2 Vict. c. 110, s. 13.

The following regulations are to be observed with respect to the purchase of land by Local Boards; (that is to say,)

(1) *Oldaker v. Hunt*, 6 De G. Mac. & G. 376; 1 Jur. (N. S.) 785.

(2) 15 Sim. 128.

Regulation
as to the
purchase of
land.

21 & 22 Vict.
c. 98, s. 75.

Interpreta-
tion of

"Special
Act" in

24 & 25 Vict.
c. 61, s. 18.

(1.) The Lands Clauses Consolidation Act, 1845, is incorporated with the Act, except the provisions relating to access to the special Act.

In the construction of the Lands Clauses Consolidation Act, 1845, for the purpose of any provisional order under the Local Government Act, 1858, conferring powers for the taking of land otherwise than by agreement, the term "special Act" shall mean the Act confirming such order, and "the date of the passing of the special Act" shall mean the date of the passing of the Act confirming such order.

(2.) The Local Board before putting in force any of the powers of the Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, are to

Publication
of notices.

21 & 22 Vict.
c. 98, s. 75.

Publish once at the least in each of three consecutive weeks in the month of November, in some newspaper circulated in the district or some part of the district, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land they require; and shall further, in the month of December,

Service of
notices.
Ib.

Serve a notice on every owner or reputed owner, lessee or reputed lessee and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking the land; the notice is to be served,

By delivery of it personally on the person required to be served; or if such person is absent abroad, to his agent; or

By forwarding it by post in a registered letter addressed to his usual or last known place of abode.

The following form of notice may be adapted to the case of a Local Board or a sewer authority :

Notice is hereby given that the _____ of _____, as the acting under and by virtue of the _____ Act _____, under the Act of _____, intend to apply to one of Her Majesty's principal Secretaries of State, in pursuance of the provisions of such statutes, &c., for powers to take a certain piece of land, not exceeding _____ acres, part of a meadow near _____ in the parish of _____, in the occupation of _____, and belonging to _____, for the purpose of erecting thereon the necessary works for carrying out the provisions of the before-mentioned Acts; and that a plan of such land and works may be seen any day, at any time between the hours of _____ in the forenoon and _____ in the afternoon, at the house of _____.

Power to
Local Board
to petition
Secretary of
State.

(3.) Upon compliance with these provisions, the Local Board may present a petition under their seal to a Secretary of State, stating the land intended to be taken, and the purposes for which it is required, and the names of the owners, etc., who

have assented, dissented, or are neuter in respect of taking the land, or who have returned no answer to the notice; and praying that the Local Board may be allowed to put in force the powers of the Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement. The prayer of the petition must be supported by such evidence as the Secretary of State may require. 21 & 22 Vict. c. 98, s. 75.

(4.) Upon the receipt of the petition, and upon due proof of the proper advertisements having been published and notices served, the Secretary of State is to take the petition into consideration, and may either dismiss it or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to its prayer; but until inquiry no provisional order can be made affecting any land, without the consent of the owners, lessees, and occupiers thereof. Secretary of State may direct inquiry. Ib.

(5.) After the completion of the inquiry, the Secretary of State may, by provisional order, empower the Local Board to put in force with reference to the land the powers of the Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit. A copy of the order must be served by the Local Board in the manner and upon the person in which and upon whom notices in respect of such land are required to be served. And may make provisional order. Ib.

(6.) No provisional order so made is however of any validity unless it be confirmed by Act of Parliament, which is to be obtained by the Secretary of State, and to be deemed to be a public general Act of Parliament. Confirmation of provisional order by Parliament. Ib.

(7.) All costs, charges, and expenses incurred by the Secretary of State in relation to any such provisional order, to such amount as the Commissioners of the Treasury think proper to direct, are to become a charge upon the general district rates levied in the district to which the order relates, and to be repaid to the Treasury by annual instalments not exceeding five, together with five per cent. interest, to be computed from the date of the order, upon so much of the principal sum as may from time to time remain unpaid. Costs, how to be defrayed. Ib.

The authority conferred on a Secretary of State by 21 & 22 Vict. c. 98. s. 75 (3), shall extend and apply and shall be deemed to have always extended and applied to every case in which, by the Public Health Act, 1848, and the Local Government Act, 1858, or either of them, or any Act extending or amending those Acts, or either of them, a Local Board are authorized to purchase, provide, use, or take lands or premises for any of the purposes of those Acts, or either of them, or of any such Act. Extent of authority to make provisional orders respecting lands. 29 & 30 Vict. c. 90, s. 47.

The observations of Stuart, V.C., upon this enactment in *Frewen v. Hastings*, (1) are instructive, he says—"It is a highly

difficult section to construe, and from the circumstances under which it was passed seems clearly intended to do what Parliament in the preceding session refused to do. The section is general in its terms, and deals with all the lands affected by the Acts of 1848 and 1858, and provides that the 73rd and 84th sections of the Public Health Act, 1848, shall be read as if the words "by agreement," therein respectively used, had been expressly repealed by the 75th section of the Local Government Act, 1858. It does not provide for the omission of any other words, and it is quite impossible to read the Act as so altered in any way capable of making it anything else than nonsense. It has, in fact, been perfectly bungled in the attempt to attain the objects proposed, one of which was, perhaps, not of a nature to be avoided." Further, with respect to the case of *Frewen v. Hastings*, see *ante*, p. 170.

Repayment
of costs ex-
tended to all
provisional
orders.
24 & 25 Vict.
c. 61, s. 27.
Powers of
Local Boards
with respect
to land
purchased.
Ib. s. 22.
Borough of
Wigan.
22 & 23 Vict.
c. 11, s. 1.

The provision for the repayment of costs, charges, and expenses incurred by the Secretary of State in relation to any provisional order under 21 & 22 Vict. c. 98, s. 75, shall extend to all provisional orders under the said Act.

Local Boards shall have the same powers with regard to any lands purchased by them under or for the purposes of the Local Government Act, 1858, or any Act incorporated therewith, which they now have with regard to lands purchased for the purpose of making or enlarging streets under the powers of the said Act.

The provisional order for the borough of Wigan, confirmed by the 22 & 23 Vict. c. 11, provides that nothing contained in it shall be deemed to give any powers for the compulsory purchase of land beyond the boundary of the borough.

An action of ejectment having been brought on a writ of *elegit* against the public officer of the Local Board of Tranmere, the plaintiffs claiming under such writ on a judgment obtained by them against the defendant in a former action, and a verdict being entered for the plaintiff with leave to move to enter it for the defendant on the grounds, first, that property held by a Local Board of Health for purposes of the Public Health Act cannot be taken under an *elegit*, and, secondly, that the writ directed the delivery to the plaintiffs of the lands, etc., of the defendant as clerk to the Local Board, whilst the lands in question were vested in the Local Board and not in the defendant as their clerk, the Court of Common Pleas held that lands held for public purposes were still liable to be taken under an *elegit*, and that a judgment against the defendant, as clerk, was in truth a judgment against the Local Board of Health. The rule to set aside the verdict was therefore discharged. (1)

The Plymouth Paving, etc., Commissioners, under the powers of their local Act, purchased certain settled property for the

(1) *Worrall Waterworks Company v. Lloyd*, 1 Weekly Notes, 247.

purposes of their Act, and paid the purchase-money into Court. The local Act contained no provision for the costs of a petition for payment out of Court of the purchase-money, but, in 1854, the Public Health Acts, in which the Lands Clauses Act was incorporated, were substituted for the Local Act, and a question arose whether the Local Board, to whom the powers of the Commissioners were transferred, were liable to pay the costs of the petition, as they would have been if the money had been paid in under the Public Health Acts. Kindersley, V.C., following the case of *Re Ellison's Estate*, (1) made an order that the Local Board should pay the costs of the petition. (2)

(1) 8 D. M. & G. 62.

(2) In re *Derriman's Settlement*, 1 Weekly Notes, 269.

CHAPTER III.

AUDIT OF ACCOUNTS.

Corporate
borough
districts.
21 & 22 Vict.
c. 98, s. 60.

WHERE the mayor, aldermen, and burgesses of a borough are the Local Board, the accounts of the receipts and expenditure of the Local Board are to be audited and examined by the auditors of the borough, and published in like manner and at the same time as the municipal accounts, and the auditors are to proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts; each auditor in respect of each audit is to be paid, out of the general district rates, such reasonable remuneration, not being less than two guineas for every day in which they are employed in the audit, as the Local Board from time to time appoints; and any order of the Local Board for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under sect. 44 of the 1 Vict. c. 78, with respect to orders of the Council of a borough for payments out of the borough fund.

Certiorari.
1 Vict. c. 78,
s. 44.

That provision recites that whereas it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund, and enacts that any order of the Council of any borough for the payment of any sum of money from or out of the borough fund of any borough may be removed into the Court of Queen's Bench by writ of *certiorari*, to be moved for according to the usual practice of the said Court with respect to writs of *certiorari*; and that such order shall be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said Court.

Local Board
of Health
districts.
21 & 22 Vict.
c. 98, s. 60 (1).

With respect to districts not boroughs, the accounts of the receipts and expenditure of the Local Board are to be audited and examined once in every year, as soon as can be after the 25th of March, by the auditor of accounts relating to the relief of the poor for the union in which the district or the greater part of it is situate, unless such auditor is a member of the Local Board whose accounts he is appointed to audit, in which case those accounts are to be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Board.

The statute is silent as to the period at which the accounts to be audited are to be closed; but the obvious intention is that they should be closed on the 25th March in each year.

When any Board of Improvement Commissioners acquires powers of rating or borrowing money under the 15th section of the Local Government Act, 1858, the provisions in relation as to audit of that Act, or of any Act amending that Act, shall be in force in the case of such Commissioners as if such provisions were contained in the Local Act under which they are constituted ; and when the provisions as to audit of such Local Act are repugnant to or inconsistent with those of the Local Government Act, or any Act amending that Act, then the audit shall be conducted under the provisions of the last mentioned Act.

Improve-
ment Com-
missioners.
24 & 25 Vict.
c. 61, s. 3.

As regards any body corporate fraudulently appropriating property of the corporation, keeping fraudulent accounts, wilfully destroying books, etc., or publishing fraudulent statements with intent to deceive or defraud, see the provisions of the Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences, 24 & 25 Vict. c. 96, ss. 81, 82, 83, 84.

Fraudulent
accounts.
Punishment.
Ib. c. 96.

Seven clear days at least before the day fixed for the audit of accounts of any Local Board, the Local Board shall cause their rate-books and other accounts to be made up and balanced, and the books and accounts so made up and balanced shall forthwith be deposited at the office of the Local Board for the inspection of owners and ratepayers, and the notice of audit shall include a notice of such deposit of accounts ; any officer of a Local Board duly appointed in that behalf neglecting to make up such books and accounts, or altering such books and accounts, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable on conviction thereof to forfeit 40s.

Making up
accounts for
audit.
Ib. c. 61, s. 15.

Penalty for
neglect.
Ib.

It shall be lawful for any ratepayer or owner of property in the district to be present at the audit of the accounts of the Local Board, and to make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances.

Attendance
of ratepayers
and owners at
audit.
Appeal
against
allowances
by auditor.

Before each audit, the Local Board, after receiving from the auditor the requisite appointment, are to give twenty days' notice of the time and place at which the audit shall be made, by advertisement in some one or more of the public newspapers circulated in the district ; and a copy of the accounts to be audited, together with all rate-books, account-books, deeds, contracts, accounts, bills, vouchers, and receipts mentioned or referred to in the accounts, are to be deposited in the office of the Local Board, and be open, during office hours, to the inspection of all persons interested, for seven days before the audit ; and all such parties shall be at liberty to take copies of or extracts from them, without fee or reward. The production of the newspaper containing the notice is to be deemed sufficient proof of the notice of audit on any proceeding whatsoever.

Ib.
Notice of
audit.
21 & 22 Vict.
c. 98, s. 60
(4).

Deposit of
accounts for
inspection.
Ib.

Proof of
notice of
audit.
Ib.

The auditor.

Under the 21 & 22 Vict. c. 98, s. 60, it is compulsory upon the poor-law auditor to audit the accounts of the Local Board; but in the event of his being a member of the Board, a difficulty may be experienced in appointing an auditor. It does not appear to what the words "any adjoining union" were intended to refer. If they refer to a union adjoining the district of the Local Board, then it may not unfrequently happen that the same auditor is the auditor of such union also, as the auditors are appointed for districts, and not for unions. Probably they would be held to refer to the poor-law auditor of any district adjoining the district of the disqualified auditor.

**Remuneration
of the auditor.
21 & 22 Vict.
c. 98, s. 60
(2).**

The auditor in respect of each audit is to be paid, out of the general district rates, such reasonable remuneration, not being less than two guineas for every day in which he is employed in the audit, as the Local Board from time to time appoints, together with his expenses of travelling to and from the place of audit.

It is reasonable to hold that the expenses contemplated by the Act are not merely the expenses of locomotion, but also personal expenses extending over the period that the auditor may necessarily be absent from his home. It seems also that the term "employed in the audit," need not necessarily be confined to the time actually occupied with the audit of the accounts, but may extend to the general duties connected with the audit.

With respect to the remuneration of the auditor, the following case may be quoted at length as showing what amount an auditor may be considered entitled to claim. It was an action brought in the Morpeth County Court, by the poor-law auditor for Northumberland, against the clerk of the Local Board for Bedlington, to recover two years' fees for auditing the Board accounts, viz., £5 5s. 0d. for each year. £3 3s. 0d. for each year was paid into Court. It was shown on the part of the plaintiff that he had audited the accounts for three years back. The first year he was paid £5 5s. 0d., but after auditing the second year, and without any previous intimation, the Local Board refused to pay more than £3 3s. 0d., which plaintiff declined, and required £5 5s. 0d., as before, for that and the subsequent year. The services performed by plaintiff were shown to be:—

1. Correspondence in order to fix a suitable day for the audit.
2. To hold the audit.
3. After holding it, to review the accounts and prepare a final report of the items under classified heads.

The holding of the audit occupied an entire day, the railway serving only from Newcastle at 9 A.M., and returning at 6.35 P.M. from Bedlington, fifteen miles. Mr. Usher proved the case, and was cross-examined with a view of showing that the Bedlington district had been incorporated with the Morpeth Local Board, and that £5 5s. 0d. was the audit fee for both. Mr. Usher

showed that the separation of the district involved a distinct set of accounts, which required as much examination as when united. His Honour here stopped the case, and said he considered the sum claimed quite reasonable; the duties were onerous and important, and the Act of Parliament intended that a gentleman in plaintiff's position should be sufficiently paid for his services. A verdict was accordingly given for the full amount claimed. (1)

Further with regard to payments made to auditors for auditing the accounts of Local Boards, see the Parliamentary return, No. 16, Session 1866.

The auditor is to disallow every item of account contrary to law, and surcharge the same upon the person making or authorizing the making of the illegal payment, and certify the amount to be due from such person.

Power of allowance, disallowance, and surcharge.
21 & 22 Vict. c. 98, s. 60

Section 60 of the Local Government Act, 1858, is not affected by section 140 of the Public Health Act, 1848, so as to control the auditor in the matter of a surcharge upon a member of the Local Board. The latter refers to the personal liability of the members to third parties for damage caused to such third parties, or for non-fulfilment of contracts entered into by the Local Board. So far as any such damage or contract is concerned, the person damaged must look to the Local Board for compensation, and not to the individual members. Section 60 of the 21 & 22 Vict. c. 98, empowers the auditor to disallow every item of the account contrary to law, and surcharge the same upon the person making or authorizing the making of the illegal payment. Looking to the very wide scope of the powers of the Local Board it will sometimes be doubtful whether a particular item of expenditure is contrary to law; but when an auditor decides it to be so, he is invested with full authority to surcharge the person who authorized the making of the illegal payment.

Upon application by any person aggrieved, the auditor is to state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made; and any person aggrieved by a disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into that Court, in the same manner and subject to the same conditions as are provided in case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor. The Court of Queen's Bench have the same powers with respect to allowances, disallowances, and surcharges, under the Local Government Act, as it has with respect to disallowances or allowances by auditors of poor-law accounts. In lieu of making application to the Court of Queen's Bench, any person aggrieved may appeal to a Secretary of State, who has the same powers in the

Disallowances may be removed by *certiorari* into Court of Queen's Bench.
Ib.

Appeal against disallowances.
Ib.

(1) *Usher v. Woodman*, 29 J. P. 27.

Allowances
24 & 25 Vict.
c. 61, s. 15.

case of the appeal as are possessed by the Poor-Law Board in the case of appeals against allowances, disallowances, and surcharges by poor-law auditors. The 24 & 25 Vict. c. 61, s. 15, gives rate-payers and owners the same right of appeal against allowances by an auditor as they have by law against disallowances.

The following are the conditions upon which a writ of *certiorari* shall issue, and the powers of the Court of Queen's Bench and the Poor-Law Board, with respect to allowances, disallowances, and surcharges, under the poor-laws.

Certiorari.
7 & 8 Vict.
c. 101, s. 35.

Every person aggrieved by an allowance, and every person aggrieved by a disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, may apply to the Court of Queen's Bench for a writ of *certiorari* to remove into that Court the allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace (see 5 & 6 Will. & M. c. 11; 8 & 9 Will. III. c. 3; 5 Geo. II. c. 19, s. 23; 5 & 6 Will. IV. c. 33), except that the condition of the recognizance shall be to prosecute the *certiorari*, at the costs and charges of such person, without any wilful or affected delay; and if the allowance, disallowance, or surcharge be confirmed, to pay to the auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the Court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to the auditor or his successor, who shall in return to the writ return a copy under his hand of the entry or entries in the book of account to which the notice shall refer, and appear before the Court, and defend the allowance, disallowance, or surcharge impeached in the Court, and be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the Court make any order to the contrary; on the removal of the allowance, disallowance, or surcharge, the Court shall decide the particular matter of complaint set forth in the statement; and no other; and if it appear to the Court that the decision of the auditor was erroneous, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting the *certiorari* to be paid by the parish or union to which such accounts relate, as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of Court are enforceable.

With regard to appeals to the Poor-Law Board, any person aggrieved by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of *certiorari*, may apply to the Poor-Law Board to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and thereupon the Board may issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

Appeals to
Poor-Law
Board.
7 & 8 Vict.
c. 101, s. 36.

Where an appeal is made to the Poor-Law Board against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, the Board may decide the same according to the merits of the case: and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by an order under their seal, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

Remission of
disallowances,
etc.
11 & 12 Vict.
c. 91, s. 4.

The Poor Law Board require appeals to them to be made in writing, and that they be signed by all the persons aggrieved by the auditor's certificate, and that they should contain a full statement of the facts which the appellants may desire to lay before the Board, together with the reasons which they may have to bring forward in support of their appeal, and they decide the appeal either by an order under their hands and seal of office, or by a certificate made pursuant to the 29 & 30 Vict. c. 113, s. 5.

Appeals to
Poor-Law
Board.
7 & 8 Vict.
c. 101, s. 36.

The practice of the Local Government Act Office in the matter of appeals against an auditor's decision appears to be to hold a local inquiry, of which public notice is given according to the following form:—

Whereas in pursuance of the Local Government Act, 1858, an appeal has been duly made by the Local Board of Health for the district of _____, in the county of _____, addressed to the Right Honourable _____, as one of Her Majesty's principal Secretaries of State, praying him to remit the auditor's surcharges made upon members of such Board at his late audit of their accounts, etc.; and inquiry has been directed as to the said surcharges and the allegations of certain ratepayers in relation thereto:

Notice is hereby given, that on the _____ day of _____, at _____ o'clock in the _____ noon, at _____, Esq., the inspector appointed for the purpose, will proceed upon the said inquiry, and will then and there be prepared to hear all persons entitled to be heard before him upon the subject of the said inquiry.

Dated this _____

The following is the form of the order of the Secretary of State deciding an appeal to him under the statutes above referred to:—

LOCAL GOVERNMENT ACT, 1858.

Form of order
of Secretary of
State deciding
appeal.

To the Local Board of the district of _____, in the county
of _____; to _____, two of the members of the
said Local Board, and to _____, Esq., auditor of accounts
of the said Local Board, under the Local Government Act, 1858,
and to all others to whom it may concern:

Whereas, _____, Esq., the auditor appointed for the
Local Board, lately held an audit of the accounts of the said Board for the
year ending the _____ day of _____, 18____, under the provisions
of the Local Government Act, 1858, and in the said accounts disallowed the
sum of _____, on the ground that the said sum was paid for _____.
And whereas the said auditor surcharged the said _____ and _____,
two of the members of the aforesaid Local Board, with the aforesaid sum
of _____ they having illegally authorized the payment of the same. And
whereas the said _____ and _____, being aggrieved by such sur-
charge, having appealed to me, as one of Her Majesty's principal Secretaries
of State, against the same, and I having duly considered the matters afore-
said, find that the said surcharge was lawfully made under the provisions
of the Local Government Act, 1858, but that the subject-matter thereof was
incurred under such circumstances as to make it fair and equitable that the
same should be remitted.

Now, therefore, I do hereby order and direct that the surcharge of the
said sum of _____ upon the above-named _____ and _____
shall be remitted, and the same is remitted accordingly.

Given under my hand this _____ day of _____, 18____.
Home-Office, Whitehall. (Signed) _____.

Duty of
auditor.

The duty of the auditor under the Local Government Act is
to disallow every item of account contrary to law; and in this
respect he will have a very difficult duty to discharge, as for the
most part he will have to form his own judgment as to what
items are contrary to law. It will obviously be impracticable
to observe the same strictness as in the case of poor-law accounts;
but generally he will exercise a sound discretion in disallowing
all items which are not within the scope of the authority of the
Local Board, or which are manifestly extravagant in amount;
as well as expenditure unnecessarily incurred by the Local
Board.

As to recovery
of disallow-
ances.
21 & 22 Vict.
c. 98, s. 60
(2).

Every sum certified to be due from any person by the auditor
is to be paid by such person to the treasurer of the Local Board
within fourteen days after it has been certified, unless there be
an appeal against the decision; and if it be not so paid, and
there be no appeal, the auditor is to recover it from the person
against whom it has been certified to be due by the like process
and with the like powers as in the case of sums certified upon
the audit of the poor-rate accounts, and shall be paid by the
Local Board all such costs and expenses, including a reasonable
compensation for his loss of time incurred by him in such pro-
ceedings, as shall not be recovered by him from such person.

7 & 8 Vict.
c. 101, s. 32.

All moneys certified by a poor-law auditor to be due are re-
coverable as so certified from all or any of the persons making
or authorizing the illegal payment, or otherwise answerable for
such moneys, and are to be recovered on the application of the
auditor, or of any auditor subsequently appointed, or by any
person for the time being entitled or authorized to receive the

same, in the same manner as penalties and forfeitures may be recovered under the 4 & 5 Will. IV. c. 76, s. 99, that is, by distress and sale of the goods and chattels of the person liable to pay the money certified to be due. The certificate of the auditor that the money is due will be final, if it be not appealed against as in the case of a poor-law audit. (1)

For the purpose of audit, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, and all other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before him at any audit or any adjournment thereof, and to make and sign a declaration as to their correctness. If any person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he incurs for every neglect or refusal a penalty not exceeding 40s.; and if he falsely or corruptly makes or signs any declaration, knowing it to be untrue in any material particular, he is liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury. Power to auditor to require production of books. 21 & 22 Vict. c. 98, s. 60 (3).

Within fourteen days after the completion of the audit, the auditor is to report upon the accounts audited and examined, and deliver his report to the clerk of the Local Board, who are to cause it to be deposited in the office of the Local Board, and to publish an abstract of the accounts in some one or more of the newspapers circulated in the district. The intention of the Act evidently is, though it is not expressed, that the auditor's report, after it has been deposited in the office of the Local Board, should be open to public inspection; the report need not, however, be published unless the Local Board so order. Report of auditor. Ib. (5).

Further with regard to accounting officers, see *ante*, p. 65.

Besides the ordinary accounts of the Local Board and their officers, the auditor is required to audit the separate accounts of the Board when it is constituted a Burial Board for the district, according to the provisions of the 23 & 24 Vict. c. 64, s. 3, *ante*, p. 325. Burial board accounts.

Here may be conveniently introduced the provisions, so far as they affect Local Boards of Health, of the Act 23 & 24 Vict. c. 51, to provide for an annual return of rates, taxes, tolls, and dues levied for local purposes in England. It recites that whereas rates, taxes, tolls, and dues to a large amount are levied for purposes of local government and improvements in England, and it is proper that Parliament should be informed annually of all sums so levied, and the expenditure thereof, but in many cases no sufficient provision has been made for that purpose; and enacts that the clerk to any corporation, justices, Commis- Annual returns to Secretary of State.

(1) See *Reg. v. Finnis*, 1 E. & E. 951; *Reg. v. Linford*, 7 E. & B. 935; 33 L. T. 146; 28 L. J. (M. C.) 950; *Reg. v. Denbighshire JJ.*, 33 L. T. 145; *Reg. v. Brecknock JJ.*, 7 E. & B.

Clerks of
Local Boards
to make
annual returns
to Secretary
of State.
23 & 24 Vict.
c. 51, s. 1.

sioners, district, or other Board, vestry, inspectors, trustees, or other body or persons authorized to levy or to order to be levied any of the following rates, taxes, tolls, or dues, sewers rates and "general sewers tax," and all rates, scots, and taxes levied by Courts or Commissioners of Sewers; whether levied under the Acts of the 3 & 4 Will. IV. c. 22, and 4 & 5 Vict. c. 45; or under any other Act of Parliament, or by charter, usage, or custom; rates under the Act for the lighting and watching of parishes, 3 & 4 Will. IV. c. 90; rates levied by Improvement Commissioners or other Commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation of any town or district; and tolls and dues levied under the authority of Parliament in respect of markets, bridges, or harbours, or any other compulsory rates, taxes, tolls, or dues in England (other than such as are levied for the public revenue of the United Kingdom), shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of Her Majesty's principal Secretaries of State in the month of June in every year. The returns are to be made for the latest period of twelve months preceding the month of June in each year for which the accounts of the Board shall be made up, and shall show the amounts levied and expended respectively, with such other particulars and in such form as shall from time to time be ordered by the Secretary of State.

For what
period returns
are to be
made up.
Ib. c. 51, s. 2.

How when
there is no
clerk.
Ib. s. 3.

Where no clerk is appointed or acting, the treasurer or other officer keeping the accounts of the receipts and expenditure of the Board, by whom any of the rates, taxes, tolls, or dues before mentioned are levied or ordered to be levied, shall make the return in relation thereto.

Penalty for
default.
Ib. s. 4.

Any clerk, treasurer, officer, or other person required to make such return who neglects so to do in the month of June in any year shall be liable to a penalty not exceeding £20 for every such offence, to be recoverable on summary conviction thereof before two justices.

Abstracts of
returns to be
laid before
Parliament.
Ib. s. 6.
Returns
from Local
Boards, etc.

The Secretary of State shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both Houses of Parliament.

In pursuance of the foregoing provisions, the Secretary of State, through the Local Government Act Office, has required that a return of receipts and disbursements on account of the Public Health Act, 1848, and Local Government Act, 1858, shall be made to that office in each year, under the following headings:—

Form of return.

Dr.

Balance in hand from last account £

RECEIPTS.

To amount received from—

General District Rate of *d.* in the £ (1)
 Special District Rate of *d.* in the £ (1)
 Highway Rate of *d.* in the £ (1)
 Public Water Supply Rate of *d.* in the £ (1)
 District Fund Account

Private Improvement Rates £
 „ Water Supply Rates

OTHER RECEIPTS:—

On account of highways, roads, &c.
 On account of improvements, interest, sale of property and
 incidentals
 Loans upon security of Rates—
 at per cent. (2)
 Total Receipts £
 Balance overspent (if any) £
 Total Receipts and Balance £

Cr.

Balance overspent on last account (if any) £

DISBURSEMENTS.

1st, in respect of PUBLIC WORKS OF

„ „ Sewerage £
 „ „ Water supply
 „ „ Street improvements
 „ „ Works of paving
 „ „ Repairs of highways
 „ „ Turnpike roads
 „ „ Scavengering and watering roads
 „ „ Lighting
 „ „ Baths and wash-houses
 „ „ Burial-grounds
 „ „ Market-places
 „ „ Slaughter-houses
 „ „ Lodging-houses
 „ „ Pleasure-grounds
 „ „ Miscellaneous works

2nd, in respect of PRIVATE WORKS OF

„ „ Drainage £
 „ „ Water supply
 „ „ Street improvements
 „ „ Paving
 „ „ Scavengering

3rd, in respect of GENERAL EXPENSES

By expenses of Adoption of Act £
 „ „ Salaries of Officers

(1) State the several rates in the £ levied during the year.

(2) State the percentage at which the several loans may have been effected.

Form of return.	By expenses of Establishment charges other than salaries	£
"	" Collector's poundage	"
"	" Election	"
"	" Surveys and plans (1)	"
"	" Law and Parliamentary Proceedings (1)	"
"	" Compensations (1)	"
"	" Other expenditure	"

4th, on account of LOANS ON MORTGAGE OF RATES.

Instalment of Loan	£
Sinking Fund Account	"
Interest	"
Total Expenditure	£
Balance now in hand	£
Total Expenditure and Balance	£

DEBTS NOW OWING;—

Bonded or mortgage debt £	at	per cent.	
Unpaid interest £			
Floating debt for tradesmen's bills, &c.			£
Length of highways and roads	miles		
Assessable value of District £			

Signature _____

Clerk to the Local Board of _____

(1) In cases where expenditure of this character is not included in any of the foregoing items.

CHAPTER IV.

CONTRACTS.

THE LOCAL BOARD may enter into all such contracts as may be necessary for carrying the Act into execution; and every contract, the value or amount whereof exceeds £10, must be in writing, and must specify the work, materials, etc., to be done or furnished, the price to be paid, and the time or times within which the contract is to be performed, and fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed. In the case of a non-corporate district, it must be sealed with the seal of the Local Board by whom it is entered into, and signed by five or more members thereof (but see sect. 46 of the Sanitary Act, 1866, *ante* p. 2, as to the incorporation of Local Boards); and in the case of a corporate district it must be sealed with the common seal; and every contract entered into as above mentioned, and duly executed, is to be binding on the Local Board by whom it is executed, and their successors, and upon all other parties thereto, their executors, etc. The Local Board may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into, whether the penalty be mentioned in the contract or in any bond or otherwise, for such sums of money or other recompense as to the Local Board may seem proper. Before contracting for the execution of any works under the provisions of the Act, the Local Board must obtain from the surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of keeping it in repair; also a report as to the most advantageous mode of contracting, that is, whether by contracting only for the execution of the work, or for executing and also maintaining it in repair during a term of years or otherwise.

The above provision, however, is only directory, and therefore the Local Board will be liable for a breach of the contract entered into for the performance of the works, though the estimate and the report from the surveyor be not obtained. (1)

Before any contract of the value or amount of £100 or upwards is entered into by the Local Board, ten days' public notice at the least must be given, expressing the nature and purpose of the proposed contract, and inviting tenders for the execution

Contracts by
Local Board.
11 & 12 Vict.
c. 63, s. 85.

Composition
for penalties
in respect of
breach of
contracts.
Ib.

Estimates to
be made before
commencing
works.
Ib.

As to contracts
above the
value of £100.
Ib.

(1) *Howell v. Worcester*, 9 Exch. 457.

of the work. In every case the Local Board must require and take sufficient security for the due performance of the contract.

Contracts with
members of
Local Boards.

Members of Local Boards vacate their office by entering into contracts with the Board; see *ante*, p. 32; but the contract nevertheless remains in force. In a case where a paving commissioner had sent in a tender, which was accepted by his co-commissioners, and the Act imposed a penalty on any commissioner engaging in a contract, the Court refused to issue a mandamus to the Commissioners commanding them to advertise for fresh tenders, since it did not appear that the contract itself was void. (1)

Generally.

If a contract be made for the superintendence of the execution of works to be completed within a certain time, and the works, from any cause, be not completed within the specified time, no claim for any payment beyond that stipulated for can be supported; therefore, on a contract by a Local Board of Health to employ the plaintiff, an engineer, about certain works, and pay him £500 during two years, he undertaking to do his best to complete the works within that period, it was held that the Local Board were not liable for refusing to allow him to carry on the works beyond that time, even though the delay was caused by their fault or default, they paying him the whole £500. And as to extras, per Martin, B., "the Board could not bind themselves without deed; and the very mischief to be guarded against is such charges for extras." (2)

It would be proper that a specification of works annexed to a contract should also be signed by the members of the Local Board; but the omission to do so would not vitiate the contract, or release the sureties of the contractor. (3)

With regard to the contracts of Local Boards of Health, as well as all other corporations, it is to be observed that the rule of law is that a corporation can only bind itself by deed (see Comyn's Digest, *tit.* "Franchise" (F), 12, 13, and the authorities there referred to); but exceptions to this rule have been established, as in the case of corporations created for the purpose of carrying on trading speculations; where the nature of their constitution has been such as to render the drawing of bills or the making of particular kinds of contracts necessary for the purposes of the corporation. In those cases the Courts hold that they would imply in those who are, according to the provisions of the charter or Act of Parliament, carrying on the corporation concerns an authority to do those acts without which the corporation could not subsist. *Sanders v. St. Neots*, (4) *Clark v. Cuckfield*, (5) and *Haigh v. North Bierley*, (6) show that

(1) *Rex v. St. Margaret's, Westminster, Paving Commissioners*, 1 Jur. 104.

(2) *Rutledge v. Farnham*, 2 F. & F. 406.

(3) *Russell v. Trickett*, 13 L. T. (N. S.) 280.

(4) 8 Q. B. 810.

(5) 21 L. J. (N. S.) Q. B. 349.

(6) 31 L. T. 213.

an action will lie although the contract be not under seal in Generally. certain cases; but a corporation would not be bound by a contract entered into by one of its servants on its behalf without evidence of its having given express authority to its servant to enter into the contract; (1) and per Martin, B., in *Walker v. Great Western Railway Company*; (2) when *Cox v. Midland Counties Railway Company* (3) was decided, it was generally supposed that a company, except in some very few cases of daily recurrence, could only contract under seal, but there has been much more freedom in this respect accorded to companies since the time of that decision.

Persons dealing with corporations should always bear in mind that they are essentially different from an ordinary partnership of individuals for all purposes of contracts, and especially in evidence against them on legal trials; and should insist upon all contracts with them being by deed, under the seal of the corporation, or otherwise executed in the manner prescribed by the Act of Parliament regulating the corporation. There is no safety or security for any one dealing with such a body on any other footing. The same observation applies in respect of any variation or alteration in a contract which has been made, and it should further be borne in mind that the secretary or other officer of the corporation has of himself no independent authority to bind the corporation by letters or documents signed by him.

Generally speaking, corporations are as much bound by their contracts as individuals, where the seal is affixed in a manner binding on them; and where a corporation is created by Act of Parliament for particular purposes, with special powers, their contract will bind them, unless it appears, by the express provisions of the statute creating the corporation, or by necessary and reasonable inference from its enactments, that the contract was *ultra vires*, or that the legislature meant that such a contract should not be made. (4)

Contracts must be under seal to bind the Local Boards, for the power of the Local Board to enter into contracts so as to bind the rates is entirely the creature of the statute, and the statute having prescribed a mode by which these contracts are to be made, is part of the power given. The Local Board has no power to bind the rates unless by contracts entered into by the mode pointed out by the Act, therefore a contract exceeding the value of £10 for the performance of works and for carrying into execution the Public Health Act, 1848, made with a Local Board of Health of a non-corporate district is not valid, so as to enable the contractor to enforce it against the Board, unless it be sealed with the seal of the Board and signed

(1) *Cox v. Midland Counties Railway Company*, 3 Exch. Rep. 268.

(2) L. R. 2 Exch. 229.

(3) 3 Exch. 268.

(4) *Bateman v. Ashton-under-Lyne*, 3 H. & N. 323; 27 L. J. (N. S.) Exch. 458.

Generally.

by five or more members thereof, and comply in other respects with the requirements of section 85; (1) for that section is not merely directory, but creates a condition which must be complied with. In the case where it was so held, a suit in equity was afterwards brought to obtain a specific performance of the contract between the plaintiff and the Local Board of Health, but it was held by Wood, V.C., that a Local Board of Health had no power to enter into a contract which can bind the rates of the particular district unless such contract is made, and the engagements therein contained are entered into, in the mode prescribed by the Act; and also that a Court of Equity equally with a Court of Law has jurisdiction to adjudicate upon the validity of such a contract. (2)

It has also been held that a municipal corporation cannot enter into a contract to pay a sum of money out of the corporate funds for the making of improvements within the borough except under the common seal; and for such a purpose the Public Health Act clearly makes a contract under seal necessary. (3)

The case of *Lamprell v. The Guardians of the Billericay Union* (4) has also an important bearing upon contracts entered into with Local Boards for the execution of works. In that case a contract had been entered into by a builder with the guardians of the union to build a union workhouse for a certain sum to the satisfaction of the architects, and it was agreed that all extra works authorized by the architects in writing should be paid for in addition to the principal sum. The builder having executed certain extra works suggested by the architects from time to time, without an authority in writing, it was held that he could not recover under the deed for such extra works, although they were from time to time examined and approved by the architects. It was held in the same case that although the deed provided for payment on account during the progress of the works, the plaintiff could not set off money so paid against the money due for the extra works. For a corporate body having no power to contract except under seal, cannot impliedly assent to extra works being done, a corporation being incapable of making a new contract by parol.

Respecting contracts by corporations which are *ultra vires* of the contracting parties, Cranworth, L.C. (in *Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company and others*), (5) said, "When the legislature constitutes a corporation it gives to that body *primâ facie* an absolute right of contracting. But this *primâ facie* right does not exist in any case where the contract is one which, from the

(1) *Frend v. Dennett*, 4 Jur. (N. S.) 897; 27 L. J. (N. S.) C. P. 314.

(2) *Frend v. Dennett*, 5 L. T. (N. S.) 73.

(3) *Ludlow v. Charlton*, 6 Mee & W. 815.

(4) 18 L. J. (N. S.) Exch. 282; 12 L. T. 533.

(5) 3 Jur. (N. S.) 781.

nature and object of the corporation, the corporate body is expressly and impliedly prohibited from making; such a contract is said to be *ultra vires*." On this point see also the *London Dock Company v. Sinnott*. (1)

The requirements of the statute that estimates shall be made before commencing works, and also as to previous reports, are directory only as respects contracts entered into by the Board with third parties, and is merely for the guidance of the Board; (2) and therefore a contract under seal, entered into between the Board and a third party for the execution of certain works, was held to be valid, although no estimate or report of the surveyor had been previously obtained. The non-observance of the proviso might however affect the right of the Board to levy a rate for the purposes of the contract. It was also held in the same case, that an action lay upon the contract itself for non-payment, and that the plaintiff was not driven to seek his remedy by mandamus or bill in equity, or by any such collateral proceeding.

The notice required by sect. 139 to be given before an action can be brought against the Local Board of Health does not apply to a contract for the execution of works. (3)

As regards personal liability of members of Local Boards of Health and their officers, see sect. 140 of the Public Health Act, 1848.

Before contracting for the execution of any works, the Local Board are required to obtain from their surveyor an estimate of the expense of executing the work, as well as of the expense of keeping it in repair; but this does not apply to a contract for work done to streets which are not highways under 11 & 12 Vict. c. 63, s. 69, and therefore the Local Board may enforce payment of the expenses from the owners of such streets, notwithstanding the absence of the estimate and report of their surveyor. The estimate and report must be obtained where, under the provisions of the Act, the Local Board are required to execute the particular work, and afterwards keep it in repair, and are not necessary if the work, when complete, would not be repaired and maintained under the Act or out of the rates. (4)

(1) 8 E. & B. 347; 4 Jur. (N. S.) Rep. 808.

(2) *Nowell v. Worcester*, 9 Ex. Rep. 457; 23 L. J. (N. S.) Ex. 139.

(3) *Davis v. Swansea*, 8 Exch.

(4) *Cunningham v. Wolverhampton*, 7 E. & B. 107; 26 L. J. (N. S.) M. C. 33.

CHAPTER V.

ARBITRATION.

Arbitration cases involving less than £20.

21 & 22 Vict. c. 98, s. 64.

Mode of referring to arbitration cases involving more than £20.

11 & 12 Vict. c. 63, s. 123.

ALL questions referable to arbitration under the Acts may, when the amount in dispute is less than £20, be determined before two justices in a summary manner; but the justices may, if they think fit, require that the work in respect of which the claim of the Local Board is made, and the particulars of the claim, be reported on to them by any competent surveyor, not being the surveyor of the Local Board; and they may determine the amount of costs incurred on that behalf, and by whom they or any part of them are to be paid.

In case of dispute as to the amount of any compensation to be made under the provisions of the Act (except where the mode of determining it is specially provided for), and in case of anything which the Act authorizes or directs to be settled by arbitration, unless both parties concur in the appointment of a single arbitrator, each, on the request of the other, is to appoint an arbitrator. Every appointment of an arbitrator, when made on the behalf of the Local Board, must, in the case of a non-corporate district, be under their seal and the hands of any five or more of their number, or under the common seal in case of a corporate district, and on the behalf of any other person under his hand, or in the case of a corporation aggregate under their common seal. The appointment is to be delivered to the arbitrators, and is to be deemed a submission to arbitration by the parties making it, and it cannot afterwards be revoked without the consent of both parties, nor shall the death of either party operate as a revocation. If, for the space of fourteen days after any dispute shall have arisen, and notice in writing by one party, who has himself duly appointed an arbitrator, to the other, stating the matter to be referred, and accompanied by a copy of the appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice is to be deemed to be appointed by and is to act on behalf of both parties. The award of any arbitrator or arbitrators appointed in pursuance of these provisions is binding, final, and conclusive upon all persons.

The power of the arbitrator under sect. 123 is limited to an inquiry into the apportionment of expenses amongst several owners of property liable to contribute under 11 & 12 Vict. c. 63, s. 69, *ante*, page 158, and he is not entitled to inquire

whether the gross amount of the expenditure was reasonable or necessary; Wills, J., *dubitante*, however. (1)

Reference to arbitration.
11 & 12 Vict.
c. 63, s. 123.

If a covenant be made with a man to do particular acts, and it is also covenanted that any question which may arise as to the breach of the covenant shall be referred to arbitration, the latter covenant does not prevent the covenantee from bringing an action; for in that case a right of action would have accrued, and it is against the policy of the law to give effect to such an agreement that such a right should not be enforced through the medium of the ordinary tribunals. (2) Therefore a general agreement in a contract to refer matters in dispute to arbitration does not oust the jurisdiction of the Courts. (3) Moreover there is no equitable construction of an agreement distinct from its legal construction; therefore if parties to an agreement provide for the settlement of disputes arising out of the contract by the arbitration of persons mentioned in the agreement, or to be determined when the dispute arises, this does not oust the ordinary tribunals of jurisdiction in such disputes. But if the contract provides for the determination of the contractor's claims and liabilities by the judgment of a particular person, everything depends on his decision, and until he has spoken no right arises which can be enforced either at law or in equity. (4)

The 123rd section of the 11 & 12 Vict. c. 63, cannot be distinguished from sect. 25 of the Lands Clauses Act; and a person who is damaged by the works executed under the Public Health Act is entitled to have the amount of compensation ascertained by arbitration under the 123rd section of the former Act. (5)

If before the determination of any matter referred to arbitration any arbitrator die, or refuse or become incapable to act, the party by whom the arbitrator was appointed may appoint in writing another person in his stead; and if he fail so to do for the space of seven days after notice in writing from the other party, the remaining arbitrator may proceed *ex parte*. Every arbitrator appointed in the room of one dying, refusing, or becoming incapable to act, has the same powers and authorities as were vested in the arbitrator originally appointed. And in case a single arbitrator die, or become incapable to act, before the making of his award, or fail to make his award within twenty-one days after his appointment, or within such extended time as shall have been duly appointed by him for the purpose, the matters referred to him may be again referred to arbitration under the provisions of the Act, as if no former reference had been made.

Death, etc.,
of one of
several
arbitrators.
Ib. s. 124.

Death
of single
arbitrator.
Ib.

(1) *Bayley*, app., *Wilkinson*, resp., 16 C. B. (N. S.) 161; 10 L. T. (N. S.) 543; 33 L. J. (N. S.) M. C. 161; 10 Jur. (N. S.) 726.

(2) *Thompson v. Charnock*, 8 T. R. 139.

(3) *Scott v. Liverpool*, 5 Jur. (N. S.) 105.

(4) *Scott v. the Liverpool Corporation*, 28 L. J. (N. S.) Ch. 230.

(5) *Bradford v. Hopwood*, 22 J. P. 561.

Arbitrators
defined.

11 & 12 Vict.
c. 63, s. 2.

Appointment
of umpire by
the parties.
Ib. s. 125.

Appointment
of umpire by
quarter
sessions.
Ib. s. 125.

Where the word "arbitrators" is used in the Act, it is to include a single arbitrator; and the word, either in the singular or the plural, includes an umpire.

In case there be more than one arbitrator, before they enter upon the reference they are to appoint by writing under their hands an umpire, and if the person appointed to be umpire die, or become incapable to act, they are forthwith to appoint another person in his stead. If they neglect or refuse to appoint an umpire for seven days after request made to them, the Court of General or Quarter Sessions, on being applied to, are to do so. The award of the umpire is to be binding, final, and conclusive upon all persons. In case the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time, if any, as shall have been appointed by them for that purpose, the matters referred are to be determined by the umpire; and the provisions of the Act with respect to the time for making an award, and with respect to extending the same in the case of a single arbitrator, shall apply to an umpirage.

The appointment of an umpire by two arbitrators under 11 & 12 Vict. c. 63, is valid, though made after the twenty-one days limited by sect. 125 of the Act for the arbitrators to make their award had elapsed without having enlarged the time, provided the appointment be within the time limited by sect. 126, *infra*, for making the umpirage. This was so held on the authority of *Bradshaw's Case*, (1) decided on similar enactments in the Lands Clauses Consolidation Act, 1845. (2)

Umpirage.

Where a dispute had arisen between an owner and a Local Board of Health as to compensation in respect to damage done to property by works executed by the Board, and arbitrators were appointed, but who did not appoint an umpire within seven days as directed by sect. 125 of 11 & 12 Vict. c. 63, the owner applied under that section to the quarter sessions to appoint one. That Court having named an umpire whose consent had not been obtained, no minute of the order was made by the clerk of the peace and no formal order was drawn up; but the owner treating his first application as a nullity, applied again at the next quarter sessions, and having in the mean time ascertained that the person named at the former sessions consented to act, obtained a regular order for his appointment as umpire. Such umpire not having made his award within the time specified by sect. 125, or extended the time for making it, but afterwards having made it in favour of the owner, both parties having attended his appointment, on an action on the award it was held that there was no appointment of an umpire

(1) 12 Q. B. 562; 17 L. J. (N. S.) Q. B. 362.

(2) *Holdsworth v. Barsham*, 2 B. & S. 480; 8 Jur. (N. S.) 672; 31 L. J. (N. S.) Q. B. 145. Affirmed by

the Court of Exchequer Chamber. *Holdsworth v. Wilson*, 32 L. J. (N. S.) Q. B. 289; 8 L. T. (N. S.) 434; 4 B. & S. 1; 10 Jur. (N. S.) 171.

at the first sessions; but that the appointment at the second Umpirage sessions was valid; and that though the Board had a valid objection on account of the umpire not having extended the time within the twenty-one days, they had, by proceeding with the reference, waived that objection, notwithstanding they protested at the time. (1)

Judgment of the Court of Common Pleas in this case was however reversed in the Court of Exchequer Chamber, that Court holding that the Local Board were not, by their conduct before the umpire, in going into the case and examining witnesses, and addressing the umpire, estopped from afterwards disputing the umpire's jurisdiction. (2)

The time for making an award under the Act is not to be extended beyond the period of three months from the date of the submission or from the day on which the umpire shall have been appointed (as the case may be). Time within which award must be made.
11 & 12 Vict.
c. 63, s. 126.

Where an arbitrator published his award after the expiration of the three months, without enlarging the time, the award was held to be bad. It was also held that the Court had no power afterwards to enlarge the time. (3)

Any arbitrator or umpire may require the production of such documents in the possession or power of either party as may be necessary for determining the matters referred, and may examine the parties or their witnesses on oath; and the costs of and consequent upon the reference are in the discretion of the arbitrator or umpire as the case may be. Production of documents.
Ib. s. 127.
Costs of reference.
Ib.

As regards the costs of a reference under 11 & 12 Vict. c. 63, s. 69, see, however, *Bayley v. Wilkinson*, ante, p. 433.

An award for costs generally, without ascertaining the amount, is good under 11 & 12 Vict. c. 63, ss. 125, 126, 127; and the party to receive, after delivering his bill for the amount, may maintain an action to recover them. The party to pay may have the costs taxed; but taxation is not a condition precedent to the other party's right to bring an action to recover them. So held by the Court of Exchequer Chamber, reversing the judgment of the Court of Queen's Bench in *Holdsworth v. Barsham*. (4)

Any submission to arbitration may be made a rule of any of the superior Courts on the application of any party thereto. Rule of Court.
Ib.

The term "superior Courts" includes her Majesty's superior Courts of Record at Westminster, and the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham. Ib. s. 2.

Before any arbitrator or umpire can enter upon any reference,

(1) *Ringland v. Lowndes*, 33 L. J. (N. s.) C. P. 25; 10 Jur. (N. s.) 48; 15 C. B. (N. s.) 189.

(2) *Ringland v. Lowndes*, 10 Jur. (N. s.) 850; 33 L. J. (N. s.) C. P. 337; 17 C. B. (N. s.) 514.

(3) *Tranmere v. Kellett*, 11 L. T. (N. s.) 457. S. C. *Kellett v. Tranmere*, 34 L. J. (N. s.) Q. B. 37.

(4) *Holdsworth v. Wilson*, ante, p. 434.

- Declaration. 11 & 12 Vict. c. 63, s. 128. he must make and subscribe the following declaration before a justice of the peace:—
 “I, *A. B.*, do solemnly and sincerely declare, that I will “faithfully and honestly, and to the best of my skill and ability, “hear and determine the matters referred to me under the “Public Health Act, 1848, and Local Government Act, 1858.”
 This declaration is to be annexed to the award when made; and any arbitrator or umpire wilfully acting contrary to it is guilty of a misdemeanour.
- Conduct of arbitrators. The arbitrators must be perfectly unbiassed in their judgment as to the matter to be referred to them; *i. e.*, they must have no direct personal interest in the matter, however remote; for it is sufficient for the interference of a Court of Equity if any circumstances be shown calculated to produce a bias in the judgment of an arbitrator. Therefore where the guarantee by an architect, who was also the arbitrator, that the expense of a certain building should not exceed a certain sum, was unknown to the plaintiffs, it was held that they were not bound by the contract to submit in all things to his determination. (1)
- Matters which may be referred. 11 & 12 Vict. c. 63, s. 69. Ib. s. 75. The matters which are authorized or directed by the Public Health Act, 1848, to be settled by arbitration are:—
 1. Disputes between Local Boards and owners as to the putting in order private streets.
 2. Terms upon which water companies ought to furnish a proper and sufficient supply of water for all reasonable purposes for which it is required.
 Ib. 3. Whether the water which any company is able and willing to supply is proper and sufficient for the purposes for which it is required.
 Ib. 4. Whether the purposes for which it is required are reasonable.
 Ib. s. 105. 5. Disputes between the Universities of Oxford and Cambridge and the Commissioners of those places respectively, as to the proportion and manner in which they shall contribute towards any expenses under the Act.
 Ib. s. 144. 6. Disputes as to damage sustained by reason of the exercise of any of the powers of the Act, if the amount claimed exceed £50.
- The award. Ib. s. 137. The award when made cannot be vacated, quashed, or set aside for want of form, neither can it be removed by *certiorari* or any other writ or process into any of the superior Courts.

(1) *Kemp v. Rose*, 32 L. T. 51.

CHAPTER VI.

LEGAL PROCEEDINGS.

IN all cases in which the amount of any damages, costs, or expenses is by the Public Health Act directed to be ascertained or recovered in a summary manner, they may be ascertained by and recovered before two justices, together with any further costs incurred, as the justices may think proper; and if the sums adjudged be not paid, they may be levied by distress. Any penalty imposed by or under the authority of the Act, on any bye-law of the Local Board of Health, the recovery whereof is not otherwise expressly provided for, may, upon proof or oath of the offence charged, be recovered before two justices, together with costs; and if the sums adjudged be not paid, they may also be levied by distress. The justices, or either of them, may order that any offender so convicted be kept in custody until return can be made to the warrant of distress, unless he enters into a recognizance for his appearance; and if before issuing the warrant, or upon the return, it appear to the satisfaction of the justices that no sufficient distress can be had within their jurisdiction, they may, by warrant under their hands and seals, cause the offender to be committed to gaol for any term not exceeding three months, unless the penalty and costs be sooner paid.

Recovery of damages, etc.
11 & 12 Vict.
c. 63, s. 129.

Penalties under the Sanitary Act, 1866, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by the 11 & 12 Vict. c. 43, or in any Act amending the same.

Recovery of penalties.
29 & 30 Vict.
c. 90, s. 54.

The expenses, etc., are to be recovered as damages by proceedings before the justices, therefore an action will not lie for their recovery. See *Blackburn v. Parkinson*. (1) In *Stevens v. Evans*, (2) *Dennison, J.*, laid it down as a rule that where a new statute prescribes a particular remedy, no other remedy can be taken; and the case of *St. Pancras Vestry v. Batterbury* (3) shows that where a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy must be adopted; so, two circumstances must concur to authorize the issuing of a mandamus,—a specific legal right, and the absence of an effectual remedy. (4) As bearing on the same point, see *ante*, p. 97.

Recovery of damages, etc.

(1) 28 L. J. (N. S.) M. C. 7; 5 Jur. (N. S.) 572; 32 L. T. 91.

(2) 2 Burr. 1157.

(3) 2 C. B. (N. S.) 477; 26 L. J.

(N. S.) C. P. 243; 3 Jur. (N. S.) 1106.

(4) *Rex v. Nottingham Waterworks Company*, 1 Nev. & P. 480.

With regard to appeals to the Secretary of State against expenses which a Local Board are empowered to recover in a summary manner, see 21 & 22 Vict. c. 98, s. 65, *ante*, p. 382.

Commence-
ment of
proceedings.

In summary proceedings to enforce payment of money, it is necessary that they should be commenced within the time limited by the 11 & 12 Vict. c. 43, s. 11. In the year 1854 certain permanent improvements were completed by a Local Board of Health upon premises in a town within their jurisdiction. A receiver of the rents of these premises appointed by the Court of Chancery in 1853 and 1854 agreed with the Local Board that the expenses should be raised by mortgage, and notice of the same was given to the receiver, who paid £30 in part payment thereof. Afterwards, having ceased to be receiver of the rents, he refused to pay the balance, and a demand for payment having been made upon him in 1857, in December of that year he finally refused to pay. A complaint was then made to the justices by the Local Board on the 19th January, 1858, which was dismissed by the justices, and upon a case being stated under the 20 & 21 Vict. c. 43, s. 2, it was held that the matter of complaint arose when notice of the amount to be raised by mortgage was given to the receiver, and that the information ought therefore to have been laid within six months from that time under the 11 & 12 Vict. c. 43, s. 11. It was also held that the Local Board in agreeing to the mortgage had exercised their option, and could not afterwards proceed to recover the expenses by summary proceedings under the 11 & 12 Vict. c. 63, s. 129. (1)

Demands
below £20 may
be recovered
in County
Courts.

24 & 25 Vict.
c. 61, s. 24.

Liability to
penalty not to
relieve from
other
liabilities.

11 & 12 Vict.
c. 63, ss. 130,
134.

Mode of pro-
ceeding before
justices.
Ib. s. 131.

Distress, how
to be levied.
Ib.

Proceedings for the recovery of demands below £20, which Local Boards are now empowered by law to recover in a summary manner, may, at the option of the Local Board, be taken into the County Court, as if such demands were debts within the cognizance of such Courts.

The Act gives a form of conviction which may be observed by the justices, and which, when used, is declared to be valid and effectual to all intents and purposes; and it further provides that the liability to any penalty under it shall not relieve from any other liability to which the offender would have been subject if the Act had not been passed.

In proceedings before justices, in cases in which the mode of proceeding is not specially prescribed, any one justice may issue a summons, and the justice or justices before whom appearance is made, or upon proof of service of the summons, may hear and determine the matter, and for that purpose examine the parties, or any of them, and their witnesses, on oath, and award such costs as they may think fit. Where any sum of money is directed to be levied by distress, the overplus arising from the sale, after satisfying such sum, the costs and expenses, is to be returned on demand. Distress levied under

(1) *Eddleston v. Francis*, 3 L. T. (N. S.) 270; 7 C. B. (N. S.) 586.

the authority of the Act is not to be deemed unlawful, nor any person making it a trespasser, on account of any defect or want of form; nor a trespasser *ab initio* on account of any irregularity afterwards committed; but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case.

Not unlawful for want of form.
11 & 12 Vict. c. 63, s. 131.

With regard to interested justices, it is provided that justices of the peace, being also members of any Local Board, may, if acting in any petty sessions, notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under the Act.

Justices, though members of Local Board, may act under this Act.
Ib. s. 132.

Still, any direct pecuniary interest, however small, in the subject-matter, will disqualify a justice from acting judicially in the matter; but the mere possibility of bias in favour of one of the parties does not *ipso facto* avoid the justices' decision. (1)

Where under a Local Improvement Act, on an information laid by order of a corporation, who were the Local Board of Health, for violating a bye-law in deviating from a plan of building, it was held that the convicting justices were not disqualified as being members of the corporation. (2)

It is now, however, enacted by the Justices of the Peace Act, 1867, that a justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a Local Board of Health, or Improvement Commissioners, or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

Justices not incapable of acting in execution of Acts when interested in application of penalty.
30 & 31 Vict. c. 115, s. 2.

If within a reasonable time the occupier against whom an order is made refuse to comply with it, he is liable to a penalty not exceeding £5 for every day afterwards during the continuance of the refusal; so, also, if the occupier, when requested by or on behalf of the Local Board to state the name of the owner of the premises, refuse or wilfully omit to disclose or wilfully misstate the name of the owner, any justice may, on oath made before him of such request, etc., summon the occupier to appear before him or some other justice, and if he neglect or refuse to attend, or if he do not show good cause for his refusal, or if the wilful omission or misstatement be proved, the justice before whom he is summoned may impose upon him a penalty not exceeding £5.

Occupiers to disclose owner's name.
11 & 12 Vict. c. 63, s. 148.

As to the services of any summons, notice, writ, or proceed-

(1) *Reg. v. Rand*, 35 L. J. (M. C.) 157; 7 B. & S. 297.

(2) *Harring v. Stockton*, 31 J. P. 420.

Service of
notice upon
Local Board.
11 & 12 Vict.
c. 63, s. 150.

ing of any kind upon the Local Board, it is provided that they may be served by being left at or sent through any post-office, directed to the Local Board at their office, or by being delivered there to their clerk personally.

It has been decided that where there was a corporate meeting held under the provisions of an Act of Parliament, with a chairman duly authorized to preside over it, a demand made by a collector for payment of poor rates at that meeting was sufficient; (1) and therefore it would seem that the service of a summons, notice, writ, or other proceeding upon a Local Board may be made in like manner notwithstanding the above provision, which is permissive merely.

Upon owners
and occupiers.
Ib.

In cases in which any notice is required to be given to the owner or occupier of any premises, it is sufficient to address the notice to them by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description; and the notice is to be served either personally or by delivering it to some inmate of the owner or occupier's place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown), upon any inmate of the premises in respect of which the notice is given, or if they be unoccupied, then, in case the notice is required to be served upon the occupier (and in case of the owner also, if his residence be unknown), it is sufficient to fix the notice upon some conspicuous part of the premises. But in the case of the owner, although his place of abode be known to the Local Board, yet, if it be not within the limits of their district, it is sufficient for them to transmit the notice, directed to him by name, through the post.

Per Pollock, C.B., the service of notice under sect. 150 of 11 & 12 Vict. c. 63, is only required where that section has been resorted to to cure a defect in the wording of the notice; and if the notice be such as would be good at common law, compliance with sect. 150 is not required.

Per Martin and Pigott, BB., a merchant's place of business is his place of abode, within sect. 150. (2)

Common
informers.
Ib. s. 133.

No proceedings for the recovery of penalties incurred under the provisions of the Public Health Act can be taken by any person other than by a person aggrieved, or the Local Board of Health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where the penalty is directed to be paid to the churchwardens and overseers of the poor, ss. 79 and 80, *ante*, p. 228), without the consent in writing of her Majesty's Attorney-General; and no penalty can be recovered unless proceedings for its recovery be com-

(1) *Curtis v. Kent Waterworks Company*, 7 B. & C. 314.

(2) *Local Board of Health (Waterloo with Seaforth)*, apps., *Bibby*,

resp., 10 Jur. (N. S.) 519. S. C. *Mason v. Bibby*, 33 L. J. (N. S.) M. C. 105; 9 L. T. (N. S.) 692.

menced within six calendar months after the commission or occurrence of the offence upon which it attaches. If the application of the penalty be not otherwise provided for, one-half of it is to go to the informer, and the remainder to the Local Board of Health of the district in which the offence was committed; but if the Local Board be the informer, they are entitled to the whole of the penalty recovered; and all penalties or sums recovered on account of any penalty by the Local Board are to be paid to their treasurer, to the credit of their district fund account.

It has been held that an information for violation of a bye-law, laid on behalf of the corporation who were the Local Board of Health for the district, did not require to be laid by a person appointed under seal of the Board, and by consent of the Attorney-General. (1)

The above limitation only applies to the recovery of penalties; but by Jervis's Act it is provided that where no time is already or shall hereafter be specially limited for making any complaint or laying any information, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose. An adjudication by two justices under the Lands Clauses Consolidation Act, 1845, and the Railway Clauses Consolidation Act, 1845, of a sum below £50, to be paid by a railway company as a compensation for injury done to lands, was held to be bad under the above provision, because the complaint on which the order was founded was made more than six calendar months after the cause of complaint arose. (2) On this point see also *Eddleston v. Francis*, ante, p. 438.

All penalties incurred in any corporate borough, and made payable to the Local Board, are to be carried to the district fund account.

The 22 Vict. c. 32, may here be noticed. It enacts that it shall be lawful for Her Majesty to remit in whole or in part any sum of money which, under any Act now in force or hereafter may be passed, may be imposed as a penalty or forfeiture on a convicted offender, although such money may be, in whole or in part, payable to some party other than the Crown, and to extend the royal mercy to any person who may be imprisoned for non-payment of any sum of money so imposed, although the same may be, in whole or in part, payable to some party other than the Crown. By the 27 & 28 Vict. c. 110, it is further enacted that where any public Act of Parliament provides that in respect of any offence therein mentioned a penalty is to be imposed of not less than a particular sum of money, or of not less than a certain term of imprisonment, or other punishment therein specified, it shall not be lawful for the justices or Court

Limitation of proceedings for penalties. 11 & 12 Vict. c. 63, s. 133. Application of penalties. Ib.

Limitation. Ib. c. 43, s. 11.

Application of penalties. 21 & 22 Vict. c. 98, s. 67. Remission of penalties. 22 Vict. c. 32.

(1) *Harring v. Stockton*, 31 J. P. 420.

(2) *In re Edmunson*, 17 A. & E. 67.

having cognizance of such offence to mitigate such penalty below the limit specified in that Act of Parliament, in pursuance of any power of mitigating penalties conferred on such justices or Court by any local or private Act of Parliament.

Small penalties.
Definition of "penalty."
28 & 29 Vict. c. 127, s. 3.
Recovery of small penalties.
Ib. s. 4.

The Small Penalties Act, 1865, which came into operation on the 1st August, 1865, enacts that the word "penalty" in that Act shall include any sum of money recoverable in a summary manner, and that where upon summary conviction any offender may be adjudged to pay a penalty not exceeding £5, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid :

For any penalty—	The imprisonment not to exceed—
Not exceeding 10s.	Seven days.
Exceeding 10s. and not exceeding £1	Fourteen days.
Exceeding £1 but not exceeding £2	One month.
Exceeding £2 but not exceeding £5	Two months.

Saving as to hard labour.
Ib. s. 5.

But nothing in the Act contained shall affect the power of imposing hard labour in addition to imprisonment in cases where hard labour might, on non-payment of the penalty, have been so imposed if this Act had not passed.

Application of Act.
Ib. s. 6.

The Act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any Act of Parliament, whether passed before or after the commencement of the Act; and all provisions of any Act of Parliament authorizing, in the case of non-payment of a penalty not exceeding £5, a longer term of imprisonment than is provided by the Act, shall be repealed.

The law officers of the Crown, Sir Roundell Palmer and Sir R. P. Collier, with reference to the Small Penalties Act, are stated to have advised that "though the wording of the Act on this subject is not quite satisfactory, they think that the true 'penalty' must be taken to mean the penal sum adjudged, together with the costs, *i.e.*, the aggregate of the penal sum and the costs." (1)

Appeal to Court of General or Quarter Sessions.
11 & 12 Vict. c. 63, s. 135.

Any person who shall think himself aggrieved by any order, conviction, judgment, or determination, or other act of any justice or justices, in any case in which the penalty imposed or the sum adjudged exceeds the sum of 20s., may appeal to the Court of General or Quarter Sessions holden next after the making of the rate objected to, or accrual of the cause of complaint. The appellant, however, cannot be heard in support of the appeal unless, within fourteen days after the accrual of the cause of complaint, he give to the Local Board, or justice or justices by whose act he may think himself aggrieved, notice in writing stating his intention to appeal, together with a state-

(1) *Law Times*, 13 April, 1867, p 455.

ment in writing of the grounds of appeal. The Court, upon Appeal to hearing and finally determining the matter of the appeal, may, Court of according to its discretion, award such costs to the party General or appealing or appealed against as they may think proper, and its Quarter Sessions. determination is to be conclusive and binding on all persons. 11 & 12 Vict. c. 63, s. 135. If there be not time to give such notice and enter into a recognizance (the purport of which, however, is not stated in the Act) before the sessions holden as last mentioned, then the appeal may be made to, and the notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard. On the hearing of the appeal, no grounds of appeal can be gone into or entertained other than those set forth in the statement of the grounds of appeal.

For the purposes of the Act, by 11 & 12 Vict. c. 63, s. 2, "the Court of General or Quarter Sessions" means such Court having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of the Court arises, and therefore if the district of the Local Board comprises parts of two or more counties, the Court of Quarter Sessions of each county would seem to have concurrent jurisdiction over the whole district.

Under 12 & 13 Vict. c. 45, s. 1, fourteen clear days' notice of Notice of appeal at least must be given in writing signed by the person appeal. or persons giving the same or by his or their attorney, and the grounds of appeal must be specified.

An application was made to the Court for a prohibition to Writ of issue to a Court of Quarter Sessions, who quashed an order prohibition. under 11 & 12 Vict. c. 63, s. 103, for payment of rates, with costs to be paid by the Local Board, on the ground that the appeal to the quarter sessions did not lie, because it contained an express adjudication that the appellant was liable to the rate (which was disputed). The Court, however, refused the application, as a writ of prohibition will not be granted after judgment, unless it be perfectly clear that there has been an excess of jurisdiction; and *semble*, that the "sum adjudged" in sect. 135 means the sum in respect of which the adjudication is made; and therefore that the order of justices was a matter or thing done by them in which the sum adjudged exceeded 20s. within the meaning of the section, and therefore the order might be appealed against. (1)

The 2nd section of 11 & 12 Vict. c. 63, defines a justice to be "a justice acting for the place in which the matter requiring the cognizance of the justice arises" and this, in a county, means a justice acting within the Petty Sessional Division in which the matter arises; therefore justices for the county not acting within the Petty Sessional Division of it in which an offence under the 148th section of the Act may be committed,

(1) *Ricardo v. Maidenhead*, 2 H. 73. See also *Reg. v. Warwickshire* & N. 257; 27 L. J. (N.S.) M. C. JJ., 6 E. & B. 837.

would have no jurisdiction to convict under the 129th section. (1)

No rate or proceeding to be quashed for want of form, etc.

11 & 12 Vict. c. 63, s. 137.

In respect of any of the foregoing matters, it is further provided that no proceeding touching the conviction of any offender against the Act, nor any order, award, or other matter or thing made, done, or transacted in or relating to the execution of the Act, can be vacated, quashed, or set aside for want of form, or be removed or removable by *certiorari* or other writ or process into any of the superior Courts.

Certiorari.

But nevertheless, the Court quashed a conviction on *certiorari* in a case where a justice had acted without jurisdiction in convicting under an illegal bye-law made by a Local Board of Health. (2)

Though the writ of *certiorari* be taken away by statute, the Court of Queen's Bench may grant the writ under certain circumstances, as in *Reg. v. Dickenson*. (3) By sect. 90 of the 5 & 6 Will. IV. c. 76 (the Municipal Corporations Act), Councils of corporate boroughs are empowered to make bye-laws; and by sect. 91, offences against bye-laws so made may be punished by summary conviction. By sect. 132, the writ of *certiorari* is taken away. In the above case the Recorder of Newcastle-upon-Tyne, upon an appeal against a summary conviction for an offence against a bye-law, with the consent of the parties, stated a case, and referred, as the only question for the Court to determine, the question, whether the facts amounted to an offence within the bye-law; and the Court having granted a writ of *certiorari* to bring up the case, it was held that by virtue of the consent of the parties, the Court might receive the case, and determine the question, although the writ of *certiorari* was taken away by the Act. But in *Reg. v. Gloucester* (4) the Court held that the 21 & 22 Vict. c. 98, s. 60, did not apply to the removal by *certiorari* of a resolution and order for payment of a sum of money which was made by the Local Board of Health, acting under the Public Health Act, 1848.

Proceedings in case of non-corporate districts.

11 & 12 Vict. c. 63, s. 138.

In a corporate district in which the Local Board of Health consists of the body corporate of the borough, the Local Board will sue and be sued in their corporate name; but in non-corporate districts the Local Board are to sue and be sued in the name of their clerk for the time being for or concerning any contract, matter, or thing relating to any property, works, or things vested or to become vested in them, or relating to any matter or thing entered into or done, or intended to be entered into or done, by them. (See, however, 29 & 30 Vict. c. 90, s. 46, as to the Incorporation of Local Boards). In any action of ejectment brought or prosecuted by a non-corporate Local Board, it will be sufficient to lay the demise in the name

Actions, etc., in name of clerk.

Ib.

(1) *Reg. v. Brodhurst*, 32 L. J. (N. S.) M. C. 130; 1 Jur. (N. S.) 802. (N. S.) M. C. 168.

(2) *Reg. v. Wood*, 5 E. & B. 49. (N. S.) M. C. 204; 3 Jur. (N. S.) 1076. S. C. nom. *Reg. v. Rose*, 24 L. J. (4) 33 L. T. 145.

(3) 7 El. & Bl. 831; 26 L. J.

of their clerk, and in proceedings by or on the part of the Board against any person for stealing or wilfully injuring or otherwise improperly dealing with property, works, or things belonging to them or under their management, it will be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the clerk of the Board, and all legal proceedings by, on the part of, or against the Local Board, under the Act, may be preferred, instituted, and carried on in his name; but no proceedings shall abate or be discontinued by his death, resignation, or removal, or by reason of any change or vacancy in the Local Board by death, resignation, or otherwise. The clerk in whose name any action or suit, complaint, information, or proceeding, may be brought or defended is to be fully reimbursed out of the general district rates all costs, charges, damages, and expenses he may become liable to pay by reason of his name being used in the proceedings.

Mode of describing property of Local Board. 11 & 12 Vict. c. 63, s. 138. Actions, etc., not to abate. Ib.

Clerk to be reimbursed expenses. Ib.

Any Local Board may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such Board or authority.

Appearance of Local Board in legal proceedings. 29 & 30 Vict. c. 90, s. 48. Actions by Local Boards.

In the case of a complaint to the justices on behalf of a Local Board for any infringement of the bye-laws, the justices are not bound to adjudicate unless the clerk of the Board attends the hearing by himself or by his counsel or attorney. (1)

Where a contract was entered into with five persons named who were members of a Local Board of Health, for works to be done by such persons, and they covenanted "for themselves, their heirs, executors, and administrators," but the contract professed to be entered into by them "for and on behalf of the Local Board," it was held that the clerk to the Local Board was the proper person to sue for a breach of the contract, by virtue of sect. 138 of the 11 & 12 Vict. c. 63. (2)

The Local Board are a fluctuating body, and therefore the legislature has provided that actions shall be brought and defended in the name of their clerk; and it has also provided against the injustice of making them or their officers personally liable for matters done *bonâ fide* in the execution of the Act. If a right of suit exists against the Board, the Act gives an easy mode of proceeding to enforce it, but not a right of action where there is not liability independent of the Act. When a judgment is recovered against the clerk as a public officer of the Board, it is not liable to the usual incidents of a judgment, and enforceable by writ of execution, but only by mandamus or by bill in equity to compel the parties to satisfy the judgment when it appears that they have the means of doing so, that is, by having recourse to the rates to be levied under the Act. Moreover, when a former Local Board of a non-corporate district has incurred a liability, an action may be maintained

(1) *Ex parte Leamington*, 26 J. P. 84.

(2) *Cobham v. Holcombe*, 8 C. B. (N. S.) 815.

Actions by Local Boards. against the Local Board for the time being in the name of their clerk. (1)

There is no direction in the 11 & 12 Vict. c. 63, that the Local Board shall be a body corporate, or that they shall use a common seal, and the above-mentioned direction is inconsistent with their being a body corporate. Therefore, upon a petition presented by the Local Board of Health for payment out of Court of dividends upon a sum of money paid in by a railway company, it was held that the Local Board of Health was not a body corporate under the 11 & 12 Vict. c. 63, and that they must sue in the name of their clerk, as directed by sect. 138, (2) as they could not sue or present a petition as a corporate body. Petitions to a Court of Equity may be presented in the name of their clerk, and moneys may be paid to their treasurer by order of the Court. But now see 29 & 30 Vict. c. 90, s. 48, *ante*, p. 445.

Persons acting in execution of Acts indemnified. 11 & 12 Vict. c. 63, s. 140.

No matter or thing done or contract entered into by the Local Board, nor any matter or thing done by any superintending inspector, or any member of the Local Board, or by the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under their direction, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing the Act, subject them or any of them personally to any action, liability, claim, or demand; and any expense incurred by any Local Board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person so acting, is to be repaid out of the general district rates.

As regards this provision it may be mentioned that a similar provision was contained in the Metropolitan Commissioners of Sewers Act, 11 & 12 Vict. c. 112, s. 128; and that it was held that the effect of it was to absolve from personal liability to an action persons who *bonâ fide* do some act under the direction of the Commissioners, which, but for that clause, would subject them to an action. (3) But see *ante*, p. 445.

Notice of action. *Ib.* s. 139.

No writ or process is to be sued out against or served upon any superintending inspector, or any officer or person acting in his aid, nor against the Local Board, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting under the direction of the Local Board, for anything done or intended to be done under the provision of the Act, until the expiration of one month next after notice in writing clearly and explicitly stating the cause of action (which is in accordance with the 5 & 6 Vict. c. 97, s. 4, *post*, p. 448), and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause.

(1) *Kendall v. King*, 25 L. J. (N. S.) Ch. 419; C. P. 132; *Hall v. Taylor*, 27 *Ib.* 17 Jur. 107.
Q. B. 311.

(2) *Ex parte Llanelly Board of Health*, 22 L. J. (N. S.) Ch. 419; 17 Jur. 107.

(3) *Ward v. Lee*, 26 L. J. (N. S.) Q. B. 142.

A letter of the plaintiff's attorney claiming compensation for the injury caused by negligence, and stating that he is instructed to commence proceedings, if no satisfactory arrangement can be come to, would not be a sufficient notice of action. (1)

As regards a notice of action in respect of a claim for compensation for injuries affecting premises by the construction of works according to the powers of the Act, see *Delany v. Metropolitan Board of Works*, (2) which, however, was upon the construction of the Metropolitan Act, 25 & 26 Vict. c. 102, s. 106.

It is settled by authority (3) that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or continuing to leave any duty unperformed, amounts to an act "done or intended to be done" within the meaning of the clauses requiring notice of action for the protection of public bodies under Acts of Parliament imposing public duties. (4)

The following is a form of notice of action.—

To the Local Board of Health of the parish or district of _____, Form of notice
in the county of _____, and to _____, of _____, clerk of action.
to the said Local Board of Health.

Take notice that I _____, of _____, will, at the expiration of one month from this date, enter my plaint against you the said Local Board of Health, and you the said _____, clerk of the said Local Board of Health, in one of Her Majesty's superior Courts of Law at Westminster, for the injury and damage caused to me by the undermentioned matters and things done by you and your labourers, servants, and others acting under your orders and directions at and upon a certain _____, belonging to me at _____, in the parish of _____: To wit, for that you the said Local Board of Health, and you the said _____, did by yourselves, your labourers, servants, and others, on or about the _____ day of _____ last past, by great force of arms and unlawfully enter upon the said _____, and did by great force of arms and unlawfully break down, remove, and destroy the railings, hedges, gates, stiles, and other fences bounding the said _____, and did thereupon with horses, carts, barrows, spades, and other implements, cart, carry and lay down upon the said _____, a large quantity of gravel, stones, rubbish, and other matters and things, and did spread the same over the said _____, to the great injury and damage of me the said _____.

Further, take notice that _____, of _____, in the county of _____, is the name of my attorney in the cause of action aforesaid.

Dated this _____ day _____, 186 .

Upon the trial of any action so brought, the plaintiff is not permitted to go into evidence of any cause of action which is not stated in the notice; and unless such notice be proved the jury shall find for the defendant; and every action must be brought or commenced within six months next after the accrual

Evidence.
11 & 12 Vict.
c. 63, s. 139.
Limitation
of actions.
Ib.

(1) *Mason v. Birkenhead*, 29 L. J. (N. s.) Exch. 407; 6 H. & N. 72.

(2) 37 L. J. C. P. 59; L. R. 3 C. P. 111; 17 L. T. (N. s.) 262.

(3) *Davis v. Curling*, 8 Q. B. 286; 15 L. J. Q. B. 56; *Poulsum v.*

Thirst, 16 L. T. (N. s.) 324; L. R. 2 C. P. 449; 36 L. J. C. P. 225.

(4) *Wilson v. Halifax*, 17 L. T. (N. s.) 660; 37 L. J. Exch. 44; L. R. 3 Exch. 114.

Venue.
11 & 12 Vict.
c. 63, s. 139.

of the cause of action, and not afterwards, and must be laid and tried in the county or place where the cause of action occurred.

This latter must be read as subject to the power of the Court to change the venue, for the common law power of the Court or a judge to change the venue in an action is not taken away. The meaning of the provision that the action shall be laid and tried in the county or place where the cause of action occurred is, that the plaintiff in the usual course of proceeding shall not be at liberty to lay the venue elsewhere than where the cause of action arose, unless the Court shall otherwise order. (1) In a later case it was held that the venue in action against Local Boards of Health is local and not transitory. (2)

General issue.
Ib.

The defendant is at liberty to plead the general issue, and to give the Public Health and Local Government Acts and all special matter in evidence thereunder; but any person to whom notice of action is given may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of the notice, and in case it be not accepted may plead such tender in bar, and (by leave of the Court) with the general issue or other plea or pleas. If upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant is entitled to full costs, and to have judgment accordingly; in case, however,

Tender of
amends, etc.
Ib.

amends be not tendered, or in case the amends tendered be insufficient, the defendant may, by leave of the Court, at any time before trial, pay into Court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue or other plea or pleas.

Money may be
paid into
Court.
Ib.

As regards the liability of lands, etc., belonging to a Local Board to be taken on ejectment brought under a writ of *elegit*, see *ante*, p. 414.

Individual
liability of
members of
Local Board.

Where a Local Board enter into a contract *ultra vires*, and therefore cannot pay the contractor out of the rates which they are authorized to levy, individual members of the Board are not personally liable for the debt. (3)

Notice of
action.

It is enacted by the 5 & 6 Vict. c. 97, s. 4, that in all cases where notice of action is required, such notice shall be given one calendar month at least before any action shall be commenced.

By sect. 5 it is also enacted that the period within which any action may be brought for anything done under the authority or in pursuance of any public, local, and personal, or local and personal Act shall be two years, and in case of continuing damage, then within one year after such damage shall have ceased. So much of any clause in any such Act, whereby

(1) *Itchin Bridge Company v. Southampton*, 8 E. & B. 801; 27 L. J. (N. S.) Q. B. 128; 3 Jur. (N. S.) 1261.

(2) *Pryor v. West Ham*, 15 L. T. (N. S.) 250.

(3) *Bailey v. Cuckson*, 32 L. T. 124.

any party or parties are entitled or permitted to plead the Notice of general issue only, and to give any special matter in evidence ^{action.} without specially pleading the same, was repealed by 5 & 6 Vict. c. 97, s. 3.

With regard to proceedings against justices for acts done by them in the execution of their office, see the third edition of Glen's Jervis's Act.

The notice of action above specified has reference to a *tort* or *quasi tort* committed in the *bonâ fide* exercise of the powers conferred by the Act; and it has been held not to be applicable to a contract for the execution of works. (1) The contract must, however, be in respect of the work to be done, for though a person employing a contractor to do a thing which is lawful in itself, is not responsible for the negligence or misconduct of the contractor or his servants in executing the matter of the contract, yet if the thing itself is wrongful, the employer is responsible for the wrong so done by the contractor or his servants, and is liable to third persons who sustain damage from the doing of that wrong. Therefore if a person employ another to break up a street or to do a certain work, having no authority to cause the street to be broken up, or the work to be done, and damage thereby accrue, the employer is liable, and is not exempted from his liability merely because there was a contract between him and the person immediately causing the work to be done. (2)

Liability for
acts of
contractor.

Further, a municipal corporation authorized by statute to carry on gas-works to light the town, and employing workmen to lay down gas-pipes in the borough, are bound to make compensation for an injury arising from the negligence of their servants employed in laying down the gas-pipes. (3)

It has also been held that a person who had contracted with a Local Board of Health for the digging of wells for the better supply of water, the work to be done to the satisfaction of the Local Board or their surveyor, and the digging to be entirely under the direction of their surveyor, was a person "acting under the direction of the Local Board," within the meaning of the above provision; and in an action for an injury caused by the works being left without sufficient light, that the action was in respect of something "done or intended to be done, under the provisions of the Act," and therefore that the defendant was entitled to notice of action under sect. 139 of the Public Health Act, 1848. (4)

So where, in reconstructing a sewer, the contractor who was employed by the Metropolitan Board of Works, was obliged

(1) *Davies v. Swansea*, 8 Exch. Rep. 808; 22 L. J. (N. S.) Exch. 267.

(2) *Ellis v. Sheffield Gas Consumers' Company*, 2 E. & B. 767.

(3) *Scott v. Manchester*, 1 H. & N.

59. Affirmed in Exch. Chamb. 2 H. & N. 204; 26 L. J. (N. S.) Exch. 406.

(4) *Newton v. Ellis*, 5 E. & B. 115; 24 L. J. (N. S.) Q. B. 337; 1 Jur. (N. S.) 850.

CHAPTER VII.

BYE-LAWS.

ALL bye-laws made by Local Boards are to be in writing and under their seal, and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal. By such bye-laws penalties may be imposed upon offenders against the Act not exceeding £5 for each offence, and in the case of a continuing offence a further penalty not exceeding 40s. for each day after written notice of the offence from the Local Board. The bye-laws so made may be altered or repealed by any subsequent bye-laws made in like manner; but all bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty; and they must not be repugnant to the laws of England or to the provisions of the Act, and are not to be of any force or effect unless they are confirmed by a principal Secretary of State, who is required to allow or disallow the same as he may think proper. No bye-laws shall be so confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which they relate one month at least before the making of such application. For one month at least before any such application, a copy of the proposed bye-laws shall be kept at the office of the Local Board, and be open during office hours thereat, for the inspection of the ratepayers of the district. The clerk shall furnish every such ratepayer who shall apply for the same with a copy thereof, or of any part thereof, on payment of sixpence for every one hundred words contained in such copy.

After confirmation the bye-laws are to be printed and hung up in the office of the Local Board; and copies of them are to be delivered upon application to any ratepayer of the district to which they relate.

Local Boards have no general power to make bye-laws for carrying out the purposes of the Act, but only such as are authorized by the Act; therefore a bye-law that "all occupiers of any premises within the district shall properly clean and remove all snow, or other obstructions, from the footpath and channel opposite their respective premises, before nine of the clock in the forenoon of each day," is not a bye-law warranted

Bye-laws of Local Board not to be in force till confirmed by Secretary of State.
11 & 12 Vict. c. 63, s. 115.

Bye-laws to be printed.
Ib. s. 116.

Removing snow, etc.

by the statute. The Board can make bye-laws to carry out the special powers of the statute, but they have no power to make bye-laws to carry out the general powers under the Act. (1)

Per Lord Campbell, C.J., we cannot by any strained construction apply the words of the statute to cases which they do not include.

Bye-laws for removal of snow, filth, etc., and keeping of animals. 21 & 22 Vict. c. 98, s. 32. Legality of bye-laws.

It has however been since enacted, that the Local Board may make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish within their district, or the keeping of animals, so as to be injurious to the public health.

If a Local Board, in making a bye-law, exceed their jurisdiction, the subsequent allowance of the bye-law by a Secretary of State will not preclude inquiry into the validity of the bye-law; where, therefore, an information having been laid for an infringement of a bye-law, and it being objected that the making of such bye-law was not authorized by the Act, the justice held that inasmuch as it had been allowed by the Secretary of State, under sect. 115, he could not entertain the objection, and convicted the occupier of the premises, the Court of Queen's Bench quashed the conviction on *certiorari*, though sect. 137 enacts that no proceeding touching the conviction of any offender against the Act shall be removable by *certiorari*; holding that the justice had acted without jurisdiction. (2)

Then the bye-law must be reasonable, for otherwise it will be bad. Where the bye-law of a borough which provided that no person shall erect any booth, or place any caravan for the purpose of any show or public entertainment, in any public place within the borough without the licence of the mayor, and that any such licence given at any other than fair time should be revoked by the mayor, if three inhabitant householders, residing within one hundred yards of the place from which it was granted, should memorialize the mayor to revoke it, was held to be an unreasonable bye-law, and therefore bad. (3)

Again, a bye-law may be good in part and bad in part, and as such divisible; and may therefore be enforced as regards the good part. (4)

Per Pollock, C.B., with regard to bye-laws *ultra vires*, "Persons empowered to make bye-laws have no right to invest themselves with powers which the law will not sanction. The way in which Boards are inclined to use their powers make it very desirable that they should have as little power as possible;" and per Bramwell, B.: "It is about the same as a policeman who thinks he is not entitled to a staff, unless he breaks somebody's head with it." (5)

(1) *Reg. v. Wood*, 5 E. & B. 49.

S. C. nom. *Reg. v. Rose*, 24 L. J.

(N. S.) M. C. 130; 1 Jur. (N. S.) 802.

(2) *Ibid.*

(3) *Elwood v. Bullock*, 13 L. J.

(N. S.) M. C. 330.

(4) *Reg. v. Lundie*, 31 L. J. (N. S.)

M. C. 157.

(5) 7 L. T. (N. S.) 334.

Bye-laws made by Local Boards will apply to the following subjects only:—

1. The summoning, notice, place, management, and adjournment of the meetings of the Board; and generally the transaction and management of the business of the Board (*ante*, p. 58). Business of Board.
11 & 12 Vict.
c. 63, s. 34.
2. The duties and conduct of the several officers and servants of the Board (*ante*, p. 61). Duties of officers.
Ib. s. 37.
3. The prevention of noxious or injurious effects of the following businesses newly established in the district; namely, blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture (*ante*, p. 298). Noxious trades.
Ib. s. 64.
4. The decent and economical interment of any corpse which may have been received into any rooms or premises provided by the Board for the reception of corpses previously to interment (*ante*, p. 326). Burial of the dead.
Ib. s. 81.
5. Imposing the duty of cleansing footways and pavements adjoining any premises, privies, ash-pits, and cesspools, and the removal of refuse from any premises (*ante*, p. 142). Cleansing footways.
21 & 22 Vict.
c. 98, s. 32.
6. For the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish within the district, or of the keeping of animals so as to be injurious to the public health (*ante*, p. 142). Removal of snow, etc.
Ib.
7. With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof; with respect to the structure of walls of new buildings for securing stability and the prevention of fires; with respect to the sufficiency of space about buildings, to secure a free circulation of air; with respect to the ventilation of buildings; with respect to the drainage of buildings; to water-closets, privies, ash-pits, and cesspools, in connection with buildings; and to the closing of buildings, or parts of buildings, unfit for human habitation, and the prohibition of their use for such habitation (*ante*, p. 201). (1) Construction of new streets.
Ib. s. 34.
8. For regulating the licensing and inspection of slaughter-houses and knackers' yards; preventing cruelty to animals therein; for keeping them in a cleanly and proper state; for removing filth from them, and requiring them to be supplied with a sufficient supply of water (*ante*, p. 295). Slaughter-houses and knackers' yards.
10 & 11 Vict.
c. 34, s. 128.
9. For regulating the number of lodgers, and for promoting cleanliness and ventilation in common lodging-houses, and the inspection of such houses (*ante*, p. 243). Common lodging-houses.
11 & 12 Vict.
c. 63, s. 66.
10. For regulating markets and fairs (*ante*, p. 290). Markets and fairs.
10 & 11 Vict.
c. 14, s. 42.
11. For the regulation of hackney carriages in the following respects:—The conduct of the proprietors and drivers, their badges and hours for plying for hire; the display of the number and licence of the carriages; the number of persons to be carried

(1) *Burgess v. Peacock*, 10 Jur. (N. S.) 803.

Hackney
carriages.
21 & 22 Vict.
c. 98, s. 44.
10 & 11 Vict.
c. 89, s. 68.
Licensing
horses, boats,
etc.
24 & 25 Vict.
c. 61, s. 25.

Burial-
grounds.
Ib. s. 21.

Stipendiary
magistrates'
salary.
26 & 27 Vict.
c. 97, s. 3.

Enforcement
of penalties.
11 & 12 Vict.
c. 63, s. 129.

11 & 12 Vict.
c. 43, s. 11.

Effect of
bye-laws.

in each; the number of horses for each; check-strings and furniture; the stands for plying for hire; the fares to be taken; and the recovery of lost property (*ante*, p. 320).

12. For licensing and regulating horses, ponies, mules, or asses standing for hire in the district, and for prescribing and regulating the stands and fixing the rates of hire, and ordering the conduct of the drivers or attendants thereof, and also for licensing, regulating, and fixing the rates of hire of pleasure boats or vessels, and the persons in charge of the same (*ante*, p. 321).

13. For the preservation and regulation of all burial-grounds within their limits when the Local Board is also the Burial Board of the district (*ante*, p. 330).

14. If the district be not a municipal corporation, and comprise a population of 25,000 persons within the area of the district, if the Local Board, by a majority of not less than two-thirds of the number of the Board, think it expedient that a stipendiary magistrate should be appointed to execute the office of a justice of the peace within the district, they may, by a like majority, make a bye-law or minute fixing the amount of the salary which the magistrate when appointed by the Secretary of State is to receive (*ante*, p. 344).

Further, with regard to bye-laws, see the several chapters treating of the subjects for the regulation of which Local Boards are empowered to make bye-laws.

With regard to the recovery of penalties imposed by any bye-laws, it is enacted that any penalty so imposed, the recovery whereof is not otherwise provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before two justices, together with such costs of the proceedings as they may think proper. The proceedings for the recovery must be taken within six months of the commission of the offence.—Further, on this subject, see *ante*, p. 441.

A bye-law has the same force within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large. (1) The validity of a bye-law may be tested and tried in an action brought to recover the penalty; or if the mode of enforcing the penalty be by distress, by an action of trespass. (2)

(1) *Hopkins v. Swansea*, 4 M. & W. 640, per Lord Abinger, C.B.

(2) *Moir v. Munday*, Sayer, 181, 185.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.

WHERE complaint is made to a Secretary of State that a Local Board has made default in enforcing the provisions of the Local Government Act, such Secretary, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

Mode of proceeding where Local Board has made default in enforcing provisions of Act, etc.
29 & 30 Vict. c. 90, s. 49.

The costs of this proceeding on the part of the Secretary of State are provided for, as will be seen *ante*, p. 89.

Whenever the consent, sanction, approval, or authority of a Local Board is required by the Public Health or Local Government Acts, it is, in the case of a non-corporate district, to be in writing under their seal and the hands of five or more of them, and in case of a corporate district, under their common seal; and per Kindersley, V.C., a Local Board of Health, in other than a corporate borough, is not made a corporation by the Public Health Act, 1848. (1) But by 11 & 12 Vict. c. 63, s. 84, *ante*, p. 411, a Local Board of Health may accept and hold lands as a corporation.

Consents of Local Boards to be in writing.
11 & 12 Vict. c. 63, s. 149.

Now by the Sanitary Act, 1866, Local Boards, if not already incorporated, shall be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on them in their characters of Local Boards.

Incorporation of Local Boards.
29 & 30 Vict. c. 90, s. 46.

The provision in 11 & 12 Vict. c. 63, s. 149, that whenever the consent, sanction, approval, or authority of the Local Board is required by the provisions of the Act "the same shall (in

(1) *Ex parte Llanelly*, 17 Jur. 108.

Consents of
Local Boards
to be in
writing.

the case of a non-corporate district) be in writing under their seal, and the hands of five or more of them," applies only to cases where something is to be done by others requiring the authority of the Local Board, and not to that which the Local Board themselves do, as the making of a general district rate. (1) But the Court of Queen's Bench now hold that the enactment applies to a general district rate made by the Board, and that the want of the seal of the Board and the signatures of five or more of the members was fatal to the validity of the rate. (2)

This, however, is scarcely reconcilable with *Reg. v. Worksop* (3), where Cockburn, C.J., is reported to have said, "We think there is no difficulty as to the objection that the signatures of five members of the Local Board, and their seals, must be to the resolution and rate. There is no foundation for that objection. The view we take of the 149th section is that it applies only to cases where something is done by others requiring the authority of the Board, and not to things done by the Local Board itself. We therefore dismiss that objection entirely."

Compensation
in case of
damage by
Local Board.
11 & 12 Vict.
c. 63, s. 144.
24 & 25 Vict.
c. 61, s. 24.

Full compensation shall be made, out of the general or special district rates, to all persons sustaining any damage by reason of the exercise of any of the powers of the Public Health Act; and in case of dispute the amount is to be settled by arbitration; or if the compensation claimed do not exceed the sum of £20, it may be ascertained by and recovered before justices in a summary manner, or in the County Court.

The 144th section of the Public Health Act, 1848, and the 68th section of the Lands Clauses Act, 8 Vict. c. 18, refer to the same injuries, and must be construed together. (4) The word "damage" therefore does not include every inconvenience, but only such as would give a right of action had there been no Act of Parliament.

The right to compensation will not arise until the damage has been sustained, for the duty to pay does not arise until after the damage has been ascertained and settled according to the provisions of the Act. (5) In a case where a Local Board of Health did not deny that they had made a certain sewer, and were liable to make compensation if there were any damage, which they denied, it was held that this was a dispute as to the amount of damage and not as to the liability of the Local Board to make any compensation, and therefore that it was the subject of a reference under the Act; and that the arbitrators, if of opinion that there was no damage, might in such case award that the amount of compensation was nothing. (6)

(1) *Reg. v. Worksop*, 10 L. T. (N. S.) 297.

(2) *Reg. v. Worksop*, 5 B. & S. 951; 11 Jur. (N. S.) 1015; 34 L. J. (M. C.) 220; 29 J. P. 406, 759.

(3) 28 J. P. 597.

(4) *Hall v. Bristol*, 15 L. T. (N. S.)

572; 36 L. J. C. P. 110; L. R. 2 C. P. 322.

(5) *Peters v. Clarson*, 7 M. & G. 548.

(6) *Brady v. Southampton*, 4 E. & B. 1014; 24 L. J. (N. S.) Q. B. 239.

So where the declaration charged that the Local Board of Health of Southampton so constructed a sewer that quantities of filth and sewage matter were poured in, upon, and about the approaches and works connected with the bridge of a floating-bridge company, it was held, upon demurrer, that the declaration charged a wrong not within section 144 of the Public Health Act, 1848, and that therefore an action might be maintained against the Local Board of Health. Per Lord Campbell, C.J., the Local Board of Health are a very peculiar body, and are entirely the creature of an Act of Parliament, having extraordinary powers conferred on them, and being subjected to extraordinary liabilities; and it seems to me that the cases of the *Feoffees of Heriot's Hospital* (1) and *Duncan v. Findlater* (2) apply to a case of this sort. Looking to the Local Board of Health created by the 11 & 12 Vict. c. 63, it is supposed to be liable to actions for a wrong which they may commit. The declaration clearly charges a wrong within section 144; the clause giving compensation is not a remedy which the legislature have applied—the remedy is by action. The question is, shall the action be brought against the Board of Health, or against the individuals from whose default the damage is supposed to have arisen? Looking to section 139, I think, if there is any case in which the Local Board of Health may be liable, that section meets such a case as this. There is a wrong, and if the defendants have any answer it must come by way of plea. Section 139 clearly supposes that there may be an action for a wrong, because it not only provides that there shall be notice of action, but also that the party to whom notice is given may tender amends, and pay money into Court. (3)

In the *Mersey Docks and Harbour Board Trustees v. Gibbs and others*, in error in the House of Lords, (4) in which it was held that the trustees were liable for damage occasioned by the negligence of persons doing the business of the trust, Lord Westbury, however, took occasion to express his doubt whether Lord Cottenham had not, in the case of *Duncan v. Findlater*, carried too far the doctrine of non-liability of trust property for the acts of trustees constituting a public body.

In the case referred to the House of Lords decided that the principle on which a private person, or a company, is liable for damages occasioned by the neglect of servants, applies to a corporation which has been entrusted by statute to perform certain works, and to receive tolls for the use of those works, although those tolls, unlike the tolls received by the private person, or the company, are not applicable to the use of the individual corporators or to that of the corporation, but are

(1) 12 Cl. & Fin. 507.

(2) 6 Cl. & Fin. 894.

(3) *Southampton and Itchin Floating Bridge Company v. South-*

ampton, 4 Jur. (N. s.) 1299.

(4) 14 L. T. (N. s.) 677; 12 Jur. (N. s.) 571; 35 L. J. Exch. 225; L. R. 1 H. L. 93.

Compensation devoted to the maintenance of the works, and, in case of any surplus existing, the tolls themselves are to be proportionably diminished. *Parnaby v. The Lancaster Canal Company*, (1) which was the case of an ordinary company, approved of, and the principle of liability for negligence there established applied to a corporate body entrusted by statute with the performance of a public duty and receiving therefrom no profits or emoluments for itself.

If knowledge of the existence of a cause of mischief makes persons responsible for the injury it occasions, they will be equally responsible when, by their culpable negligence, its existence is not known to them.

Per Lord Westbury—Trustees may render the property of their beneficiaries liable to third persons for acts done in the exercise of the trust.

The Middle Level Drainage Commissioners in Norfolk were empowered and directed by statute to make a cut, and make and maintain at or near its opening a sluice, to exclude the tidal waters. They were trustees for a public purpose, and acting without reward. The sluice was properly made, but owing to the absence of due care and skill in the persons employed by them to maintain it, the sluice burst, whereby the tidal waters came in, and flooded the neighbouring lands. There was no proof that the Commissioners had negligently or improperly employed unskilful or incompetent agents; and per Cockburn, C.J. and Mellor, J., *dissentiente* Blackburn, J., it was held that the Commissioners were not liable to an action at the suit of the owners of the neighbouring lands. (2) But on appeal to the Court of Exchequer Chamber, that Court, on the authority of the *Mersey Docks Case*, reversed the decision, for the reasons given in the judgment of Blackburn, J., in the Court below, namely, that as there was an absolute duty imposed on the Commissioners of maintaining the sluice, they were liable for the damage caused by the negligent performance of that duty by their servants. (3)

Under sects. 69, 70, of the Metropolitan Sewers Act (11 & 12 Vict. c. 112), it was held that power was given to resort to arbitration only in those cases where the mere amount of compensation was disputed; not in cases where the liability to make any compensation at all was denied. (4) In another case the Court granted a mandamus commanding a Local Board of Health to make compensation for damage sustained by reason of their sinking shafts near to and making sewers under certain houses within their district. (5) And the return to the writ showing that the prosecutor had not taken any

(1) 11 A. & E. 223.

(2) *Coe v. Wise*, 5 B. & S. 440; 10 L. T. (N. S.) 666.

(3) *Coe v. Wise*, 14 L. T. (N. S.) 891; L. R. 1 Q. B. 711; 7 B. & S.

831; 37 L. J. Q. B. 262.

(4) *Reg. v. Metropolitan Commissioners of Sewers*, 1 E. & B. 694.

(5) *Reg. v. Burslem*, 22 J. P. 400.

steps towards having the amount of damage determined or ascertained in the manner provided for by the Act, nor given nor delivered to the defendants any notice in writing or otherwise of the claim for compensation, or of the cause or amount thereof, nor informed them whether it exceeded the sum of £20, nor appointed an arbitrator, nor given notice of an intention on his part to do so; it was held to be a good return, inasmuch as it showed that the prosecutors had not specified the amount claimed, or whether it was under £20, whereby the defendants were unable to know whether proceedings were to be taken before an arbitrator, or before justices, as provided by the Act. (1) A rule nisi was afterwards obtained to enter the verdict for the defendants on the trial of the issues raised upon the mandamus, but was discharged by the Court, (2) as the matters alleged in the return to the writ were no answer to the writ, it not being distinctly stated that the amount of compensation only was in dispute. (3) Under the 144th section the mandamus was good, and the prosecutor was held entitled to a verdict on the whole return to a peremptory mandamus; for that as it did not appear on the return that there was any dispute as to the amount, the rest of the allegations in the return (beyond the traverse of the denial of liability which had been found for the prosecutor) were immaterial. (4)

Lord Campbell, C.J., in *Reg. v. Halifax Local Board of Health*, (5) said, that a public body having public duties to perform and public funds to administer ought to ascertain its liabilities cheaply, and to discharge them properly. In the above case the Corporation of Halifax as a Local Board of Health constructed a temporary drain, whereby they severed the connection of an existing drain and a private drain, whereby damage was occasioned to the premises of the owner of the private drain. Compensation for the damage not having been made, a rule nisi was applied for calling upon the Local Board of Health to show cause why a writ of mandamus should not issue, commanding them to appoint an arbitrator under the Public Health Act, 1848, and to make compensation. The first part of sect. 144 says that "full compensation shall be made out of the general (or special) district rates, to be levied under this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act;" and the Court in making the rule absolute said that the duty to make compensation is clear, unless the *primâ facie* case be answered, and that it must be complied with. It is the duty, the Court

(1) *Reg. v. Burslem*, 23 J. P. 84.

(2) *Reg. v. Burslem*, 33 L. T. 184.

(3) *Reg. v. Burslem*, 33 L. T. 201.

(4) *Reg. on the prosecution of Hans Ringland v. Burslem*, 28 L. J. (N. S.) Q. B. 345; 5 Jur. (N. S.) 1394.

Affirmed by the Court of Exchequer Chamber in error from the Queen's Bench, 29 L. J. (N. S.) Q. B. 242; 6 Jur. (N. S.) 696; 2 L. T. (N. S.) 667.

(5) 20 J. P. 51.

Compensation
for damage.

said, of the Local Board to administer the funds entrusted to them with a careful regard to the interests of the ratepayers, and it would be much to be deplored if the Local Board were in this case to persist in trying by the process of a mandamus a question which might be more cheaply determined. The counsel for such a body ought not to be here in such a case without authority to consent to such a course as the Court might recommend.

Members of a Local Board are not personally liable to compensate a person for damage occasioned to him by their carelessness or want of due regard in the performance of their duty under the Act; but they are liable in this respect as a public body, and are entitled to reimburse themselves out of the funds over which they have control. Where, however, a member of the Board does something not within the scope of his authority as a member, it would seem that the Board as a body are not liable, but that personal liability would attach to the particular member in respect of the act done. (1) On this point see also *Hall v. Taylor*. (2)

By statute 18 & 19 Vict. c. 120, s. 96, vestries and district Boards in the metropolis are required to execute the office of surveyor of highways within their parishes and district; and if they duly execute the same, not personally interfering, they are not liable to a passenger for an injury caused to him by a heap of paving stones having been negligently left on the road by the workmen employed by the acting surveyor. (3)

Where the owner of a house in the metropolis employed a contractor to make a drain from his house to the main sewer under the powers given by the 18 & 19 Vict. c. 120, ss. 77, 110, and the contractor made the drain, but filled up the ground so negligently where it crossed a public footway that it subsided and left a hole, into which a person fell and was injured, it was held by the Court of Exchequer Chamber, reversing the judgment of the Court of Queen's Bench, (4) that the owner was liable for the injury; as he was bound to do the work properly, and was not excused by reason of his having employed to perform the work a contractor who omitted to do his duty. (5)

Under the same Act it has been held that the mere temporary obstruction of access to premises, though it may cost some inconvenience and loss of business to the occupier, is not a "damage" in respect of which he is entitled to claim compensation under ss. 135, 225. (6)

The following further illustrates the liability of public func-

(1) *Ruck v. Williams*, 3 H. & N. 308.

(2) 23 J. P. 20.

(3) *Holliday v. St. Leonard, Shoreditch*, 11 C. B. (N. S.) 192; 8 Jur. (N. S.) 79.

(4) *Gray v. Pullen*, 8 L. T. (N. S.) 201; 32 L. J. (N. S.) Q. B. 169.

(5) *Gray v. Pullen*, 34 L. J. (N. S.) Q. B. 265.

(6) *Herring, app. v. The Metropolitan Board of Works, resps.*, 19 C. B. (N. S.) 510; 34 L. J. C. P. 372.

tionaries to compensate for damage caused by the execution of their statutory powers. Compensation for damage.

Commissioners acting under the Towns Improvement Clauses Act, 1847, are liable to an action, in their corporate capacity, at the suit of a person who has suffered damage from a highway, within the limits of the Commissioners' Special Act, being allowed by them to remain in a dangerous condition. Per Blackburn, J., the Act casts on the Commissioners the duty of repairing the highway, and renders them indictable if they do not (sect. 49). In such an action it is not necessary to aver in the declaration that the Commissioners had funds. (1)

If the Metropolitan Board of Works, in the exercise of the statutory powers given them, do an act, without exercising due care and skill, which causes injury, they will be liable to an action, although compensation is given by way of proceeding before justices by sects. 135 and 225 of the 18 & 19 Vict. c. 120, for damage done by acts done with due care, within the powers of the Act. (2)

A private injury arising from a public nuisance is the subject-matter of an action for damages. The true test of liability in such a case is whether an excavation whereby it was caused be substantially adjoining the public way, over which the public have a right to go, and this principle applies to an action brought under the 9 & 10 Vict. c. 93. The occupier of land is bound to fence off any hole or area upon which it adjoins, or is so close to a public way that it may be dangerous to passers by if left unguarded, and he is *primâ facie* liable for any damage that may arise by neglecting to fence. (3)

Where under an Act the amount of any damage, costs or expenses is directed to be ascertained or recovered in a summary manner, or the amount of damages, costs, or expenses directed to be paid, and the method of ascertaining the amount or enforcing the payment is not provided for, it shall, in case of dispute, be ascertained and determined before two justices, that remedy is exclusive, and therefore an action will not lie against an owner for the amount of the expenses. (4)

A contractor under the Metropolitan Board of Works having completed a sewer beneath a public highway and filled up the excavation in a reasonably proper manner, was held not liable for damage in consequence of a subsidence of the road which took place two or three months afterwards, causing a hole into which a horse and cart ran in the night and suffered damage. (5)

Where the Local Board have incurred expenses, for the repayment whereof the owner of the premises is made liable, they

(1) *Hartnell v. Ryde Commissioners*, 33 L. J. (N. S.) Q. B. 39; 8 L. T. (N. S.) 574.

(2) *Clothier v. Webster*, 12 C. B. (N. S.) 790; 9 Jur. (N. S.) 231; 31 L. J. (N. S.) C. P. 316; 6 L. T. (N. S.) 461.

(3) *Barnes v. Ward*, 2 C. & K. 661.

(4) *St. Pancras Vestry v. Batterbury*, 2 C. B. (N. S.) 477; 26 L. J. (N. S.) C. P. 243; 3 Jur. (N. S.) 1106.

(5) *Hyams v. Webster*, 16 L. T. (N. S.) 118; 36 L. J. Q. B. 166. Affirmed in error; W. N. 1868, p. 288.

Expenses due from owners to be a charge on premises.
21 & 22 Vict.
c. 98, s. 62.

may be recovered from the person who is owner of the premises when the works are completed, in the manner provided by the Public Health Act, 1848 (see *ante*, p. 437). Such expenses are to be a charge on the premises in respect of which they were incurred, and bear interest at the rate of £5 per centum per annum till payment. In all summary proceedings by a Local Board for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Apportionment of expenses payable by owners to be conclusive after three months from notice given to them of the amount.
21 & 22 Vict.
c. 98, s. 63.
Penalty on injury to works, etc., of Local Board.
Ib. s. 66.

In all cases where the Local Board have incurred expenses, for the repayment whereof the owners of the premises for or in respect of which the same are incurred is made liable, and such expenses have been settled and apportioned by the surveyors as payable by the owner, the apportionment is to be binding and conclusive upon the owner, unless within the expiration of three months from the time of notice being given by the Local Board or their surveyor of the amount of the proportion settled by the surveyor to be due he shall by written notice dispute the same.

Persons wilfully injuring works or materials belonging to any Local Board, in cases where no other penalty is provided by the Public Health Act, 1848, or any Act incorporated therewith, incur for every offence a penalty not exceeding £5, to be recovered in a summary manner.

By the Sanitary Act, 1866, s. 45, if any person wilfully damages any works or property belonging to any Local Board he shall be liable to a penalty not exceeding £5.

False evidence punishable as perjury.
11 & 12 Vict.
c. 63, s. 147.
Ib. s. 2.

Every person who upon any examination on oath under the provisions of the Public Health Act wilfully and corruptly gives false evidence, is liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury; and the word "oath" is to be construed to mean and include an affirmation in the case of Quakers, and a declaration in the case of persons allowed by law to make a declaration in lieu of an oath.

Penalty for obstructing officers, defacing notice boards.
Ib. s. 148.
Upon occupiers preventing execution of works.
Ib. s. 148.

Whosoever wilfully obstructs any superintending inspector, or any member of the Local Board, or any officer or person employed in the execution of the Acts, or destroys, pulls down, injures or defaces any Board upon which any bye-law, notice, or other matter is inscribed, put up by authority of the Local Board, is liable to a penalty not exceeding £5. If the occupier of any premises prevent the owner from obeying or carrying into effect the provisions of the Acts, any justice on application is by order in writing (schedule F) to require the occupier to permit the execution of the works, provided that they are necessary for the purpose of obeying or carrying into effect the provisions of the Acts.

If a person be charged under 11 & 12 Vict. c. 63, s. 148, with obstructing the works of a Local Board of Health he is not necessarily entitled to have the case dismissed by the justices

because the obstruction took place in the assertion of a private right; nor are the justices warranted in refusing as frivolous an application to state a case under 20 & 21 Vict. c. 43. (1)

The following is the form of order to permit execution of works by owners :—

County of _____ } Whereas complaint hath been made to me, *E. F.*, Form of order
[or Borough, etc.] } Esquire, one of Her Majesty's justices of the peace for execution of
to wit. } in and for the county [or borough, etc.] of _____, works.
by *A. B.*, owner, within the meaning of the Public Health Act, 1848, of
certain premises, to wit, a house [as the case may be] situate in
street [as the case may be] in the parish of _____, in the said county [or
borough, etc.] that *C. D.*, the occupier of the said premises, doth prevent
the said *A. B.* from obeying or carrying into effect the provisions of the said
Act in this, to wit, that he, the said *C. D.*, doth prevent the said *A. B.*
from [here describe the works generally, according to circumstances for in-
stance, thus:] constructing and laying down, in connection with the said
house, a covered drain, so as to communicate with a [sewer or drain] of the
Local Board of Health of the district of _____, or a sewer, etc., which the
Local Board of Health of the district of _____ are entitled to use [as the case
may require], such sewer being within one hundred feet of the said house;
and whereas the said *C. D.*, having been duly summoned to answer the said
complaint, and not having shown sufficient cause against the same, and it
appearing to me that the said works are necessary for the purpose of
enabling the said *A. B.* to obey and carry into effect the provisions of the
said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* to
execute the same in the manner required by the said Act.
Given under my hand and seal, this _____ day of _____, in the
year of our Lord one thousand eight hundred and _____
E. F. (L.S.)

With regard to orders of justices made under the Public Health and Local Government Acts, it should be borne in mind, that the justices having once made the order, *i.e.* put their hands and seal to the document, meaning it to be an order, cannot afterwards amend it any way. (2) In this respect an order differs from a conviction, which may be returned to the sessions in a more formal shape when warranted by the facts, even though a copy of it has been delivered to the person convicted. (3)

No deed, award, submission, instrument, contract, agreement, or writing made or executed by the Local Board, their officers or servants, under or for the purposes of the Acts, nor any appointment by the Local Board of any officer or person, is chargeable with stamp duty. Exemptions from stamp duty. 11 & 12 Vict. c. 63, s. 151.

This would exempt from stamp duty a cheque drawn by the Local Board of Health upon their treasurer, as such a document would be an "instrument" within the meaning of the Act.

In the construction of the Acts,

Words importing the singular number include the plural, and words importing the plural include the singular number.

Interpretation of terms.
Ib. s. 2.
Number.

(1) *Reg. v. Pollard*, 14 L. T. (N. S.) 599.

(2) *Rex v. Cheshire JJ.*, 5 B. & Ad. 439.

(3) *Rex v. Barker*, 1 East, 186.

- Gender. Words importing the masculine gender include females; and
- "Person." The word "person" and words applying to any person or individual apply to and include corporations, whether aggregate or sole:
unless such meanings be repugnant to or inconsistent with the context or subject-matter in which such words or expressions occur.

INCORPORATED POWERS.

Towns Police
Clauses Act,
21 & 22 Vict.
c. 98, s. 44.

The provisions of the Towns Police Clauses Act, 1847—

1. With respect to obstructions and nuisances in the streets (*ante*, p. 307).
2. With respect to fires (*ante*, p. 312).
3. With respect to places of public resort (*ante*, p. 313).
4. With respect to hackney carriages (*ante*, p. 318).
5. With respect to bathing (*ante*, p. 242);—

are incorporated with the Local Government Act.

Towns Im-
provement
Clauses Act.
Ib. s. 45.

The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters, are also incorporated with the Act:—

1. With respect to naming the streets and numbering the houses (*ante*, p. 176).
2. With respect to improving the line of the streets and removing obstructions (*ante*, p. 172).
3. With respect to ruinous or dangerous buildings (*ante*, p. 209).
4. With respect to precautions during the construction and repair of the sewers, streets, and houses (*ante*, p. 211).
5. With respect to the supply of water, except the proviso thereto (*ante*, p. 227).
6. With respect to the prevention of smoke (*ante*, p. 304).
7. With respect to slaughter-houses (*ante*, p. 294).
8. With respect to clocks (*ante*, p. 178).

Lands
Clauses
Consolidation
Act, 1845.
8 Vict. c. 18.
Commis-
sioners
Clauses Act.
10 Vict. c. 16.
Markets and
Fairs Clauses
Act.
21 & 22 Vict.
c. 98, s. 50.

The provisions of the Lands Clauses Consolidation Act, except the provisions relating to access to the special Act (*ante*, p. 412).

The provisions of the Commissioners Clauses Act, 1847, with respect to mortgages (*ante*, p. 410).

For the purpose of enabling the Local Board to establish markets, or to regulate markets established in corporate boroughs before the constitution of a Local Board therein, the following provisions of the Markets and Fairs Clauses Act, 1847, are incorporated—

1. With respect to the holding of the market or fair, and the protection thereof (*ante*, p. 285).
2. With respect to the weighing of goods and carts (*ante*, p. 287).
3. With respect to the stallages, rents, and tolls (*ante*, p. 289); and
4. With respect to bye-laws (*ante*, p. 290).

Subject to this provision, that all tolls leviable by the Local Board pursuant thereto shall be approved by one of Her Majesty's principal Secretaries of State.

In the construction, for the purposes of the Local Government Act, of the Acts incorporated therewith, the expression of terms for purposes of this Act, etc., in Acts hereinafter incorporated. 21 & 22 Vict. c. 98, s. 7.

"the Special Act" means the Public Health Act, 1848, as brought into operation within the district, and the Local Government Act; the "limits of the Special Act" means the "limits of the district;" "the passing of the Special Act" means the date of the coming in force of the Local Government Act, or, in the case of districts under the Public Health Act, 1848, the 1st September, 1848; and the Local Board, according to the tenor of the incorporated Act, is to be deemed to be the promoters of the undertaking, "Town Commissioners," Commissioners, or "undertakers;" and all penalties incurred under the incorporated Acts are to be recovered in the same way as penalties incurred under the Public Health Act, 1848, and be applied in aid of the purposes of that Act and the Local Government Act.

Lastly, all powers given by the Sanitary Act, 1866, are to be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, law, or custom, and such authority may exercise such other powers in the same manner as if the Sanitary Act, 1866, had not passed. Powers of Sanitary Act, 1866, cumulative. 29 & 30 Vict. c. 90, s. 55.

During the session of Parliament, 1866, a local and personal Act was passed for the purification of the River Thames, by the diversion therefrom of the sewage of Oxford, Abingdon, Reading, Kingston, Richmond, Twickenham, Isleworth, and Brentford, and for the collection and utilization of that sewage (see also *ante*, p. 130). Further with reference to the River Thames, see *ante*, p. 133. Sewage of Oxford and other towns on banks of River Thames. *Ib.* c. cccix.

Since the earlier sheets of this work were printed off, the following point has been decided by the Court of Queen's Bench:

A parish is a place "having a known or defined boundary" within the meaning of sect. 12 of 21 & 22 Vict. c. 98; but a parliamentary borough is not such a place. So again a parish which includes within it a corporate borough is a "greater place" including within its limits a "less place" within the meaning of sect. 14 of the same Act; and therefore the borough cannot adopt the Act unless the parish has refused to do so, although the parish be itself included within the limits of a parliamentary borough. An order of the Secretary of State that the Act should be in force within the limits of such a parish is therefore valid. (1) Adoption of Local Government Act.

(1) *Reg. v. Secretary of State for the Home Department*, In re *Lymington*, 19 L. T. (N. S.) 352. *S. C. Reg. v. Hardy*, W. N. 1868, p. 284; 38 L. J. Q. B. 9.

PART IV.

CHAPTER I.

REMOVAL OF NUISANCES.

Preliminary
observations.

THE preceding parts of this work have application more particularly to districts in which the provisions of the Public Health Act, 1848, or the Local Government Act, 1858, have been adopted by the inhabitants, or are otherwise in force. The Nuisances Removal Act and the Amending Acts require no adoption, but are in force generally throughout England; and under those Acts local authorities are constituted having authority in every parish and district to enforce measures for the removal of nuisances injurious to health. The constitution and powers of those local authorities will form the subject of the first chapter of this part of the work; but, as preliminary to the subject, it will be convenient to mention in this place that by the 23 & 24 Vict. c. 77, s. 1, the third, sixth, seventh, and ninth sections of the Nuisances Removal Act, 1855, have been repealed. It is not necessary to refer further to those repealed provisions, as the enactments substituted for them will be found in their proper places hereafter.

Short title
of Act.
18 & 19 Vict.
c. 121, s. 4.

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

Definition of
"Nuisances
Removal
Acts."

By the Sanitary Act, 1866, the expression "Nuisances Removal Acts" shall mean the 18 & 19 Vict. c. 121; 23 & 24 Vict. c. 77; and the 29 & 30 Vict. c. 90, s. 14, as amended by the second part of the Sanitary Act, 1866; and that part of the Act shall be construed as one with the previous Acts above mentioned.

Jurisdiction
of other
authorities
preserved.
18 & 19 Vict.
c. 121, s. 43.

The Act of 1865 shall not be construed to affect the provisions of any local Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any Commissioners of Sewers or of drainage, or in relation to their proceedings, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Smoke Act, 16 & 17 Vict. c. 128; or the Common Lodging Houses Acts, 14 & 15 Vict. c. 28 (1851), and 16 & 17 Vict.

c. 41 (1853); the Municipal Corporations Act, 5 & 6 Will. IV. Jurisdiction of other
 c. 76; the Public Health Act, 11 & 12 Vict. c. 63, or any Im- authorities
 provement Act respectively, or any Acts incorporated with such preserved.
 Acts; and authorities may respectively proceed for the abate- 18 & 19 Vict.
 ment of nuisances, or in respect of any other matter or thing c. 121, s. 43.
 hereinbefore provided or referred to, either under the Acts
 mentioned in this section or any other Act conferring jurisdic-
 tion in respect of the nuisances referred to in this Act, or any
 bye-laws framed under any such Act, as they may think fit;
 and the local authorities constituted under and for the purposes
 of the Common Lodging Houses Acts shall, for the purposes
 of those Acts, have all the power of local authorities under the
 Nuisances Removal Act.

The following are those local authorities:—

- | | |
|--|--|
| 1. The Commissioners of Police of the metropolis within their jurisdiction. | Local authorities under Common Lodging Houses Act. |
| 2. The Local Board of Health within their jurisdiction. | 14 & 15 Vict. c. 28, s. 3. |
| 3. The mayor, aldermen, and burgesses of a borough not under a Local Board of Health. | 16 & 17 Vict. c. 41, s. 10. |
| 4. The Oxford Commissioners within that city. | 14 & 15 Vict. c. 28, s. 3. |
| 5. The Cambridge Commissioners within that borough. | |
| 6. Trustees or Commissioners of improvement within any other district. | |
| 7. The justices acting in petty sessions within and for all places other than the above. | |

Nothing in the Nuisances Removal Act is to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal, or to be construed to extend to mines of different descriptions, so as to interfere with or obstruct the efficient working of such mines, or the smelting of ores and minerals, or to the manufacturing of such ores and minerals. Neither shall any power under the Act be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream supplying any waterworks established by Act of Parliament; or in other cases without the consent, in writing, of the company or corporation in whom the waterworks may be vested, or the persons entitled to the use of the water, as well as the owners of the reservoirs and streams, if they are not the same person.

The undermentioned words and expressions used in the Interpretation 18 & 19 Vict. c. 121, have the following meanings, unless such of terms used meanings be repugnant to or inconsistent with the context; in the Act.
 (that is to say), Ib. s. 2.

The word "place" includes any city, borough, district under Place.
 the Public Health Act, parish, township, or hamlet, or part of Ib.
 any such city, borough, district, town, parish, township, or
 hamlet.

The word "guardians" includes the directors, wardens, Guardians.
 overseers, governors, or other like officers having the manage- Ib.

ment of the poor for any parish or place where the matter, or any part of the matter, requiring the cognizance of any such officer arises.

Borough, etc.
18 & 19 Vict.
c. 121, s. 2.

The word "borough," and the expressions "mayor, aldermen, and burgesses," "council," and "borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high-bailiff, borough-reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies.

By the Municipal Corporations Act, 5 & 6 Will. IV. c. 76, s. 142, the word "borough" shall be construed to mean "city, borough, port, cinque port, or town corporate" named in one of the schedules, (A) and (B), to the Act; but the other expressions are not defined in that Act.

Improvement
Act.
Ib.

The expression "Improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes.

Owner.
Ib.

The word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery, or under any order thereof, or who would receive the same if such property were let to a tenant.

Premises.
Ib.

The word "premises" extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private.

Parish.
Ib.

The word "parish" includes every township or place separately maintaining its poor, or separately maintaining its own highways.

29 & 30 Vict.
c. 113, s. 18.

By the Poor Law Amendment Act of 1866 (29 & 30 Vict. c. 113, s. 18), "in *all* statutes, except there shall be something in the context inconsistent herewith, the word 'parish' shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."

Quarter
sessions.
18 & 19 Vict.
c. 121, s. 2.
Person.
Ib.

The expression "quarter sessions" means the Court of General or Quarter Sessions of the peace for a county, riding, or division of a county, city, or borough.

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

And the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district. Two justices.
18 & 19 Vict.
c. 121, s. 2.

The operative words used in the section are, "means," "includes," "extends," and "apply to." The effect of the word "means" is to limit, that of all the other words is to enlarge the interpretation, though they do not exhaust it; therefore other than the authorities, places, or things, to which those latter words apply may be included in them, or may be made to extend or apply to those words. (1) Interpretation
of terms.

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

§ 1. THE LOCAL AUTHORITY.

"Nuisance authority" shall mean any authority empowered to execute the Nuisances Removal Acts. Definition of
"nuisance
authority."

The Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases (23 & 24 Vict. c. 77) enacts, that the following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the districts hereunder stated in England: 29 & 30 Vict.
c. 90, s. 15.
How con-
stituted.
23 & 24 Vict.
c. 77, s. 2.
Local Boards
of Health,
Ib.
Boroughs.
Ib.

1. In any place within which the Public Health Act is or shall be in force—the Local Board of Health; City of
London.
Ib.
2. In any other place wherein a Council exists or shall exist—the mayor, aldermen, and burgesses by the Council; Oxford.
Cambridge.
Ib.
3. In the city of London and the liberties thereof, where the local authority shall be—the Commissioners of Sewers for the time being; and except
4. In the city of Oxford and borough of Cambridge, where the local authority shall be—the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough; Improve-
ment Com-
missioners.
Ib.
5. In any place in which there is no Local Board of Health or Council, and where there are or shall be trustees or Commissioners under an Improvement Act—such trustees or Commissioners. (With regard to this class of local authorities, see *ante*, page 5.) Guardians of
Poor Law
Unions.
6. In any place within which there is no such Local Board of Health, Council, body of trustees, or Commissioners, if there be a Board of Guardians of the poor for such place,

(1) See *Reg. v. Kershaw*, 6 E. & 979 *Reg. v. Cambridgeshire JJ.*,
B. 1007; *Doe v. Benham*, 7 Q. B. 7 A. & E. 491.

23 & 24 Vict.
c. 77, s. 2.

Overseers of
the poor.
Ib.

The
metropolis.
18 & 19 Vict.
c. 120, s. 134.

Vestries and
district
Boards of the
metropolis.
23 & 24 Vict.
c. 77, s. 6.

Incorporation
of nuisance
authorities.
29 & 30 Vict.
c. 90, s. 46.

Extra-
parochial
places con-
stituted
parishes.
20 Vict.
c. 19, s. 1.

or for any parish or union within which such place is situate—such Board of Guardians.

7. If there be no such Board of Guardians—the overseers of the poor for such place, or for the parish of which such place forms part.

8. In parishes within the area comprised within the district of the Metropolis Local Management Act, other than parishes in the city of London and the liberties thereof—every vestry and district Board under the Act 18 & 19 Vict. c. 120, shall within their respective parish or district be the local authority for the removal of nuisances.

As regards the metropolis, the vestries and district Boards under the 18 & 19 Vict. c. 120, within their respective parishes and districts, shall continue and be the local authorities for the execution of the Nuisances Removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed. The powers of the vestries and district Boards in this respect given by sect. 134 of the 18 & 19 Vict. c. 120, are therefore preserved to them by the 23 & 24 Vict. c. 77, s. 6.

With regard to the jurisdiction of nuisance authorities in certain matters in districts under sewer authorities, reference must be made to the Sanitary Act, 1868 (31 & 32 Vict. c. 115), ss. 4 and 5, *post*, p. 544.

By the Sanitary Act, 1866, nuisance authorities are made bodies corporate, to be designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers upon them.

With regard to places which were extra-parochial, it is enacted by the Act to provide for the relief of the poor in such places, that after the 31st December, 1857, every place entered separately in the report of the Registrar-General, on the last census (1851), which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall, for all the purposes of (amongst other things) the removal of nuisances, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report.

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

It may be observed that where the sea-shore forms the boundary of a parish, the portion of the shore between the high-water mark of ordinary spring tides and that of medium tides is within the limits of the parish; but in such a case the portion of the shore below the high-water mark of medium tides was held to be an extra-parochial place within the 18 & 19 Vict. c. 121, s. 6, which section, however, was repealed by 23 & 24 Vict. c. 77, s. 1. (1)

Now the 31 & 32 Vict. c. 122, deals with certain extra-parochial lands, the sea-shore, accretions from the sea and the banks of rivers, and provides for the incorporation of every such place with the next adjoining parish. The enactment is as follows:—"From the 25th day of December, 1868, every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for the year 1851 or not, for which an overseer has not been then appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish, shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value.

"And every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the 25th of December, 1868, shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary."

The 23 & 24 Vict. c. 77, s. 3, is repealed by the Sanitary Act, 1866, and all powers vested in any Highway Board or "nuisance removal committee" under the Nuisances Removal Acts shall determine, and all property belonging to them for the purposes of the Nuisances Removal Acts shall, subject to any debts or liabilities affecting the same, be transferred to or vested in the nuisance authority under those Acts: the repealing section, however, shall not extend to any vestry or district Board, under the 18 & 19 Vict. c. 120, or to any committee appointed by such vestry or district Board for the purpose of carrying into effect the Nuisances Removal Acts, or any of them.

Besides the foregoing authorities, the 18 & 19 Vict. c. 121, s. 43, as already stated, provides that the local authorities constituted under and for the purposes of the Common Lodging Houses Acts, 1851 and 1853 (14 & 15 Vict. c. 34; 16 & 17 Vict. c. 41), shall, for the purposes of those Acts, have all the powers of local authorities under the Nuisances Removal Act, 1855.

Under the Sanitary Act, 1866, the chief officer of police may become the local authority in certain cases. It is thereby enacted that in any place within the jurisdiction of a nuisance authority the chief officer of police within that place, by and under the directions of one of Her Majesty's principal Secretaries of State, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceeding which the nuisance authority of such

31 & 32 Vict.
c. 122, s. 27.Sect. 3 of
23 & 24 Vict.
c. 77, re-
pealed.
29 & 30 Vict.
c. 90, s. 17.Common
lodging
houses.
18 & 19 Vict.
c. 121, s. 43.Power of
police with
respect to
nuisances.
29 & 30 Vict.
c. 90, s. 16.

place might institute with respect to the removal of nuisances: provided always, that no officer of police shall be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice of the peace, for the purpose of carrying into effect the Act.

Mode of proceeding where nuisance authority has made default.
29 & 30 Vict. c. 90, s. 49.

Where complaint is made to a Secretary of State that a nuisance authority has made default in enforcing the provisions of the Nuisances Removal Acts, such Secretary, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

The costs of this proceeding on the part of the Secretary of State are provided for, as will be seen, *ante*, p. 89.

§ 2. COMMITTEES OF LOCAL AUTHORITY.

Committees of local authority.
18 & 19 Vict. c. 121, s. 5.

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

Committees of Board of Guardians.
23 & 24 Vict. c. 77, s. 5.
Their powers.
Ib.

The Board of Guardians for a union may appoint a committee or committees of their own body, under sect. 5 of the Nuisances Removal Act, 18 & 19 Vict. c. 121, to act in and for one or more of the parishes or places for which the Board is the local authority. Every committee so appointed shall have the full power of executing the Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment.

Their expenses.
Ib.

The Board of Guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which the committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the Board as local authority for or

in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee. Expenses of Committees.

Where any one such committee is appointed for all the places for which the Board is the local authority its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the Board would have been contributed and paid if such committee had not been appointed.

The office of a guardian being an annual one, it is necessary that the committee should be reappointed annually.

When it is proposed to take proceedings under sect. 5 of the 18 & 19 Vict. c. 121, an order in writing in each particular case must be obtained from the local authority or committee to their officer to make complaint to the justices, as a previous general authority is not sufficient. The complaint authorized by the section to be made is a complaint not to the party through whose default the nuisance arises, but to the justices, by taking out a summons. (1) Authority of committee, etc.

The appointment of the committee will not supersede the action of the guardians as a Board, but it will be obviously undesirable that the Board of Guardians and the committee should act simultaneously in the same matter. The proceedings of the committee should be recorded in a minute book of their own, and it will not be necessary that their acts should be confirmed by the guardians.

§ 3. APPOINTMENT OF INSPECTORS OF NUISANCES.

Local authorities under the 23 & 24 Vict. c. 77, may, for the purposes of the Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors. Inspectors of nuisances. 23 & 24 Vict. c. 77, s. 9.

The appointment need not be by an instrument under seal, (2) but it should be entered in the minutes of the meeting of the local authority at which it is made, so that, if necessary, the fact of the appointment having been made may be capable of proof. The salary of the inspector may be either an annual salary or a weekly salary, and may be paid at such periods as may be stipulated at the time of the appointment, and if it be not paid the officer may recover it in an action for debt. (3)

The guardians and not the committee for any parish or parishes in the union must in all cases appoint the inspector of nuisances; and the guardians and not the committee must also pay the salary as well as all the expenses which may be incurred, and charge the payments to the parishes or parties liable. The Poor Law Board recommend that the salary of the inspector

(1) *Isle of Wight Ferry Company*, (N. s.) Exch. 201; *Reg. v. Greene*, apps., *Ryde Commissioners*, resps., 17 Q. B. 793.
25 J. P. 454.

(3) *Hall v. Taylor*, 27 L. J. (N. s.) Q. B. 311; 22 Jur. 877.

(2) *Smart v. West Ham*, 24 L. J.

should be apportioned among the parishes for which he is appointed upon the basis of the number of inhabited houses in each parish, which afford some indication of the amount of services required of the officer in each parish.

If the inspector be appointed to act for one parish only, the salary should be charged by the guardians acting as the local authority to the parish, and not to the common fund of the union if the parish be in a union.

Relieving
officers.

As regards the appointment of relieving officers as inspectors of nuisances, the Poor Law Board say, that if it be deemed advisable to appoint a relieving officer as such, it will be necessary that an application should be made to them for their consent, in accordance with article 166 of the General Consolidated Order. (1) (See Glen's Poor Law Board Orders, Sixth Edition.)

Constables.

County constables, on the other hand, appear to be disqualified altogether for being appointed inspectors of nuisances, for the Constabulary Act, 2 & 3 Vict. c. 93, s. 10, enacts that all chief or other constables appointed under that Act shall be restrained from employing themselves in any office or employment for hire or gain, other than in the execution of their duties under that Act. In some places they, however, have been so appointed with the consent of the chief police authority.

Appointment
by Local
Boards of
Health.

As regards the appointment of inspectors of nuisances in districts under Local Boards of Health, see 11 & 12 Vict. c. 63, s. 37, *ante*, p. 61.

In the
metropolis.
18 & 19 Vict.
c. 120, s. 133.

Duties of
inspectors
in the
metropolis.
18 & 19 Vict.
c. 120, s. 133.
Ib.

Within the district of the Metropolis Local Management Act, every vestry and district Board shall nominate and appoint such number of persons to be inspectors of nuisances in their parish or district as the vestry or Board may think fit. The inspectors so appointed shall superintend and enforce the due execution of all duties to be performed by the scavengers employed, or contracted with under the Act, and report to the vestry or district Board the existence of any nuisances.

Every inspector is to be required to provide and keep a book in which shall be entered all complaints made by any inhabitant of the parish or district of any infringement of the provisions of the Act, or of any bye-laws made thereunder, or of nuisances; and shall forthwith inquire into the truth or otherwise of such complaints, and report upon the same to the vestry or Board at their next meeting. Such report and the order of the vestry or Board thereon shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the parish or district. Further, it shall be the duty of the inspector, subject to the directions of the vestry or Board, to make complaints before justices, and take legal proceedings for the punishment of any person for any offence under the Act or bye-laws.

(1) Circular of Oct. 10, 1860.

Further, with respect to the appointment of inspectors of nuisances under the Towns Improvement Clauses Act, when incorporated with any local Act, see the 10 & 11 Vict. c. 34, ss. 9-11.

§ 4. EXPENSES OF LOCAL AUTHORITY.

All expenses incurred by a nuisance authority in carrying into effect any of the provisions of the second part of the Sanitary Act, 1866, shall be deemed to be expenses incurred by carrying into effect the Nuisances Removal Acts.

All charges and expenses incurred by the local authority in executing the Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows; to wit:

1. Out of the general district rates where the local authority is a Local Board of Health. How to be defrayed.
23 & 24 Vict.
c. 77, s. 4.
Local Boards of Health.
2. Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses, by the Council. Boroughs.
3. In the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable. Oxford.
Cambridge.
23 & 24 Vict.
c. 77, s. 4.
4. Out of the rates levied for the purposes of improvement under any Improvement Act, where the local authority is a body of trustees or Commissioners acting in execution of the powers of such an Act. Improvement Commissioners.
Ib.
5. Where a Board of Guardians for a union is the local authority for the whole of the union, the charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor. Guardians acting as local authority for the whole union.
Ib.
6. Where the Board of Guardians for a union is the local authority for two or more places maintaining their own poor, but not for all the places in the union, the charges and expenses shall be paid out of the poor rates of the places for which the Board is the local authority. Guardians acting as local authority for part of union only.
Ib.
7. Where the Board of Guardians for a union is, under the Act, the local authority for a single place maintaining its own poor, and where the Board of Guardians for any such single place or the overseers of any such place are, under the Act, the local authority for such place, the charges and expenses shall be defrayed out of the rates for the relief of the poor thereof. The local authority for a single place.
Ib.

It was held that the nuisances removal committee acting for any place under the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 7, and entitled to be paid their costs and charges in executing the Act out of the poor rates, might call upon the overseers to pay them the amount of such costs and charges, without justifying the particular items of charge to the overseers, and the latter might be compelled by mandamus

to pay such costs and charges. (1) The above is as the case is reported in the 'Weekly Reporter;' but the order of the Court, and the finding of the Master, are in the following terms:—"And upon hearing counsel on both sides and by consent, it is ordered that it be referred to the Master on the Crown side of this Court to determine what sum, if any, for the said costs, charges, and expenses, is to be paid by the said overseers to the said James Joseph Blake (the chairman of the committee), and who shall pay the costs of and occasioned by this application." The finding of the Master was in the following terms.—"In pursuance of the within rule I do determine that the sum of £47 19s. 6d. (the sum demanded was £50) is the sum for the costs, charges, and expenses in the said rule mentioned to be paid by the overseers of the parish of Ewell to James Joseph Blake, as chairman of the nuisances removal committee of the said parish. And I further determine that each party bear his own costs of the said rule, and of the reference of the matter thereof to me. Dated the 18th March, 1861, Thos. Norton, Crown Office, Temple." As to the time within which application must be made to the Court for costs of mandamus, see *ante*, p. 358.

Guardians
acting as
local
authority for
part of a
place only.
23 & 24 Vict.
c. 77, s. 4.
Part of parish.
Ib.

8. Where the Board of Guardians for a union is under the Act, the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, the Board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such Board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof.

Ib.

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

The 23 & 24 Vict. c. 77, s. 4, applies only to parishes which are divided between boroughs and counties, or between separate local authorities.

Provision
for raising
money in
divided
parishes.
29 & 30 Vict.
c. 90, s. 33.

The last-mentioned provision it will be seen is not repealed, though the Sanitary Act, 1866, enacts that:—"Where the guardians are the nuisance authority for part of any parish only, and shall require to expend money on account of such part in execution of the provisions of the Nuisances Removal Acts, the overseers of the parish shall, upon receipt of an

order from the guardians, raise the requisite amount from the persons liable to be assessed to the poor rate *therein* by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate when made, and shall account to the auditor of the district for receipt and disbursement of the same, in like manner, and with the same consequences, as in the case of the poor rate made by them." Provision for raising money in divided parishes. 29 & 30 Vict. c. 90, s. 33.

It will be noticed that the words "poor rate therein," refer to their antecedent, "overseers of the parish," not to "part of any parish only." The whole parish will therefore, it seems, be liable to the charge.

§ 5. WHAT ARE DEEMED NUISANCES.

The Act defines the word "nuisances" as including—

1. Any premises in such a state as to be a nuisance or injurious to health.
2. Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit, so foul as to be a nuisance or injurious to health.
3. Any animal so kept as to be a nuisance or injurious to health.
4. Any accumulation or deposit which is a nuisance or injurious to health.

Nuisances defined. 18 & 19 Vict. c. 121, s. 8.

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

By the Sanitary Act, 1866, the word "nuisances" under the Nuisance Removal Acts shall include.

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

Addition to definition of nuisance. 29 & 30 Vict. c. 90, s. 19.

2. Any factory, workshop, or workplace not already under the operation of any general Act for the regulation of factories or bakehouses, not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein.

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

Addition to
definition of
nuisance.
29 & 30 Vict.
c. 90, s. 19.

dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever.

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

Provided, first, that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act :

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

Provision as
to district of
nuisance
authority
extending
to places
where ships
are lying.
Ib. s. 30.

For the purposes of the Sanitary Act, 1866, any ship, vessel, or boat that is in a place not within the district of a nuisance authority shall be deemed to be within the district of such nuisance authority as may be prescribed by the Privy Council, and until a nuisance authority has been prescribed, then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line. The nuisance authority cannot, however, interfere with any ship, vessel, or boat that is not in British waters.

Provision as
to ships
within the
jurisdiction
of nuisance
authority.
Ib. s. 32.

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

Nuisances
defined.

Of nuisances, Mr. Justice Blackstone says, "*Nuisance, nocumentum*, or annoyance, signifies anything which worketh hurt, inconvenience, or damage. And nuisances are of two kinds : *public* or *common* nuisances which affect the public, and are an annoyance to all the king's subjects—for which reason we must refer them to the class of public wrongs, or crimes and misdemeanours : and *private* nuisances, which are the objects of our present consideration, and may be defined, anything done to the hurt or annoyance of the lands, tenements, or heredita-

ments of another." (1) Elsewhere he says, "Common nuisances are a species of offences against the public order and economical regimen of the State; being either the doing a thing to the annoyance of all the king's subjects, or the neglecting to do a thing which the common good requires." (2) And again he says, "Common nuisances are such inconvenient or troublesome offences as annoy the whole community in general, and not merely some particular person, and therefore are indictable only, and not actionable." (3) He says, "Common nuisances are all those kinds of nuisances (such as offensive trades and manufactures) which, when injurious to a private man are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity of the misdemeanour; and particularly the keeping of hogs in any city or market town is indictable as a public nuisance." (4) And again, per Lord Mansfield, C.J., to constitute a nuisance it is enough that the matter complained of renders the enjoyment of life and property uncomfortable. (5) It is with public or common nuisances that the present statute deals, for private nuisances have their own peculiar remedy. The particular thing complained of must be a nuisance or injurious to health; so that injury to health need not necessarily be conjoined with the nuisance; but inasmuch as it is scarcely possible to define what is a nuisance under the Act apart from its being injurious to health, it will be the safest course for the justices not to act unless it be proved to them that the particular thing complained of is a nuisance injurious to health, and that it is likely in a substantial degree to injure the health of persons passing by or living near to the premises on which it exists.

The following may be noted:—The sewage from a lunatic asylum was alleged to foul a brook so as to be a public nuisance, an information was filed to restrain the outpouring of such sewage so as to cause a nuisance. After standing over ineffectually for an arrangement for two years, the case was argued, when the Court directed a reference to an expert (who was agreed upon), under the 15 & 16 Vict. c. 80, s. 42, as to whether, with reference to the health of the inhabitants, it was necessary that steps should be taken for purifying the brook, or whether the drainage should be diverted from the brook, and by what means. (6)

For the following peculiar class of public nuisances special provision has been made by the 20 & 21 Vict. c. 31:—wilfully causing any injury or damage to any fence of any town or village green or land, or wilfully and without lawful authority leading or driving any cattle or animal thereon, or wilfully laying any manure, soil, ashes, or rubbish or other matter or

Nuisances
on village
greens.
20 & 21 Vict.
c. 31.

(1) 3 Com. 216.

(2) 4 Com. 166.

(3) 4 Com. 167.

(4) 4 Com. 167.

(5) *Rex v. White*, 1 Burr. 337.(6) *Attorney-General v. Colney Hatch Lunatic Asylum*, 19 L. T. (N. S.) 44.

Nuisances
on village
greens.
20 & 21 Vict.
c. 31.

thing thereon, or doing any other act whatsoever to the injury of such town or village green or land, or to the interruption of the use or enjoyment thereof as a place of exercise and recreation. Persons offending in any of these respects, upon a summary conviction thereof before two justices, upon the information of any churchwarden or overseer of the parish in which the green or land is situated, or of the person in whom the soil of the green or land may be vested, for each and every offence, over and above the damages occasioned thereby, are liable to a penalty not exceeding 40s.

Under the General Inclosure Act, 8 & 9 Vict. c. 118, s. 15, provision is made for preserving town and village greens for the use of the inhabitants; and by section 73 for allotments of commons as places of exercise and recreation of the inhabitants of the parish and neighbourhood. These provisions, however, concern the churchwardens and overseers of the parishes in which the greens and commons may be situated, and not local authorities for the purposes of the Public Health or Nuisances Removal Acts.

Arising from
noxious
trades, etc.
18 & 19 Vict.
c. 121, s. 8.

The carrying on of noxious trades or manufactures is not legalized by the proviso to the 8th section, which only defines the conditions upon which accumulations or deposits which are injurious to health may be suffered to remain on the premises; namely, that the accumulation or deposit has not been kept longer than is necessary for the purposes of the particular business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby. It is not enough that the precautions ordinarily adopted in the particular trade or manufacture have been observed, for they must be the best available means which can be adopted for securing the end in view. (1) In determining this question the justices will doubtless be guided more by the opinions of scientific persons than by considerations of the expense which "the best available means" would cost. Even though the best available means have been adopted, the trade or employment may continue a nuisance or injurious to health, and though it will in that case be punishable under this Act, persons injured thereby have still their private remedy, for it is provided that nothing in the Act shall impair any power of abating nuisances at common law. As a general rule it is apprehended that the local authority will not deem it necessary to take proceeding for the removal of offensive accumulations or deposits against persons carrying on noxious trades when they have every reason to believe that such persons have done everything in their power to lessen the inconvenience occasioned thereby to the neighbourhood, as otherwise the local authority may be mulcted in the costs of a frivolous or unfounded complaint. Further, with respect to noxious trades or manufactures, see

Ib. s. 43.

(1) *Schofield v. Schunck*, 19 J. P. 84.

post, p. 523; and as regards houses, &c., in an unwholesome state in a district under a Local Board of Health, see the 11 & 12 Vict. c. 63, s. 60, *ante*, p. 153.

By the interpretation clause the word "premises" extends to all messuages, lands, or tenements, whether open, or enclosed, whether built on or not, and whether public or private.

Premises defined.
18 & 19 Vict.
c. 121, s. 2.
Arising from
alkali works.
26 & 27 Vict.
c. 124, s. 7.

There is another class of nuisances arising from noxious trades, for the suppression of which special provision has been made, and though in regard to which no action can be taken by the local authority under the Nuisances Removal or Public Health Acts, it is proper to notice in this work—namely, nuisances arising from the non-condensation of muriatic acid gas evolved in alkali works. The serious injuries occasioned to health and property in the neighbourhood of those works are shown in the report of the Committee of the House of Lords appointed on the motion of Lord Derby; in consequence of that report an Act was passed for the more effectual condensation of such gas in alkali works—namely, the 26 & 27 Vict. c. 124, which was in the first instance continued until the 1st July, 1868, only, but which by 31 & 32 Vict. c. 36, s. 1, has been continued without limitation as to time. The 26 & 27 Vict. c. 124, provides for the appointment of an inspector of such works by the Board of Trade, and enacts that every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the inspector derived from his own examination or from that of a sub-inspector, of not less than ninety-five per centum of the muriatic acid evolved therein, subject to certain penalties for carrying on any work in contravention of the Act. All such works must be registered with the inspector; and the term "alkali work" shall mean every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved.

Ib. s. 4.

Ib. s. 6.

Ib. s. 3.

Since the Act has been in operation, two reports have been made by Dr. R. Angus Smith, the inspector appointed under it, of his proceedings during the years 1864 and 1865, and the general results may be stated as being highly satisfactory, and the success of the measure more complete than had been anticipated.

§ 6. AUTHORITY TO INSPECT PREMISES, AND ORDER WORKS TO BE DONE.

It shall be the duty of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of the Nuisances Removal Acts, and to enforce the provisions of the Acts in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fire-places and furnaces to consume their own smoke; and any

Duties of
nuisance
authorities
as to inspec-
tion of
nuisances.
29 & 30 Vict.
c. 90, s. 20.

Order of
justices to
admit
nuisance
authority.
29 & 30 Vict.
c. 90, s. 20.
Notice of
existence of
nuisances.
18 & 19 Vict.
c. 121, s. 10.

justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under 18 & 19 Vict. c. 121, s. 11, *infra*.

Before the local authority can take any proceedings under the Act of 1855, notice of the nuisance complained of must be given to them in the form (B) in the schedule to the Act by—

Any person aggrieved thereby ;

Or by any of the following persons :—

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

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

The relieving officer of the union or parish,

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

And in case the premises be a common lodging-house, any person appointed for the inspection of common lodging-houses (see, however, 16 & 17 Vict. c. 41, s. 9, *ante*, p. 250).

Ib.

And the local authority may take cognizance of any such nuisance after entry made, as provided by the Act, or in conformity with any Improvement Act under which the inspector has been appointed.

Application
to justices by
inhabitants
of parish.
23 & 24 Vict.
c. 77, s. 13.

Instead of giving notice to the local authority as above mentioned, any inhabitant of any parish or place may make complaint before a justice of the peace of the existence of any nuisance upon any private premises in the same parish or place, who is thereupon to issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the complaint and act in relation thereto, as in cases where complaint is made by a local authority under section 12 of the Nuisances Removal Act, 1855, and as if the person making the complaint were such local authority.

Entry upon
premises.
18 & 19 Vict.
c. 121, s. 11.
To ground
proceedings.
Ib.

The local authority, by themselves or their officers, have power of entry upon the premises.

1. To ground proceedings.

18 & 19 Vict.
c. 121, Sch.
Form A.
Ib. Sch.
Form C.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists, demand may be made by them or their officer (either personally or in writing), on any person having custody of the premises, of admission to inspect the same, between nine o'clock in the morning and six in the evening. If admission be not granted, an order of a justice may be obtained, after reasonable notice and without the person complained of having been previously summoned, to admit the local authority or their officer. If no person having custody of the premises can be discovered, the

justice may and shall, on oath made before him of belief in the existence of the nuisance and of the fact that no person having the custody of the premises can be discovered, by order authorize the local authority or their officers to enter upon the premises between the hours above stated.

Notice of the intended application to a justice must be served at least twenty-four hours before the time at which it is proposed to make the entry on the premises; and it may be served by delivering it to or at the residence of the person to whom it is addressed. Where the notice is addressed to the owner or occupier of the premises, it may also be served by delivering it, or a true copy of it, to some person upon the premises; or if there be no person upon the premises who can be so served, by affixing it upon some conspicuous part of the premises. If the person resides at a distance of more than five miles from the office of the inspector it may be served by a registered letter sent through the post. Distance in this case will be measured, not by the nearest practicable road, but by a straight line from point to point on the horizontal plane "as the crow flies," as in *Lake v. Butler*, (1) *Stokes v. Grissell*, (2) which related to County Courts; and *Reg. v. Saffron Walden*, (3) which was a decision under the 4 & 5 Will. IV. c. 76, to the effect that the words "within ten miles thereof," in sect. 68 of that Act, mean within ten miles measured in a straight line from the house which the person inhabits to the boundary of the parish in which the estate conferring a settlement is situate.

It must be observed, however, that sect. 9 of the 18 & 19 Vict. c. 121, regarding the appointment of a sanitary inspector, has been repealed, and that though in that section provision was made for the office of the sanitary inspector, no such provision is contained in the 23 & 24 Vict. c. 77, s. 9, which authorizes the appointment of an inspector of nuisances.

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

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

3. To remove or abate a nuisance in case of non-compliance with, or infringement of, the order of justices,—or to inspect or examine any carcase, meat, poultry, game,

Service of notice of entry.
18 & 19 Vict. c. 121, Sch. Form C.
18 & 19 Vict. c. 121, s. 31.

Entry upon premises to examine and execute works.
Ib. s. 11.

To remove nuisances or examine meat.
Ib.

(1) 24 L. J. (N. S.) Q. B. 273.
(2) 23 L. J. (N. S.) C. P. 141.

(3) 9 Q. B. 76; 15 L. J. (N. S.) M. C. 115.

flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of the Act; that is to say, "exposed for sale, or in the course of, or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in England."

To examine
meat, etc.
18 & 19 Vict.
c. 121, s. 11.

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

Further with regard to the inspection of animals, meat, etc., see the provisions of the statute 26 & 27 Vict. c. 117, *post*, p. 520.

Where the chief officer of police becomes the local authority (see *ante*, p. 471) he is restricted by the 16th section of the Sanitary Act, 1866, from entering any dwelling-house without the occupier's consent or without the warrant of a justice of the peace.

Power of
entry to
nuisance
authority or
their officer.
29 & 30 Vict.
c. 90, s. 31.

The power of entry given to the authorities by 18 & 19 Vict. c. 121, s. 11, may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried on. And any justice's order once issued under the section shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

Inspection of
premises.

Having obtained admission to the premises, the inspection of the alleged nuisance should be so conducted as to enable the local authority to determine whether it exists, or whether it existed at the time the notice was given, and whether, although it has since been removed or discontinued, it is likely to recur or to be repeated; and in all cases it will be the most expedient course to reduce to writing the result of the inspection. When the inspection is made by an officer of the local authority, it will also be expedient for that authority, on receiving the report of their officer, formally, and in writing, to record the conclusions to which they have come after considering his report, in order to ground further proceedings.

Execution of
works.

It should be borne in mind that the Act gives no power to the local authority to enter upon any premises to execute works, such as are contemplated by sect. 11, except in the event of disobedience of an order of justices; and that, if they make such an entry, they may be restrained by a Court of Equity; for if a tribunal having a limited jurisdiction goes beyond that jurisdiction, it is unnecessary to resort to the appeal clause of the Act, as the Court of Chancery interferes for the purpose of restraining the exercise of powers beyond the jurisdiction of the bodies exercising them; per Lord Justice Turner, in *Tinkler v. Wandsworth*. (1) And further, with reference to the excess of

jurisdiction which had been exercised by the local authority in that case, he said, it may be as well to caution the defendants, intrusted as they are by the Act (*i.e.*, the Metropolis Local Management Act, the 18 & 19 Vict. c. 120) with very extensive powers, that it is their bounden duty to look well that they keep strictly within their powers, and not to be guided by any fancied opinions of their own as to the "spirit" of the Act by which they are governed: this caution, it seems scarcely necessary to add, is equally applicable to local authorities acting under the 18 & 19 Vict. c. 121, and 23 & 24 Vict. c. 77. Execution of works.

The case of *Tinkler v. Wandsworth* first came before Vice-Chancellor Stuart on a motion for an injunction to restrain the defendants, the Board of Works for the Wandsworth district, from pulling down or converting the privies attached to thirty-nine cottages belonging to the plaintiff, situate at Ford's Buildings, in the parish of Battersea, into water-closets. On the 27th January, 1857, the defendants caused a notice to be served on the plaintiff's agent, requiring the plaintiff to commence, within fourteen days from the date thereof, the conversion of the privies in question into water-closets. The plaintiff in consequence informed the defendants that the occupiers of the cottages were satisfied with the accommodation which was attached to their dwellings, and that the proposed water-closets would be found inconvenient, and be perpetually getting out of order. The defendants replied, that it was their intention to do away with all privies in their district where there was available drainage for water-closets. A sewer having been in the meantime constructed by the defendants for carrying off the sewage matter from the water-closets proposed by them to be constructed on the plaintiff's premises, they on the 8th June, 1857, served the plaintiff's agent with a notice, entitled, "In the Metropolis Local Management Act, 18 & 19 Vict. c. 120, and in the Nuisances Removal and Diseases Prevention Act, 18 & 19 Vict. c. 121," to the effect that as the plaintiff had not constructed the works required by them to be constructed by their former notice, the workmen of their contractor would forthwith execute such works on or after the expiration of seven days from the service of the notice of the 8th of June, and that the defendants would adopt the course provided by the law for enforcing the payment of the expenses thereby incurred. Afterwards, on the 7th November, the defendants' workmen entered on the plaintiff's premises and commenced the works. Vice-Chancellor Stuart, in delivering the judgment of the Court, said, that the legislature, by the 12th section of the 18 & 19 Vict. c. 121, has provided the proper tribunal for trying questions of this kind. Before justices of the peace such questions may, according to the provisions of the Act, be speedily and cheaply tried and decided. After hearing all that was urged by the counsel for the defendants, there appears, he said, nothing to satisfy the mind of any reasonable man that

Execution of
works.

the Local Board are justified in refusing to proceed so as to have the question between them and the plaintiff tried before the justices of the peace according to the Act of Parliament. Assuming that there was such a nuisance as required the intervention of the Board, it is not satisfactorily shown that they have proceeded with a proper degree of moderation; they did not proceed so as to give that right of appeal to the justices, or even that intervention in the first instance of a justice, which is authorized by the Act. The proceedings of the defendants sought to be restrained are wholly arbitrary, and have been so conducted by them as to exclude the intervention of any other opinion than their own, and that of their own officers, to guide them in the exercise of those enormous statutory powers which are inconsistent with the ordinary common law right of every Englishman. And again, he said, it is not reasonable that the defendants should be allowed to proceed in such a manner as to deprive the plaintiff of the means of having his legal rights adjudicated upon by a proper legal tribunal. Without entering more minutely into the evidence on both sides, it is sufficient to say, that, upon the whole, there seems enough proved on the part of the plaintiff to show that he has a right to the intervention of a proper legal tribunal to adjudicate upon the question between himself and the defendants as to the legality of their proceedings, and the nature of the works which must be done. It is not consistent with the doctrine of the Court of Chancery that, when questions of that kind are to be determined, the defendants should be allowed to decide the question in their own favour, and put in force violently those powers conferred by the Act, till that which seems the proper legal tribunal shall have decided that the case is one to justify the exercise of those extraordinary powers. The order, therefore, went for an injunction according to the prayer of the bill filed by the plaintiff until answer or further order; the plaintiff undertaking to proceed without delay to construct at his own expense proper and sufficient works and conveniences on the premises, so as not to be objectionable as a nuisance or liable to removal under any proceedings before justices, under the 12th, 13th, and 14th sections of the 18 & 19 Vict. c. 121, with liberty to either party to apply as they may be advised. (1) This order having been appealed against, it was confirmed by the Lords Justices of Appeal (Knight Bruce and Turner), with costs; their lordships holding, that, assuming that a district Board has jurisdiction under the 18 & 19 Vict. c. 120, to order water-closets to be provided instead of privies in particular cases where such an alteration may be required, yet the Board is bound to exercise its discretion in each particular instance, and is not competent to lay down any general rule requiring that in all cases water-closets shall be provided in the place of privies; and that the

(1) 21 J. P. 757.

jurisdiction of the Court of Chancery to interfere by injunction was not ousted by the 211th section of the 18 & 19 Vict. c. 120, giving an appeal to the Metropolitan Board of Works. The order, therefore, was illegal and bad. (1)

The question as to the extent in this respect of the powers of the local authority in the metropolis is now, however, settled by a more recent decision. The Metropolitan Local Management Act, s. 81, enacts, "that if it appear to the vestry or district Board that any house is without a sufficient water-closet or privy and ashpit, they may require the owner or occupier to provide a sufficient water-closet or privy and ashpit, or either of them, as the case may require;" and the Court of Queen's Bench have held that the section authorizes the vestry or district Board to require a water-closet to be provided for premises in lieu of a privy already existing thereon. (2)

§ 7. AUTHORITY TO NUISANCE AUTHORITIES IN METROPOLIS TO PROVIDE HOSPITALS FOR THE SICK.

In the metropolis the nuisance authority, and in a Local Board of Health district the Local Board, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick.

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

It may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of its district, on payment by the sewer authority (*sic*) of such annual or other sum as may be agreed upon.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act.

The sewer authority, or in the metropolis the nuisance authority, shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it now has to provide hospitals or temporary places for the reception of the sick under the Sanitary Act, 1866, s. 37, but such power to make provision for the temporary supply of medicine and medical assistance shall

(1) *Tinkler v. Wandsworth*, 27 L. J. Ch. 342; 2 De G. & J. 261; 4 Jur. (N. S.) 293. *Lewis, resp.*, 5 L. T. (N. S.) 608; 31 L. J. (N. S.) M. C. 73; 8 Jur. (N. S.) 432.

(2) *St. Luke, Middlesex*, apps.,

Execution of works.

Power to nuisance authority to provide hospitals in the metropolis. 29 & 30 Vict. c. 90, s. 37. 30 & 31 Vict. c. 113, s. 16.

Supply of medicine, etc. 31 & 32 Vict. c. 115, s. 10.

not be exercised without the sanction of Her Majesty's Privy Council.

In the ninth report of the medical officer of the Privy Council, it is stated (page 25) that "during August and September (1866) numerous applications were made by local authorities to the War Office for the loan of hospital tents and ambulances for the use of persons suffering from cholera. As the Sanitary Act, 1866, which was passed on August 7th, 1866, gives power to metropolitan Boards and vestries, and in the country to sewer authorities (see *post*, p. 550), to provide temporary hospitals, these applications were not indiscriminately entertained; but whenever exceptional circumstances existed (such as those of some places during hop-picking), the War Office upon their Lordships' recommendation granted the required accommodation subject to the price or hire of the tents and ambulances being paid."

CHAPTER II.

§ 1. PROCEDURE BEFORE JUSTICES.

WHERE in the manner mentioned in the preceding chapter, a nuisance is ascertained by the local authority to exist, or where the nuisance, in their opinion, did exist at the time when the notice was given, and although it has since been removed or discontinued, it is in their opinion likely to recur or to be repeated on the same premises, or on any part of such premises, they shall cause complaint thereof to be made before a justice of the peace. The justice is thereupon to issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices in petty sessions, who shall proceed to inquire into the complaint. If it be proved to their satisfaction that the nuisance exists or did exist at the time when the notice was given, or if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier, for the abatement, or discontinuance and prohibition of the nuisance, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order. (1)

A notice under sect. 11 of 18 & 19 Vict. c. 121 (*ante*, p. 483), is not necessary to found jurisdiction under sect. 12. (2)

But by the Sanitary Act, 1866, the nuisance authority or chief officer of police (see *ante*, p. 471) shall, previous to taking proceedings before a justice under 18 & 19 Vict. c. 121, s. 12, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works and to do all such things as may be necessary within a time to be specified in the notice: provided,

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

Secondly, that where the person causing the nuisance cannot

(1) See *Isle of Wight Ferry Company*, apps., *Ryde Commissioners*, resps., *ante*, p. 473.

(2) *Amy's*, app., *Creed*, resp., W. N. 1868, p. 287; 38 L. J. M. C. 22.

Proceedings
by chief
officer of
police.
29 & 30 Vict.
c. 90, s. 21.

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

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

The above provision removes the difficulty in *Attorney-General v. Richmond*, (1) in which it was held that the clause in the Public Health Act directing the Local Board to be sued in the name of their clerk does not extend to a "local authority" under the Nuisances Removal Acts.

Jurisdiction
of justices.

The jurisdiction of the justices under the Nuisances Removal Act will not arise if the nuisance is only consequential to an act done by persons in another jurisdiction; therefore where in a parish having a local authority acting under the 18 & 19 Vict. c. 121, there was a nuisance in a stream of water occasioned by the acts of certain persons in an adjoining parish not within the limits of the local area of the local authority, it was held that the local authority had no powers under the Act to proceed summarily against the person causing the nuisance, for the justices have no summary jurisdiction under the statute for the removal and prevention of nuisances, unless the cause of the nuisance and its effect are within the area of the local authority. (2) And it may be added that the 12th section of the 18 & 19 Vict. c. 121, applies to all nuisances caused by the acts of an individual, and which that individual has the power to remove in the manner contemplated by the Act. (3)

A. was the owner of property on which certain cesspools existed, which contained the sewage from several houses also his property. This sewage, together with the sewage of houses belonging to other persons, flowed over the cesspools in rainy weather and passed through pipes, laid under the highway, into an open ditch on a field belonging to B., where the sewage first became a nuisance. On evidence of these facts the justices refused to make an order on A. for the abatement of the nuisance; and to prevent its recurrence, and on a case stated, it was held that the justices were right; but the case was remitted to the justices for the addition of further facts; (4)

(1) 12 Jur. (N. s.) 544.

(3) *Reg. v. Gee*, 33 L. T. 181.

(2) *Reg. v. Cotton*, 1 E. & E. 203;
28 L. J. (N. s.) M. C. 22; 5 Jur.
(N. s.) 311; 32 L. T. 125.

(4) *Hendon v. Bowles*, 17 L. T.
(N. s.) 597.

and per Blackburn, J.: "An owner *quâ* owner is not necessarily liable, but his tenant may be liable; or if the owner is occupier he may be liable."

In another case, B. was the owner of a brewery, and sent the refuse and sewage from his premises on to the land of A., where also it met the refuse from other sewers and caused a nuisance on the land of A., but no nuisance was caused on the land of B.; but B.'s contribution of refuse was the main cause of the nuisance. B., under such circumstances, was held liable for the nuisance as the person by whose "act, default, permission, or sufferance" the nuisance arose within the meaning of 18 & 19 Vict. c. 121, s. 12. (1) Per Cockburn, C.J., if a nuisance arises from a joint contribution of different persons, of such a nature that the contribution of each person is not in itself a nuisance, but the nuisance is caused by these contributions in the aggregate, I should hesitate very much to hold that it would be competent to the justices to make an order prohibiting each separate contributor from draining his sewage into a separate drain. But in the present case, independently of the subsequent contribution, there is a quantity of refuse poured into the drain by the applicant, which in itself creates a nuisance.

Where a nuisance existed on a common, which was managed by a committee of the copyholders, the committee, and not the lord of the manor, are the persons by whose act and default the nuisance arises, and are the persons to be proceeded against. (2)

As affecting agreements between landlords and tenants, by an agreement for a lease the landlord agreed to repair the demised premises, and also to pay and discharge all rates, taxes, tithes, and other charges payable in respect of the premises. Part of these premises consisted of a piece of ornamental water; a deposit of mud formed in this water, consisting partly of decayed vegetable matter and house drainage, which became a nuisance. The local authority took proceedings against the tenant as the person by whose default the nuisance arose, and ultimately made an order upon him for the removal of the nuisance. The tenant had previously to the making of the order, but after the commencement of the proceedings against him, entered into an agreement with a person for the removal of the deposit and the cleansing of the ornamental water to the satisfaction of the inspector of nuisances, for the sum of £100, which he paid upon the completion of the work, and for the recovery of which he afterwards sued his landlord; but it was held that the latter was not bound, under the covenant to repair, to cleanse the ornamental water; and with respect to so much of the sum paid as was paid for the removal of the nuisance, the plaintiff was not entitled to recover it under the agreement, as a charge

(1) *Brown v. Bussell*, 32 J. P. 196; 37 L. J. (M. C.) 65; 18 L. T. (N. S.) 19; L. R. 3 Q. B. 251.

(2) *Richmond v. Dean and Chapter of St. Paul's*, 32 J. P. 374; 18 L. T. (N. S.) 522.

Jurisdiction
of Justices.

payable in respect of the premises or as money paid for the defendant at his request. (1)

Again, C. was the owner of certain houses, for the use of which he had constructed a drain under a private road, and thence leading to a stream in the lands of A. The refuse polluted this stream, and caused a nuisance on the lands of A., though none was caused on the lands of C. In this case, also, C. was held to be liable for the nuisance on the lands of A., as the person by whose act it was caused, though C. claimed to discharge his refuse as a easement. (2)

No justice to
be incapable
of acting
because
member of
body
authorized
to execute
Act or
liable to
contribute.
29 & 30 Vict.
c. 41, s. 2.

It has happened that all the justices usually acting at a particular petty sessions have been *ex officio* guardians of the union acting as the local authority for the removal of a nuisance, and that in consequence of objection being taken to their jurisdiction the proceedings have failed. In order to obviate this inconvenience, the 16th section of 23 & 24 Vict. c. 77, has been repealed, and now no justice of the peace shall be deemed incapable of acting in cases under the Nuisances Removal Act, or the Act of the 23 & 24 Vict. c. 77, by reason of his being a member of any body thereby declared to be the authority to execute the said Act, or by reason of his being a contributor or liable to contribute to any rate or fund out of which it is thereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

Justices not
incapable
of acting in
execution of
Acts when
interested in
application of
penalty.
30 & 31 Vict.
c. 115, s. 2.

A justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a Local Board of Health, or Improvement Commissioners, or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

With regard to the jurisdiction of justices, if a statute refers to the justices of a *division*, any justice of the county has jurisdiction over it, for the word is merely directory, and not restrictive or qualificatory, (3) and the same where a statute refers a matter to justices *in or near* the parish or division: (4) so again, if a statute directs anything to be done "in the division by *magistrates acting for the division*," any magistrate of the county present at a meeting in the division is competent for that purpose. (5)

(1) *Bird v. Elwes*, 18 L. T. (N. S.) 727; 37 L. J. Exch. 91; L. R. 3 Exch. 225.

(2) *Francomb v. Freeman*, 32 J. P. 196; 37 L. J. (M. C.) 65; 18 L. T. (N. S.) 19.

(3) *Ashley's Case*, 2 Salk, 280; *Anon.* 12 Mod. 546.

(4) *Rex v. Price*, Cald. 305; *Rex v. Loxdale*, 1 Burr. 447.

(5) *Rex v. Price*, Cald. 307.

The form of summons given in the schedule to the Act may be varied as circumstances may require, and the form of complaint may be made to correspond therewith. The summons will be served in the same manner as notices and orders: see sect. 31, *post*, page 529. In most cases it will be found that the nuisance complained of will be removed after notice has been given by the local authority or their officer; and although the Act imperatively requires that complaint shall be made by the local authority to the justices, no purpose will be gained by the adoption of such a course when the nuisance has been abated, and is not likely to recur. Where, however, the fact of the nuisance existing is established, the justices are bound to make an order. If, however, the person summoned undertakes to abate the nuisance without an order, the justices in that case, if they think fit, may suspend the issue of the order by adjourning the hearing. If at the adjourned hearing the nuisance be not abated, the justices should then make a peremptory order in accordance with the statute. The person proceeded against need not necessarily be the owner or the occupier of the premises; for if any other person than the owner or occupier cause the nuisance, such person is liable to be proceeded against under the Act. If, however, such person cannot be found, or if it cannot be ascertained who he is, then the owner or occupier should be proceeded against; but in either case it is for the justices to determine who is the proper person to be summoned. If, on the other hand, it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known, or cannot be found, the order may be addressed to and executed by the local authority, and the costs defrayed out of the rates or funds applicable to the execution of the Act. If, in the execution of the order, or in pursuance of any other power in the Act, the local authority remove any matter or thing from the premises, in pursuance of the Act, such matter or thing may be sold by public auction, after not less than five days' notice, by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices (*i. e.* as it is presumed, the justices making the order; but it is not clear what justices are referred to) may direct the immediate removal, destruction, or sale of the matter or thing. The money arising from the sale may be retained by the local authority, and applied in payment of all expenses incurred under the Act with reference to the particular nuisance, and the surplus, if any, is to be paid on demand, by the local authority, to the owner.

It would, no doubt, be inconvenient to sell by public auction "matters or things" which, after all, may be but of trifling value; and apparently no other mode of disposing of them could be legally adopted, unless where delay would be prejudicial to health. But it is to be observed, that the language

Summons.

Order of
justices.18 & 19 Vict.
c. 121, s. 17.Ib. sch.
Form E.Disposal of
noxious
matters
removed
from premises,
18 & 19 Vict.
c. 121, s. 18.

of the enactment is not imperative—the matter or things *may* be sold by public auction—not they *shall* be sold by public auction. So far as the language of the enactment is concerned, it does not prevent the local authority disposing of the “matter or things” in any other way than by sale by auction; and, indeed, it would seem that there is nothing to prevent the local authority allowing the owner to dispose of them in any way he may think proper.

Nuisance
within the
Act.

The following is an illustration of what is a nuisance within the meaning of sect. 12 of the 18 & 19 Vict. c. 121. The appellant, claiming to be owner of the markets and fairs held in the town of Crewkerne, erected a sheep-pen in front of a house in the town, and took toll for sheep exposed for sale therein. After the removal of the sheep their droppings and urine remained, and a complaint was lodged against the appellant by the respondent (who was the inspector of nuisances) in respect thereof. For fifty-five years the inhabitants of the houses before which the sheep were penned had been in the habit of clearing away the droppings, except in cases where houses before which the pens were placed were unoccupied. The justices being of opinion that the appellant was a person by whose “permission or sufferance” the nuisance was created, and that the ground inclosed by the appellant with hurdles for penning the sheep was “lands or tenements” within the meaning of sect. 12, and that the nuisance was a recurring nuisance within the Act, issued their prohibition to the appellant. On a case stated under the 20 & 21 Vict. c. 43, s. 2, the Court of Common Pleas held that the justices were right. (1).

Owner or
occupier,
how
designated.
18 & 19 Vict.
c. 121, s. 35.
Joint owners
or occupiers.
Ib. s. 34.
To the
execution of
what works
the order
may extend.

It is not in any case necessary, though it will be generally better to do so, to designate an owner or occupier by name in any proceeding under the Act, for it is sufficient to designate him as the “owner” or “occupier” of the premises; and in the case of joint owners or occupiers, it is sufficient to proceed against any one or more of them, without proceeding against the other joint owner or occupier.

The order of justices may extend to the execution of such works as are necessary to abate the nuisances mentioned in sections 12, 13, and 14 of the 18 & 19 Vict. c. 121, (2) and those works are not necessarily structural works within the meaning of sect. 16 of the Act. In a recent case the corporation of Liverpool built a gaol outside the limits of the borough, in the township of Walton, the drainage from which was carried off by open drains passing through land not belonging to the corporation, in the township of Bootle-cum-Linacre; and the Nuisance Removal Committee of this latter township, under sect. 12 of the 18 & 19 Vict. c. 121, summoned the corporation for this nuisance, which could only be removed by the con-

(1) *Draper, app., Sperring, resp.*,
10 C. B. (N. S.) 113; 30 L. J. (N. S.)
M. C. 225; 4 L. T. (N. S.) 365.

(2) Per Erle J., in *Reg. v. Middleton*, 5 Jur. (N. S.) 624.

struction of a covered drain through the land. The justices accordingly made an order upon the corporation "within three months to abate and discontinue the nuisance, and to do such works and acts as are necessary to abate the same." Upon a motion on behalf of the corporation for a *certiorari* to bring up the two orders which were made in the case, and for a *mandamus* to the Court of Quarter Sessions to hear an appeal against the first order, it was held that the order was proper and properly made on the corporation, that it was an order to abate a nuisance merely, and not an order for structural works to be executed within sect. 16, and that consequently there was no appeal to quarter sessions against it. (3)

The proceedings are to be before "any two justices in petty sessions assembled at their usual place of meeting," and by the interpretation clause, the expression, "two justices," shall, in addition to its ordinary signification, mean one stipendiary or police magistrate, acting in any police court for the district. But stipendiary magistrates do not usually sit in petty sessions, but in the police court of the district for which they are appointed. And it is enacted by the 2 & 3 Vict. c. 71, s. 14, that "none of the said magistrates (*i. e.* stipendiary magistrates) shall be competent to act as a justice of the peace, either alone or with any other justice or justices, in anything which is to be done at a special or petty sessions of all the justices acting in the division, or by the justices of any of the said counties or liberties in quarter sessions assembled." The counties or liberties referred to, are the counties of Middlesex, Surrey, Kent, Essex, and Hertfordshire; the city and liberty of Westminster, and the liberty of the Tower of London. Further upon this point see Glen's Jervis's Acts (3rd edition), 11 & 12 Vict. c. 42, ss. 29, 30, and 11 & 12 Vict. c. 34, s. 33.

To the execution of what works the order may extend.

Proceedings before stipendiary magistrates. 18 & 19 Vict. c. 121, s. 12. *Ib.* s. 2.

§ 2. ORDER FOR ABATEMENT OF NUISANCES.

By their order, the justices may require the person on whom it is made—

To provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable; What the order may require. *Ib.* s. 13.

Or to pave, cleanse, whitewash, disinfect, or purify (but see *post*, p. 503), the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order;

Or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit, which is a nuisance or injurious to health;

Or to provide a substitute for that complained of;

(1) *Ex parte Liverpool* (Mayor, &c.) 27 L. J. (N. S.) M. C. 89; 4 Jur. (N. S.) 333.

What the order may require.
18 & 19 Vict.
c. 121, s. 13.

Or to carry away the accumulation or deposit which is a nuisance or injurious to health ;

Or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health ;

Or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance) ;

Or to do such other work or acts as are necessary to abate the nuisance complained of, in such manner, and within such time, as in such order shall be specified ;

Ib. Sch.
Form E.

And if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require.

Entry of local authority on premises.
18 & 19 Vict.
c. 121, s. 14.

The order is to be made at the time the complaint is heard, and the local authority is empowered in case of default, under the powers of entry given by the 11th section of the Act, to enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited ; but they have a discretion in the matter, as the Act only says that they *may* enter the premises. A rule for a mandamus to a Local Board of Health to enforce an order under this section for the abatement of a nuisance was therefore refused. (1)

Where, however, a Local Board have ordered works to be done to abate a nuisance, and the person upon whom the order is made does works, but not to the extent or in the manner ordered, the justices, on an application of the Board to enforce the order, have no power to dismiss the complaint if they are of opinion that all that was really necessary to be done has been done, but are bound to enforce execution of the order of the Board. (2)

Where an order to abate a nuisance by removing offensive privies, &c., was directed to "the owner or to the Nuisances Removal Committee," the owner being directed to remove the same within seven days, and if such order were not complied with, the committee were authorized and required to enter and remove the nuisance complained of, and the seven days elapsed without the owner or the committee having removed the nuisance, it was held that the justices had power to fine the owner, under sect. 14, for disobedience of the order, notwithstanding that it was directed to the committee as well as to him. (3)

It may be observed here that long before the first Nuisances Removal Act, it was held by the Court of Exchequer that an entry on the land of another in order to remove a nuisance of filth, by a person injured thereby, is justifiable without previous

(1) *Ex parte Bassett*, 7 E. & B. T. 241 ; 3 B. & S. 613 ; 32 L. J. 280 ; 26 L. J. (N. S.) M. C. 64 ; (N. S.) M. C. 111.

(3) *Tomlins v. Great Stanmore*, 3 Jur. (N. S.) 136. 12 L. T. (N. S.) 118 ; 29 J. P. 117.

(2) *Hargreaves v. Taylor*, 38 L.

notice, where the owner of the land is himself the original wrongdoer by placing it there. So possibly also where the nuisance arises from a default in the performance of some obligation on him. But where the nuisance is created by another, and the owner succeeds to the *locus in quo*, he is entitled to notice before an injured person can enter to remove it. The case of an abatement of a nuisance dangerous to life may however be an exception. (1)

It will be desirable in all cases at the hearing of the complaint to be prepared to point out specifically the particular things that are to be done, and the manner and time of doing them. And it is the more necessary to do so, for there is no appeal against orders for the abatement of a nuisance, except in so far as they may direct the execution of structural works; moreover, any person not obeying an order for the abatement of a nuisance, if he fail to satisfy the justices that he has used all due diligence to carry out such order, is liable for every such offence to a penalty not exceeding 10s. per day during his default.

Penalties imposed by the 14th section of the 18 & 19 Vict. c. 121, for disobeying an order to abate a nuisance under section 13, cannot be enforced without previously summoning the offender under section 20 of the Act. (2)

It will be seen hereafter that the power given by the 18 & 19 Vict. c. 121, s. 14, to the local authority to enter and execute the works necessary to be done to effect the removal of a nuisance under the Act is merely permissive, and that a mandamus will not lie against the local authority to enforce the order of justices on the default of the person upon whom it is made. The section, it will be perceived, provides a specific remedy by imposing a penalty on the person disobeying the order of justices.

If the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another, declaring such house habitable, from the date of which other order such house may be let or inhabited.

With respect to the order of prohibition, it seems to result from collating the words of the section with the Form of Order (Sch. Form E), that the power to prohibit recurrence is general, and not confined to the case of a nuisance removed or discontinued since the notice, but likely to recur.

The order of prohibition may be appealed against in manner prescribed by the 40th section of the Act. And any person knowingly or wilfully acting contrary to the order is liable to a penalty not exceeding 20s. per day during such contrary action.

(1) *Jones v. Williams*, 11 M. & W. 570; 32 L. J. (N. S.) M. C. 1; 7 176; 12 L. J. (N. S.) Exch. 249. L. T. (N. S.) 272; 3 B. & S. 116.

(2) *Reg. v. Jenkins*, 9 Jur. (N. S.)

local authority
may enter
and remove
or abate
nuisance.
18 & 19 Vict.
c. 121, s. 14.
Mandamus.

The local authority may under the powers of entry given by the Act enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of the order, and charge the cost to the person on whom the order is made, as provided by sect. 19 of the Act, *post*, p. 499.

The 18 & 19 Vict. c. 121, s. 14, which imposes a penalty on persons on whom an order of justices has been made under the Act for disobedience of the order, and authorizes the local authority to enter on the premises to which the order relates, and abate the nuisance, is merely permissive in the latter respect; and a mandamus will not be granted to compel the local authority to enforce the order on the default of the person upon whom it is made. (1)

But since the Act 23 & 24 Vict. c. 77, a private person may obtain an order of justices for the removal of a nuisance on private premises, and enforce the order without the intervention of the local authority.

Justices, on
the applica-
tion of
householders,
may order
the removal
of nuisances.
23 & 24 Vict.
c. 77, s. 13.

Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting. The justices shall then proceed to inquire into the complaint, and act in relation thereto as in cases where complaint is made by a local authority under sect. 12 of the 18 & 19 Vict. c. 121, and as if the person making the complaint were such local authority. The said justices, if they see fit, may adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under sect. 11 of the Act (*ante*, p. 482). The costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices. Any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof, and subject to the like appeal, as any order made under sect. 12 of the 18 & 19 Vict. c. 121 (*ante*, p. 489), and the justices making such order may thereby authorize any constable or other person or persons to do all

(1) *In re Ham, Surrey*, 26 L. J. parte *Bassett*, 7 E. & B. 280; 3 Jur. (N. S.) M. C. 64. S. C. nom. Ex (N. S.) 136.

acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under that Act, and charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

The justices, if they are of opinion that any nuisance is likely to recur, may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence as the case may require. They may also, when it shall appear to them that the execution of structural works is required for the abatement of a nuisance, direct such works to be carried out under the direction, or with the consent or approval, of any public Board, trustees, or Commissioners, having jurisdiction in the place, in respect of such works. A difficulty may in some cases arise in determining what are "structural works" within the meaning of this section. Generally every work which creates a new structure is a structural work; but certainly the term does not apply to a mere alteration or repair of works already existing. However, it will be for the justices in each case to determine for themselves whether the particular works deemed necessary for the abatement of a nuisance are works within the meaning of the enactment respecting structural works.

The legal force of an order for the execution of structural works may be suspended until after the determination of or the ceasing to prosecute an appeal against it. If within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it, and shall have entered into recognizances to try the appeal, and shall appeal accordingly, in such an event no liability or penalty shall arise, nor shall any work be done or proceeding taken under the order until after the determination of the appeal, unless it cease to be prosecuted. The appeal will be to the Court of Quarter Sessions held next after the making of the order, but the notice of appeal must be given within seven days from the date of the order; and it will be prudent that the appellant should accompany the notice with a statement in writing of the grounds of appeal, though it does not appear to be absolutely necessary that he should do so.

§ 3. COSTS OF LOCAL AUTHORITY.

All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice, or obtaining an order of justices, or in carrying the same into effect shall, under the Act, be deemed to be money paid for the use, and at the request of the person on whom the order is made.

Therefore, even though no order for the abatement of the nuisance may have been obtained, the local authority may re-

Removal of nuisances.

Order prohibiting recurrence of nuisance. 18 & 19 Vict. c. 121, s. 13. Structural works. Ib. s. 16.

Appeal against order for execution of work. Ib.

Ib. s. 40.

How recovered. Ib. s. 19.

cover by action in the County Court, or in a higher Court, if necessary, any expenses they may have incurred in proceedings under the Act in regard to the particular nuisance.

How
recovered.
18 & 19 Vict.
c. 121, s. 19.

If the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, the costs and expenses are to be deemed to be money paid for the use and at the request of the person by whose act or default the nuisance was caused. On the other hand, if the nuisance be caused by the act or default of the owner of the premises, such premises shall be and continue chargeable with the costs and expenses, and also with the amount of any penalties under the Act, till such costs, expenses, and penalties shall be fully discharged; provided, however, that the costs and expenses do not exceed in the whole one year's rack-rent of the premises.

The Nuisances Removal Act, 1855, s. 19, only makes the expenses for carrying out an order of justices for the removal of a nuisance a charge upon the premises in the case of nuisances caused by the default of the owner of the premises. (1)

Nuisance au-
thority may
require pay-
ment of costs
or expenses
from owner
or occupier,
and occupier
paying to
deduct from
rent.
29 & 30 Vict.
c. 90, s. 34.

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

(1) *Bird v. Elwes*, 18 L. T. (N. S.) 727; 37 L. J. Exch. 91.

neither shall it affect any contract whatsoever between landlord or tenant.

Where the tenant of a house within the district of the Metropolis Local Management Act received notice from the vestry of the parish under 25 & 26 Vict. c. 102, s. 96, to pay his rent to them on account of the expenses of paving a road, and the landlord, being aware of such notice, after the rent became due, but before the tenant had paid any part of it to the vestry, put in a distress, in an action for wrongful distress it was held that as the landlord's right of distress was not taken away by the Act, the tenant was not protected till he had actually paid his rent to the vestry. (1)

In June an order of justices was made under the 18 & 19 Vict. c. 121, "on the owner" of certain premises to remove a nuisance, and in default the Local Board themselves commenced the necessary works for abating the nuisance, which were completed on the 7th of September following, and the expenses were then paid by the guardians acting as the local authority. The real owner of the premises was abroad, and on the 21st of May he executed a power of attorney to the defendant to receive the rents for him. This reached the defendant on the 22nd July, and the rent being payable yearly at Michaelmas, he received the past year's rent at the Michaelmas following:—on an appeal from the County Court of Suffolk, holden at Halesworth, it was held that the defendant was not liable, under the 19th section of 18 & 19 Vict. c. 121, to an action for money paid within the meaning of section 19 of 18 & 19 Vict. c. 121. (2)

The costs and expenses, and penalties, together with the charges for suing for them, may be recovered in any County Court or superior Court; or, if the local authority think fit, before any two justices. In what Court. 18 & 19 Vict. c. 121, s. 19.

That is to say, they may be so recovered from the person on whom the order was made; from the person by whose act or default the nuisance was caused; and, as it seems, from the owner of the premises, if the nuisance was caused by his act, or default. How recovered.

By the interpretation clause the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery, or under any order thereof, or who would receive the rents if such property were let to a tenant. It is apprehended, therefore, that when the costs, expenses, and penalties are chargeable upon the premises, they may be recovered under

(1) *Ryan v. Thompson*, 17 L. T. (N. S.) 506; 32 J. P. 135; L. R. 3 C. P. 144.

(2) *Blything v. Warton*, 32 L. J. (N. S.) M. C. 132; 7 L. T. (N. S.) 672; 3 B. & S. 352; 9 Jur. (N. S.) 867.

Recovery of costs.

sect. 20, to be hereafter adverted to, from any owner of the premises for the time being, and in such case he should be designated in the proceedings as the "owner," without mentioning his name or giving any further description of the person intended to be referred to by that designation (18 & 19 Vict. c. 121, s. 35). As regards the action in the County Court, it should be observed that the action will lie in that Court, whatever be the amount of the costs, and even though the title to land should come in question; see *Reg. v. Harden*, (1) and *Hertford v. Kimpton*, (2) which were cases upon the former statute 11 & 12 Vict. c. 123, s. 3, and in which it was held that the remedy provided by the Act must be pursued, and that the superior Courts have no jurisdiction to entertain a claim for the recovery of such costs and expenses. The present statute, however, expressly gives jurisdiction to a superior Court.

Division of costs.
18 & 19 Vict.
c. 121, s. 19.

Costs of frivolous complaint.
Ib.

If the proceedings be before the justices, they are empowered to divide the costs, expenses, and penalties between the persons by whose act or default the nuisance arose as they may consider reasonable. On the other hand, if it appear to the justices that a complaint made under the Act is frivolous or unfounded, they may order the payment by the local authority, or persons making the complaint, of the costs incurred by the person against whom the complaint was made, or any part of such costs. The proper time for making such an order appears to be at the hearing when the case is dismissed, and not when costs are applied for by the local authority, in pursuance of this section.

Remedy.

Generally it may be again observed with reference to the provisions of the statute with regard to the recovery of costs, that where a pecuniary obligation is created by a statute, and a remedy is expressly given for enforcing it, that remedy must be adopted. (3)

Order for payment.
Ib. s. 20.

Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, that is, it is presumed, in pursuance of anything contained in any of the first nineteen sections, any justice, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices, or a stipendiary magistrate, at a time and place to be named therein, to answer the complaint. Upon proof, to the satisfaction of the justices present, that any costs, expenses, or penalties are so due, such justices, unless they think fit to excuse payment on the ground of poverty or other special circumstances, shall, by order in writing under their hands and seal, order payment of the amount thereof to the

Ib. Sch.
Form H.

(1) 2 E. & B. 128; 22 L. J. (N. S.) Q. B. 299.

(2) 25 L. J. (N. S.) M. C. 41; 11 Exch. 295.

(3) *St. Pancras v. Batterbury*, 2 C. B. (N. S.) 477; 26 L. J. (N. S.) C. P. 243; 3 Jur. (N. S.) 1106.

local authority at once, or by such instalments as the justices 18 & 19 Vict.
 may think fit, together with the charges attending such appli- c. 121, Sch.
 cation and the proceedings thereon. If the amount mentioned Form I.
 in the order of justices be not paid within fourteen days there-
 after, it may be levied by distress and sale. This, it will be Ib. Sch.
 perceived, only refers to the recovery by the local authority of Form K.
 costs, expenses, and penalties, and not to any other complaint,
 or to the case of a person complained of who becomes entitled
 to costs, as in the case of a frivolous or unfounded complaint
 under sect. 19. With regard to such it is provided, that the Costs on
 costs may be recovered by persons thereto competent, in Eng- frivolous
 land according to the provisions of the 11 & 12 Vict. c. 43; complaint.
 and in the case of a local authority, that statute is also applic- Ib. s. 38.
 able to the enforcing an order of justices under sect. 20 of the
 18 & 19 Vict. c. 121.

§ 4. DISINFECTING PREMISES.

By the Nuisances Removal Act, 1855 (*ante*, p. 495), provi-
 sion is made to compel disinfection of premises, but further
 provision has since been made on the subject by the Sanitary
 Act, 1866.

It is thereby enacted that if the nuisance authority shall be Power to
 of opinion, upon the certificate of any legally qualified medical cause
 practitioner, that the cleansing and disinfecting of any house premises to
 or part thereof, and of any articles therein likely to retain in- be cleansed
 fection, would tend to prevent or check infectious or contagious or otherwise
 disease, it shall be the duty of the nuisance authority to give disinfected.
 notice in writing requiring the owner or occupier of such house 29 & 30 Vict.
 or part thereof to cleanse and disinfect the same as the case c. 90, s. 22.
 may require. If the person to whom notice is so given fail to
 comply therewith within the time specified in the notice, he
 shall be liable to a penalty of not less than one shilling and not
 exceeding ten shillings for every day during which he continues
 to make default; and the nuisance authority shall cause such
 house or part thereof to be cleansed and disinfected, and may
 recover the expenses incurred from the owner or occupier in
 a summary manner. When the owner or occupier of any such
 house or part thereof as is referred to in the section is from
 poverty or otherwise unable, in the opinion of the nuisance
 authority, effectually to carry out the requirements of the sec-
 tion, such authority may, without enforcing such requirements
 on such owner or occupier, with his consent, at its own ex-
 pense, cleanse and disinfect such house or part thereof and any
 articles therein likely to retain infection.

The nuisance authority in each district may provide a proper Power to
 place, with all necessary apparatus and attendance, for the dis- provide
 infection of woollen articles, clothing, or bedding which have means of
 become infected, and they may cause any articles brought for disinfection.
 disinfection to be disinfected free of charge. Ib. s. 23.

§ 5. CARRIAGES FOR CONVEYANCE OF INFECTED PERSONS.

Nuisance authorities may provide carriages for conveyance of infected persons. 29 & 30 Vict. c. 90, s. 24.

Penalty on person suffering from infectious disorder entering public conveyance without notice to driver. *Ib.* s. 25.

Provision is made for the conveyance of infected persons by the local authority, under the Diseases Prevention Act (23 & 24 Vict. c. 77, s. 12), but that provision did not extend to local authorities under the Nuisances Removal Act. It is now provided by the Sanitary Act, 1866, that it shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick or to his own home.

If any person suffering from any dangerous infectious disorder shall enter any public conveyance without previously notifying to the owner or driver thereof that he was so suffering, he shall on conviction thereof before any justice be liable to a penalty not exceeding five pounds, and shall also be ordered by such justice to pay to such owner and driver all the losses and expenses they may suffer in carrying into effect the provisions of the Act (see s. 38, *post*, p. 564); and no owner or driver of any public conveyance shall be required to convey any person so suffering until they shall have been first paid a sum sufficient to cover all such losses and expenses.

§ 6. REMOVAL OF SICK TO HOSPITALS.

Removal of persons sick of infectious disorders, and without proper lodging, in any district. *Ib.* s. 26.

Power to remove to hospital sick persons brought by ships. 28 & 29 Vict. c. 90, s. 29.

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

Any nuisance authority may, with the sanction of the Privy Council, signified in manner provided by the Public Health Act, 1858 (*post*, p. 553), lay down rules for the removal to any hospital to which such authority is entitled to remove patients, and for keeping in such hospital so long as may be necessary, any person brought within their district by any ship or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding £5 on any person committing any offence against the same.

§ 7. MORTUARY HOUSES.

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

Places for the reception of dead bodies may be provided at the public expense. 29 & 30 Vict. c. 90, s. 27.

Any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as provided for in sect. 27 of the Act) for the reception of dead bodies for and during the time required to conduct any *post-mortem* examination ordered by the coroner of the district or other constituted authority, and may make such regulations as they may deem fit for the maintenance, support, and management of such place. Where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such *post-mortem* examination and the re-removal of such body, such costs of removal and re-removal to be paid in the same manner and out of the same fund as the cost and fees for *post-mortem* examinations when ordered by the coroner.

Places for reception of dead bodies during time required for post-mortem examination may be provided. *Ib.* s. 28.

The fees for *post-mortem* examinations by order of the coroner are payable under 6 & 7 Will. IV. c. 89, s. 3, and 7 Will. IV. & 1 Vict. c. 68, s. 2, out of the county rates or borough fund as the case may be.

§ 8. DITCHES, DRAINS, ETC., ADJOINING HIGHWAYS.

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

Duty of surveyor. 18 & 19 Vict. c. 121, s. 21. Compensation for damages.

to be settled and paid by the law in force for the time being with regard to highways.

The power extends to any lands or grounds "adjoining or lying near to any highway;" the right to damages arising only in case the lands or grounds are not waste or common. The words "upon paying, etc.," do not make payment a condition precedent, (1) for the duty to pay does not arise until after the justices have at their special sessions settled the amount.

How to be
settled.
5 & 6 Will. IV.
c. 50, s. 54.
Ib. s. 45.

The amount to be paid for damages done is to be settled and ascertained by order of justices at a special sessions for the highways, which are to be held by any two or more justices of the peace within their respective divisions, not less than eight, nor more than twelve times in every year, for the purpose of executing the provisions of the Highway Act. The days of holding such sessions are to be appointed at a special session to be held within fourteen days after the 20th March in every year.

How in the
metropolis.
18 & 19 Vict.
c. 120, ss. 86,
87.

In parishes and places within the district of the Metropolis Local Management Act, special provision is made by that Act for draining, cleansing, covering, or filling up all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature or likely to be prejudicial to health.

District
Board to
cause
offensive
ditches,
drains, etc.,
to be cleansed
or covered.
Ib. s. 86.

Every vestry and district Board within the limits of the Act shall drain, cleanse, cover, and fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their parish or district. They shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge of such filth, water, matter, or thing, or to do such other works as the case may require. If the person to whom such notice is given fail to comply therewith, the vestry or Board shall execute such works as may be necessary for the abatement of such nuisance, and may recover the expenses thereby incurred from the owner of the premises in manner hereinafter mentioned: provided always, that it shall be lawful for such vestry or Board, where they think it reasonable, to defray all or any portion of such expenses, as expenses of sewerage are to be defrayed under the Act: Provided also, that where any work by any vestry or district Board done or required to be done in pursuance of the provisions of the Act interferes with or prejudicially affects any ancient mill, or any right con-

Where works
interfere
with any
ancient mill,
etc., com-

(1) *Lister v. Lobley*, 7 A. & E. 124; *Peters v. Clarson*, 7 M. & G. 548.

connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner provided by the Act; or it shall be lawful for the vestry or Board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of the Act with respect to the purchases by the vestry or Board shall be applicable to every such purchase.

Any vestry or district Board in the metropolis, where they think fit, may cause the ditches at the sides of or across public roads and bye-ways and public footways to be filled up, and to substitute pipes or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from such roads and ways thereinto, and from time to time to repair and amend the same; and the surface of land gained by filling up such ditches may, if the vestry or Board so think fit and direct, be thrown into such roads and ways, and be repairable as part thereof, and be under the control of the surveyors of the highways, or other person in charge of such roads, bye-ways, or footways.

With regard to watercourses and ditches on the sides of turnpike roads, the 3 Geo. IV. c. 126, provides that it shall be lawful for the surveyor of every turnpike road, and such person as he or they (*sic*) shall appoint, to remove and prevent all annoyances on every part of every turnpike road, by filth, dung, ashes, rubbish or any other matter or thing whatsoever, being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof, and to dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within twelve hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate; and to turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches, after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances, to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered; and if after the removal of any of the said annoyances any person shall offend in the like kind, every such person

compensation to be made, or rights therein purchased.

18 & 19 Vict. c. 120, s. 86.

Vestries and district Boards to fill up ditches by the side of roads, and substitute pipes.
Ib. s. 87.

How in the case of turnpike roads. Annoyances removed.
3 Geo. IV. c. 126, s. 114.

Owners not removing.
Ib.

Watercourse and drains may be turned.
Ib.

Owners not cleansing to pay the costs, etc.

Second offence, penalty.
Ib.

shall, for every such offence, forfeit and pay any sum not exceeding £5.

Expenses of repairing drains, etc., in towns to be defrayed equally between trustees and inhabitants.
3 Geo. IV. c. 126, s. 115.

And further, that in all cases where any gutter, drain, sink, sewer, or under drain, made or hereafter to be made under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road, or conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street, or place, and no specific mode of repair, or persons liable to the expense of maintaining the same, shall be appointed, the expense of maintaining and repairing such gutter, drain, sink, sewer, or under drain, shall be borne and defrayed equally or in proportions by the trustees or Commissioners of such turnpike road, and the inhabitants of the town, hamlet, village, street, or place using the same; and in order to ascertain the proportion and recover such expenses the surveyor of the turnpike road under, at the sides, or near to which such gutter, drain, sink, sewer, or under drain shall be situated, shall, as often as shall be requisite, repair the same, and shall then make out an account of the costs and expenses of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where such gutter, drain, sink, sewer, or under drain, or so much thereof as shall be repaired, shall lie; and it shall and may be lawful for the said justices, and they are hereby authorized and empowered, to examine the accounts and statements to be produced to them, and to inquire as to the persons using such gutter, drain, sink, sewer, or under drain, and to proportion the amount to be paid by the trustees or Commissioners of the turnpike road and by the inhabitants and persons using such gutter, drain, sink, sewer, or under drain respectively, and to fix and ascertain the amount of such proportion as they (the said justices) shall deem just and reasonable, to be paid by the said several parties respectively; and if any person or persons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace acting for the county or place where such person or persons shall reside.

Expenses of repairs laid before two justices, who shall apportion amount to be paid by the parties.
Ib.

If not paid, distress.
Ib.

The cleansing of ditches, etc., in places under Local Boards of Health is treated of in a former part of this work, *ante*, p 138.

With regard to the removal of nuisances on the highway, see Glen's Highway Laws, Second Edition, p. 389.

§ 9. NEW SEWERS.

New sewers.
18 & 19 Vict. c. 121, s. 22.

Whenever any ditch, gutter, drain, or watercourse used, or partly used, for the conveyance of any water, filth, sewage, or other matter from any house, building, or premises, is a nuisance within the meaning of the Act, and cannot, in the opinion of

the local authority, be rendered innocuous without the laying down of a sewer, or of some other structure along the same or part thereof, or instead thereof, the local authority are required to lay down such sewer or other structure, and to keep the same in good and serviceable repair. To enable them to do so they are declared to have the same powers as to entering lands, and to be entitled to recover the same penalties in case of interference, as are contained in the 67th and 68th sections of the Highway Act, 5 & 6 Will. IV. c. 50. The local authority are further authorized and empowered to assess every house, building, or premises then or at any time thereafter using the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable.

Entry upon
premises.
18 & 19 Vict.
c. 121, s. 22.

Assessment.
Ib.

Per Wood, V.C., with reference to the above enactment, the only thing they (the local authority) have vested in them is a certain sewer, or right of preventing nuisances in their own parish, and that only by constructing sewers for the purpose of arresting the nuisance. The sewers are to be constructed in such a manner as will enable people to drain into them, and they have also power to compel people to drain into them if they think fit. (1)

Having regard to the Sewage Utilization Act, and the amending Acts, *post*, it may be a question how far the 22nd section of the 18 & 19 Vict. c. 121, is superseded by those Acts; yet as it is not expressly repealed it is necessarily retained in this work.

The expression "repair" in 18 & 19 Vict. c. 121, s. 22, does not mean the reconstruction of a sewer which has been originally defectively made, but the keeping the original sewer in proper repair. Therefore, to a *mandamus* requiring the defendants as the local authority to put a sewer within their district in good and serviceable repair, it was held a sufficient return that the sewer which had originally been constructed by another authority had been defectively made; that it was not such a sewer as was required by the Act, and that in consequence of its defective structure it could not be put into good and serviceable repair. (2)

Mandamus to
repair.
Ib.

The real effect of the finding was that this particular sewer could not be put into serviceable repair, or, that if it were so, it would be a nuisance. As to the deodorizing processes, the evidence was overwhelming that they were not practicable, and even if otherwise, they would hardly come within the definition of repair. There could hardly be a *mandamus* to deodorize the sewage; still less could that be asked for under a *mandamus* to repair. The truth was that it would require a large expenditure, for which, under the Nuisances Removal Act, there were

(1) *Attorney-General v. Richmond*,
12 Jur. (N. S.) 544.

(2) *Reg. v. Epsom*, 8 L. T. (N. S.)
383.

Mandamus
to repair.
18 & 19 Vict.
c. 121, s. 22.

Amount of
assessment.
Ib.

no funds. The Local Boards under that Act had no power to buy land and construct works of that kind. There would be such a power under the Public Health Act, but the parties did not desire to put the district under that Act, and therefore it was sought to effect the object by a sort of side wind. That, however, could not be done. The rule, therefore, was refused.

The assessment to be made under this section shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any.

If a highway parish be co-extensive with a poor law parish and be included in a highway district under 25 & 26 Vict. c. 61, no separate highway rate will be levied, as by 27 & 28 Vict. c. 101, s. 33, the money called for by the Highway Board is to be paid by the overseers out of the poor rate. See Glen's Highway Laws, Second Edition, p. 32.

By the Highway Act, 1864, s. 3, "highway rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a Highway Board.

The law officers of the Crown (Karslake and Selwyn), and Mr. Tomlinson, with reference to the limitation of the rate to be levied under 18 & 19 Vict. c. 121, s. 22, have advised the Poor Law Board that in a poor law parish which is co-extensive with a highway parish and in which the precept of the Highway Board is addressed to the overseers of the poor law parish, and the amount called for is paid by them out of a rate made in accordance with the statute 6 & 7 Will. IV. c. 96, there is an assessment to the highway rate within the meaning of the proviso to 18 & 19 Vict. c. 121, s. 22; and that the guardians as the local authority can in no case make an assessment for the purposes of the 18 & 19 Vict. c. 121, s. 22, at an amount exceeding one shilling in the pound on the rateable value of the property mentioned.

The word "assessment" means, not the sum assessed, but the rateable value at which the premises are assessed to the highway rate. The rate may be for a sum more than one shilling in the pound and spread over several years, but so that in no one year the rate exceeds one shilling in the pound. (1)

And after *fourteen* days' notice at the least left on the premises so assessed, they may levy and collect the sum and sums so assessed in the same manner, and with the same remedies, in case of default in payment, as highway rates are leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as is given against any rate made for the repair of the highways.

The assessing the premises and giving notice of the assess-

(1) *Reg. v. Middleton*, 28 L. J. (N. S.) M. C. 41; 5 Jur. (N. S.) 622; 32 L. T. 124.

Collection
and recovery
of assessment.
Ib.

Appeal.
Ib.

ment are two successive acts, going to make up the liability of Appeal.
the person assessed; and the words "after fourteen days" refer 18 & 19 Vict.
to the latter, (1) and both days must be excluded in reckoning c. 121, s. 22.
the fourteen days. (2)

The provisions contained in 18 & 19 Vict. c. 121, s. 22, are deemed to be part of the law relating to highways in England; and under the 5 & 6 Will. IV. c. 50, s. 105, any person aggrieved by any rate may appeal to the next quarter sessions, first giving to the opposite party notice of appeal within fourteen days after the rate shall have been made.

The following bears upon this enactment limiting the amount Limitation to
of the rate. By a local Act a Town Council were empowered amount of
to make once a year or oftener one or more rates, provided that rate.
the amount to be levied did not in any one year exceed one Ib.
penny in the pound upon the rateable value of the property.
The Council made a rate and directed the overseers to levy
£4767; but the overseers said they could not levy that sum
without charging more than one penny in the pound upon the
productive rateable property. The Council, therefore, applied
to the justices to issue a warrant to levy the £4767 upon the
goods of the overseers, but the justices declined to do so. Upon
application for a rule to the justices and the overseers to show
cause, the Court of Queen's Bench held that the justices were
right in so declining. (3)

Where any part of the ditch, gutter, drain, or watercourse Jurisdiction.
shall be within the jurisdiction of different local authorities, the Ib.
18 & 19 Vict. c. 121, s. 22, is to apply to each local authority
only as to so much of the works, and the expenses thereof, as is
included within the respective jurisdiction of that authority.

The following provisions of the Local Government Act, 1858,
bear on the same subject:

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

(1) *Reg. v. Middleton*, 5 Jur. & E. 173.
(N. S.) 623; 28 L. J. (N. S.) M. C. 41; (3) *Reg. v. Liverpool JJ.*, 6 L. T.
32 L. T. 124; 1 E & B. 98. (N. S.) 241.
(2) *Reg. v. Shropshire JJ.*, 8 A.

Power to
Local Board
to execute
works in
adjoining
place.
21 & 22 Vict.
c. 98, s. 28.

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

Cleansing
foul and
offensive
watercourses,
or open
ditches lying
near to or
forming the
boundaries of
districts.
Ib. s 31.

In case any watercourse or open ditch lying near to or forming the boundary between the district of any Local Board and any adjoining parish or place shall be foul and offensive, so as injuriously to affect the district of such Local Board, any justices of the peace for the county, city, or borough in which such adjoining parish or place may be situate may, on the application of such Local Board, summon the local authority for the purposes of the Nuisances Removal Act, 1855, of such adjoining parish or place, to appear before the justices of the same county, city, or borough, to show cause why an order should not be made by the said justices for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such justices to be necessary; and such justices, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as such justices shall deem reasonable; and any sums ordered to be paid by any justices in pursuance of this section shall be a charge upon and be payable out of the poor rates of such adjoining parish or place, as if the same were legally incurred in the relief of the poor of such parish or place, and in default of payment may be levied upon the goods and chattels of such overseers by distress and sale thereof.

Course of
procedure.

Apparently the 18 & 19 Vict. c. 121, s. 22, is compulsorily upon the local authority; but, nevertheless, it could hardly have been intended that no discretion was to be permitted to them in the exercise of the powers given to them by the Act, when the owners or other persons interested in the property are willing themselves to do the works without the intervention of the local authority.

Offensive
watercourses,
etc.

As to what sewers came within the contemplation of the Act, the following observations, per Crompton, J., are important:—
“I think the 22nd section of the 18 & 19 Vict. c. 121, must be held to include at the least a case in which a private person has a watercourse into which the sewage of new buildings is made to flow to such an extent as to cause a nuisance, requiring a remedy by structural works along the watercourse, or part of it, or instead of it. To make the owner of the watercourse do

such works would be a hardship. The intention is, therefore, that the community should do it, at the expense of those who get the benefit. (1) Offensive watercourses, etc.

But the local authority are not entitled, on the ground of there being an ancient custom or privilege at various times and in various proportions of making a river or running stream carry off their sewage into drains, to collect the whole mass and pour it at one time in such a manner and quantity as that the river or running stream cannot perform its proper function of diluting the sewage on its passage down to the lower riparian proprietors, and thus cause a pollution of the stream and a nuisance. The Court in such a case will restrain the local authority from doing so in future if the practice has become a nuisance. (2)

Before proceeding to exercise the powers conferred upon them by the 18 & 19 Vict. c. 121, s. 22, it should be ascertained in the manner already indicated (*ante*, p. 481) whether a nuisance exists within the meaning of the Act. The local authority should then, by a resolution entered on the minutes of their proceedings, formally resolve that the ditch, gutter, etc., cannot in their opinion be rendered innocuous without the laying down a sewer or some other structural work.

The sewer to be laid down by the local authority in pursuance of 18 & 19 Vict. c. 121, s. 22, must be as nearly as possible in the same line or course, and upon the same site as the former sewer. Where the former sewer ran along the side of a field, it was held that the local authority was not, in the absence of proof that it was necessary to depart from the former line, justified in laying down a new one instead thereof across a field, although that might be the least expensive and most convenient mode of remedying the nuisance. It was also held that the power given by the 67th section of the 5 & 6 Will. IV. c. 50, did not justify the local authority, *qua* surveyor, in making the new sewer across the field, although it was bounded on one side by a highway; and further, that though the local Act empowered the local authority to carry sewers, if necessary, through enclosed lands, making compensation to the owners, and giving twenty-eight days' notice before commencing, such Act must be taken into consideration together with the general Act, 18 & 19 Vict. c. 121. (3)

The 67th and 68th sections of the 5 & 6 Will. IV. c. 50, which are incorporated with the 18 & 19 Vict. c. 121, s. 22, may here be quoted. The 67th section is nearly the same as the 21st Incorporated provisions of Highway Act. 5 & 6 Will. IV. c. 50, s. 67.

(1) *Reg. v. Gee*, 5 Jur. (N. S.) 1348.

(2) *Attorney-General v. Richmond*, 35 L. J. Ch. 597; 14 L. T. (N. S.) 898; L. R. 1 Eq. V.-C. W. 306; 12 Jur. (N. S.) 544.

(3) *Earl of Derby v. Bury Im-*

provement Commissioners, 37 L. J. Exch. 64; 18 L. T. (N. S.) 147; L. R. 3 Exch. 121. But this case is now pending in the Exchequer Chamber in error from the Court of Exchequer.

Highway Act. section of the 18 & 19 Vict. c. 121, and is as follows : " And be 5 & 6 Will. IV. it further enacted, that the said surveyor, district surveyor, or c. 50, s. 67. assistant surveyor, shall have power to make, scour, cleanse, and

Ib. s. 68.

keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plats, or bridges, as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are herein directed to be settled and paid." By section 68, it is enacted, "that if any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such surveyor or district surveyor, and without his authority or consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses." The application of sect. 67, above quoted, to the new sewer or other structural work is this: that the local authority may, within their own jurisdiction, do that which is authorized by the section to be done in respect of ditches, etc., under the Highway Act; and of sect. 68, is to make any owner, occupier, or other person who shall alter, etc., any sewer laid down by the local authority, liable to reimburse all charges and expenses which may be occasioned to the local authority, by reinstating and making good the work so altered, etc.

Assessment
to defray
cost of new
sewers.
18 & 19 Vict.
c. 121, s. 22.

The local authority are empowered to assess every house, building, or premises, "then or at any time thereafter" using the ditch, etc., to such payment, "either immediate or annual, or distributed over a term of years, as they may think just and reasonable." But it will be observed that the Act gives the local authority no power to borrow money for the execution of the works if they should be of an extensive kind, and to charge the rates leviable under the Act with the repayment of the loan and interest. Moreover, a local authority who have rendered innocuous a drain passing through their district, conveying away the filth of houses in a higher district, have no power to assess the owners of those houses for payment of the expenses, though those houses use the drain. The power of assessment is confined to property within the district for which the local authority acts. (1)

At the time of making the assessment, only existing houses, buildings, or premises are to be assessed; the benefit derived

(1) *Reg. v. Tatham*, 8 E. & B. 915.

from the works is solely the benefit of existing houses, which, as they enjoy the benefit, ought to pay for it. If at a future period other houses should be built and use the ditch or drain, they may be included in a subsequent rate, but the original assessment will not be bad for omitting to assess in respect of houses which do not and never may exist. Again, the rate or assessment will not be bad because the local authority may, when they made the assessment, also have resolved that the persons chargeable to the rate might compound by making at once a payment equal to the amount of four annual payments. Then the houses assessed must be within the jurisdiction of the local authority, for the statute gives no power to assess property in another parish, even though the particular works executed by a local authority under this provision improve property which is situated in such other parish; and *prima facie*, any authority conferred on a Board acting within local limits is only to be exercised within those limits. The following are the facts of the case in which it was so held. The drainage of two houses in the parish of St. Pancras was carried by a covered drain into an open ditch in the parish of Hornsey. This ditch, being a nuisance, was made into a covered sewer by the local authority of Hornsey, under the Nuisances Removal Act, 1855; and they, under section 22 of that Act, assessed, amongst others, two houses in St. Pancras parish as using the drain or structure so made. It was also considered doubtful whether the two houses used the structure within the meaning of sect. 22, as they derived no benefit from the covering of the ditch, which was no nuisance to them when open. (1)

The following further illustrates the section.—Where a parish was divided into four districts, for the purpose of drainage under the 18 & 19 Vict. c. 121, s. 22, in the year 1855, sewers were made for draining one of the districts, and a house in such district was assessed in respect of the expenses of making the sewers. The person so assessed compounded and paid the sum at which he was charged. In the year 1856 another of the districts was drained, and the result of the works made in the two districts was to increase a nuisance which before existed in another of the districts undrained. Accordingly, in 1859 it became necessary to make new sewers in that district, and it was resolved by the local authority that the drainage of the four districts should be considered as one system. The works were made, and the house for which the assessment had been compounded for and paid was again assessed in respect of the expenses of making the new works. Upon a rule to the justices to show cause why they should not issue their warrant to levy by distress and sale the rate made on such house, it was held that the local authority had power to charge the

Assessment
to defray
costs of new
sewers.
18 & 19 Vict.
c. 121, s. 22.

(1) *Reg. v. Warner*, 6 E. & B. 395; 27 L. J. (N. S.) M. C. 144; 4 Jur. (N. S.) 609.

Assessment
to defray
costs of new
sewers.
18 & 19 Vict.
c. 121, s. 22.

person assessed, as his house might be said to use the sewer into which its refuse flowed, within the meaning of the Act; and per Cockburn, C.J., the policy of the legislature is, that the drainage of the large district should be considered as one aggregate drainage for the good of the whole community of the district. (1)

The section enables the local authority to impose the assessment on "the house, building, or premises," but does not indicate whether the owner or the occupier is the person liable to pay the assessment. In the Hornsey case above mentioned the occupier was also the owner of the house, so that the question did not arise in that case; but as the assessment is made liable to the incidents of a highway rate, in respect of its levy and collection, and as that rate is chargeable only upon the occupier of the premises, it would seem that the occupier is the proper person to be assessed. In the Hornsey case an objection was taken that the assessment was not allowed by the justices and published in the same manner as a highway rate; but as, notwithstanding that objection, the rule was made absolute to the justices to levy the rate, it appears to be settled that such allowance and publication are not necessary to give validity to the assessment. As regards the enforcement of a highway rate, see the 5 & 6 Will. IV. c. 50, s. 34, and 12 & 13 Vict. c. 14; also the 13 & 14 Vict. c. 99, as to the assessment of the owners of tenements, the yearly rateable value whereof does not exceed six pounds, in lieu of the occupiers of such tenements; and as regards the right of appeal against the amount of the assessment, see the 5 & 6 Will. IV. c. 50, s. 105, under which the appeal lies to the justices at the next or general quarter sessions, provided notice in writing, and a statement of the grounds of appeal, have been given by the person aggrieved to the surveyor of the highways (in this instance it is presumed to the local authority) within fourteen days after the rate shall have been made.

With reference to the repealed provision in sect. 7 of the 18 & 19 Vict. c. 121, empowering justices to make orders for the payment of expenses incurred by the local authority in execution of the Act, it has been held that it was not to be resorted to until the means given by the 22nd section for defraying expenses for structural works have been exhausted. (2) This decision is equally applicable to the substituted provision in the 23 and 24 Vict. c. 77, s. 4; and the funds there referred to must therefore not be resorted to in order to defray the cost of structural works under the 18 & 19 Vict. c. 121, s. 22.

Penalty for
damaging
works.

It may be here added that by the Sanitary Act, 1866, s. 45, if any person wilfully damages any works, or property of any nuisance authority, he shall be liable to a penalty not exceeding £5.

(1) *Reg. v. Bodkin*, 30 L. J. (N. S.)
M. C. 38; 6 Jur. (N. S.) 1370.

(2) *Reg. v. Gosse*, 30 L. J. (N. S.)
M. C. 41; 6 Jur. (N. S.) 1369.

§ 10. CONSTRUCTION OF SEWERS, ETC., AND PROVISION OF
WELLS AND PUMPS BY CHURCHWARDENS AND OVERSEERS
IN POPULOUS PARISHES.

It will readily be perceived that there is very great difficulty attendant upon the adoption of proceedings under the 22nd section of the 18 & 19 Vict. c. 121; especially when the local authority for the district is a Board of Guardians. When such is the case the Poor Law Board have recommended the guardians not to undertake any proceedings with a view to the execution of structural works requiring a large outlay of money; but rather that the Local Government Act, 1858, should be adopted in the particular district. It will be seen that the Local Boards under that Act, and the Public Health Act, 1848, have ample powers to deal with matters arising within their district which the present statute was intended to deal with in other districts. On this point see *Reg. v. Epsom*, ante, p. 509.

As to construction of sewers, wells, pumps, etc., for certain parishes, etc., with less than 2,000 inhabitants. 11 & 12 Vict. c. 63, s. 50.

In a district in which a Board of Guardians is the local authority under the Nuisances Removal Acts, and there is no proper system of sewerage, the most practicable course will be for the vestry of the particular parish to proceed under the Sewage Utilization Act, 1865, as amended by the Sanitary Acts, 1866 and 1868, as to which see *post*, p. 536.

Another alternative is the adoption by the inhabitants in vestry of the provision in the Public Health Act, 1848, with regard to the construction of sewers, wells, pumps, etc., in certain parishes, which it will be observed is entirely exceptional to the ordinary machinery of that Act, as it is to be put in force by the inhabitants in vestry, and not by any local authority constituted under the Act.

If it appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census in which the Public Health Act shall not have been applied by Order in Council or provisional order, assembled at a public meeting to be called in the manner which will be hereafter adverted to, that it would contribute to the health and convenience of the inhabitants—

That any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up;

Or that a sewer should be made or improved;

A well dug, or a pump provided, for the public use of the inhabitants;

The churchwardens and overseers shall procure a plan and estimate of the cost of executing such works, or any of them,

New sewers,
wells, etc.

and shall lay the same before another public meeting of the inhabitants, to be called in the same manner.

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

Notice of every such meeting shall be given by the churchwardens and overseers as is by the Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of the Act (see *ante*, p. 7), and every such notice shall contain a statement of the work proposed or intended to be submitted for consideration and approval.

With reference to section 50 of the 11 & 12 Vict. c. 63, the Poor Law Board say that it is not free from ambiguity, but they are disposed to consider that it will be sufficient if three-fifths of the rated inhabitants who are present at a meeting duly summoned under that section give their consent to the proceedings therein contemplated. The Act requires that there should be a majority of the inhabitants assembled at a meeting duly called, and that such majority should not be less than three-fifths. It appears to the Board that the majority intended is the majority of the meeting, and not the majority of all the rated inhabitants in the parish. The meeting having been duly called, those who are absent must be presumed to acquiesce in the proceedings of those who attend. If the consent of the inhabitants be duly obtained, no order of the Poor Law Board is required to enable the overseers to execute any works provided for by the enactment. (1)

Wells, foun-
tains, and
pumps
vested in
local
authority.
23 & 24 Vict.
c. 77, s. 7.

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

Ib.

It will be observed that the first part of the above provision is compulsory, and that the latter is permissive only, and does not vest the property in the wells or fountains in the local authority. Moreover, the Act does not enable the local authority to erect pumps where they are not already in existence.

But now, by the Sanitary Act, 1866, s. 13, all such wells,

fountains, and pumps, and powers in relation thereto vested in 29 & 30 Vict.
the nuisance authority, shall vest in the sewer authority, where c. 90, s. 13.
that authority supplies water to its district.

If any person do any act whatsoever whereby any fountain or Penalty for
pump is wilfully or maliciously damaged, or the water of any fouling water.
well, fountain, or pump is polluted or fouled, he shall, upon 23 & 24 Vict.
summary conviction of such offence before two justices (or a c. 77, s. 8.
stipendiary magistrate), forfeit a sum not exceeding £5 for such 18 & 19 Vict.
offence, and a further sum not exceeding 20s. for every day c. 121, s. 2.
during which such offence is continued after written notice
from the local authority in relation thereto; but nothing herein
contained shall extend to any offence provided against by
sect. 23 of the Nuisances Removal Act, which forms the sub-
ject of the following chapter.

§ 11. FOULING WATER WITH GAS WASHINGS.

Persons or companies engaged in the manufacture of gas who The offence.
shall at any time cause or suffer to be brought or to flow into Ib. s. 23.
any stream, reservoir, aqueduct, pond, or place for water, or
into any drain communicating therewith, any washing or other
substance produced in making or supplying gas, or shall wilfully
do any act connected with the making or supplying of gas
whereby the water in any such stream, reservoir, aqueduct,
pond, or place for water shall be fouled, shall forfeit for every
such offence the sum of £200; and it would appear from
Hipkins v. Birmingham and Staffordshire Gaslight Company (1)
that an involuntary or unknown proceeding would be within
the prohibition of the statute.

The penalty may be recovered, with full costs of suit, in any Penalties.
of the superior Courts, by the person into whose water such Ib. s. 24.
washing or other substance shall be conveyed or shall flow, or
whose water shall be fouled by any such act as above mentioned;
or if there be no such person, or in default of proceedings by
such person, after notice to him from the local authority of
their intention to proceed for such penalty, by the local
authority; but such penalty shall not be recoverable unless it
be sued for during the continuance of the offence, or within six
months after it shall have ceased.

In addition to the penalty of £200 (whether it shall have Daily penalty
been recovered or not) the person or company offending are during con-
liable to forfeit the sum of £20, to be recovered in like manner, tinuance of
for each day during which the offence shall continue, or during offence.
which the act by which the water is fouled shall continue, after Ib. s. 25.
the expiration of twenty-four hours from the time when notice
of the offence shall have been given by the local authority, or
by the person whose water shall be fouled thereby; which

latter penalty is to be paid to the persons from whom the notice shall proceed. All moneys recovered by a local authority, as above stated, after payment of any damage caused by the act for which the penalty is imposed, are to be applied towards defraying the expenses of executing the Act.

Recovery of
penalty.
18 & 19 Vict.
c. 121, s. 24.

The penalty can only be sued for in one of the superior Courts, and therefore cannot be enforced summarily by proceedings before the justices. In the default of proceedings by the person injured, the local authority is to sue for the penalty, and if such authority be a corporation they may sue in their corporate name.

Nuisance authorities being now incorporated by the Sanitary Act, 1866, s. 46, they will sue for the penalty under 18 & 19 Vict. c. 121, s. 24, in the corporate name which they shall usually bear or which they may adopt.

If the district be one in which the provisions of the Watching and Lighting Act (3 & 4 Will. IV. c. 90) have been adopted, an action for a similar penalty may be brought by any person, and the penalty is to be paid to the person "who shall inform or sue for the same." See sect. 50 of that Act.

§ 12. EXPOSING FOR SALE MEAT UNFIT FOR FOOD.

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

Medical
officer of
health or
inspector of
nuisances to
inspect any
animal, etc.
26 & 27 Vict.
c. 117, s. 2.

The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged. In case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice. If it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed, or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom the same belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same

is found, shall, upon conviction, be liable to a penalty not exceeding £20 for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months. Penalty. 26 & 27 Vict. c. 117, s. 2.

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

An open yard at the back of a house is a place within the meaning of sects. 2 and 3 of the statute 26 & 27 Vict. c. 117. (1)

As regards the exposure for sale of horses or other animals in any "market, fair, or other public place where animals are commonly exposed for sale," when affected or labouring under glanders, or depasturing such horses or other animals in unenclosed land, see the 11 & 12 Vict. c. 107, extended by 16 & 17 Vict. c. 62, and the last continuing Act, 26 & 27 Vict. c. 95. The mere fact of selling a glandered horse at a horse-repository is, however, not an illegal act, either at common law or under the above Act. (2) As to the recovery of penalties under the 26 & 27 Vict. c. 117, see sect. 38, *post*, p. 531. See also a similar provision to the present in the Public Health Act, 11 & 12 Vict. c. 63, s. 63, *ante*, p. 297. Sale of horses when affected with glanders.

The statute 23 & 24 Vict. c. 84, is for preventing the adulteration of articles of food or drink. It recites that the practice of adulterating articles of food and drink for sale, in fraud of Her Majesty's subjects and to the great hurt of their health, requires to be repressed by more effectual laws than those which are now in force for that purpose, and imposes penalties on persons so offending, and provides for the appointment of analysts of articles of food and drink purchased within the particular district. The Act applies to Great Britain and Ireland; but the local authorities under the Nuisances Removal Act are not invested with any duties under it. Adulteration of food, etc. 23 & 24 Vict. c. 84.

By the Pharmacy Act, 1868, the provisions of the 23 & 24 Vict. c. 84, "shall extend to all articles usually taken or sold as medicines, and every adulteration of any such article shall be deemed an admixture injurious to health; and any person registered under the Act 31 & 32 Vict. c. 121, who sells any such article adulterated, shall, unless the contrary be proved, be deemed to have knowledge of such adulteration." Adulteration of Food or Drink Act to extend to medicines. 31 & 32 Vict. c. 121, s. 24.

(1) *Young, app., v. Grattbridge*, Exch. 45; 2 H. & N. 299; 3 Jur. resp., W. N., 1868, p. 287. (N. S.) 592.

(2) *Hill v. Balls*, 27 L. J. (N. S.)

§ 13. NOXIOUS TRADES AND MANUFACTURES.

Noxious accumulations upon premises.
18 & 19 Vict. c. 121, s. 8.

By section 8 of the Nuisances Removal Act, which defines the word "nuisance," no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby; a summary remedy for the abatement of other nuisances arising from noxious trades or manufactures is given by another section of the Act.

Noxious trades, etc.
Ib. s. 27.

If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia (situate within the limits of any city, town, or populous district), be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners (and a requisition in writing under the hands of any ten inhabitants of a place shall for the purposes of 18 & 19 Vict. c. 121, s. 27, be deemed to be equivalent to the certificate of the medical officer or medical practitioners therein mentioned, and the section shall be enforced accordingly, 29 & 30 Vict. c. 90, s. 18), to be a nuisance or injurious to the health of the inhabitants of their neighbourhood, the local authority shall direct complaint thereof to be made before any justice. Such justice may then summon before any two justices in petty sessions the person by or in whose behalf the work complained of is carried on; and if upon inquiry it appear to them that the trade or business is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that the person complained against has not used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia, the offender (being the owner or occupier of the premises, or a foreman or other person employed by the owner or occupier) shall, upon summary conviction, be liable to a penalty not exceeding £5, nor less than 40s. Upon a second conviction he is to be liable to a penalty of £10; and for each subsequent conviction to a penalty in a sum double the amount of the penalty imposed on the last preceding conviction, but so that such cumulative penalty do not in any case exceed £200.

Ib.

The justices may, however, suspend their final determination upon the complaint, upon condition that the person complained against shall undertake to adopt within a reasonable time such means as the justices shall judge to be practicable, and order to be carried into effect, for abating the nuisance, or mitigating or preventing the injurious effects of the effluvia. They may also

suspend their final determination if the person complained against shall give notice of appeal, and shall enter into recognizances to try such appeal, and shall appeal accordingly.

Noxious trades, etc.
18 & 19 Vict.
c. 121, s. 27.

The foregoing provision, however, shall not extend or be applicable to any place without the limits of any city, town, or populous district.

The local authority, before proceeding to abate a nuisance arising from the carrying on of any noxious trade above specified, must wait till they are set in motion by the certificate of "any medical officer, or any two legally qualified medical practitioners." What "medical officer" is referred to is not very apparent, but probably the words refer to any "officer of health," appointed for a place under a Local Board of Health, under the 11 & 12 Vict. c. 63, s. 40; or they may apply to a poor law medical officer of a union or parish, appointed by the Board of Guardians of such union or parish. Where, however, it may be apprehended that a question will be raised as to who is competent to certify as a "medical officer," it will be better that the proceedings should be taken on the certificate of two "legally qualified medical practitioners," that is, two medical practitioners duly registered under the 21 & 22 Vict. c. 90; or a requisition from any ten inhabitants under 29 & 30 Vict. c. 90, s. 18. It would seem, from the language of the enactment, that it is compulsory upon the local authority to direct complaint to be made to a justice on their receiving the certificate; but it would also seem that the justice is not compelled to act upon the complaint, if for any cause he see fit to refuse to do so; he *may* summon before any two justices (or a stipendiary magistrate) "the person by or on whose behalf the work complained of is carried on;" and if the commission of the offence be proved to the satisfaction of the justices, the person so offending, "being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier," shall, upon summary conviction, forfeit, &c. It is only the person by or on whose behalf the work is carried on that can be summoned before the justices; and though the owner, occupier, foreman, or other person employed by the owner or occupier, are made liable to the penalties provided by the Act, it would be the safer course to convict the person who is actually summoned, provided he be the owner or occupier, that is, the person by or in whose behalf the work is carried on; for these words do not apply to a foreman or servant, who cannot be said to carry on the work in the sense of the enactment. The penalties are recoverable according to the provisions of Jervis's Act, 11 & 12 Vict. c. 43, which requires that the offender be previously summoned to appear to answer the complaint. As it is only the person by or on whose behalf the work is carried on that can be summoned, it is difficult to see, notwithstanding the words of the present enactment, how any other than such person can be convicted in the penalty.

Recovery of penalties.
Ib. s. 38.

Recovery of
penalties.
18 & 19 Vict.
c. 121, s. 38.

The justices can only convict the person complained against if he shall not have used the best practicable means for abating the nuisance, or preventing or counteracting effluvia injurious to health; therefore, if it appear to the justices that he has done all that it is practicable for him to do under the circumstances, their jurisdiction will be ousted, notwithstanding the existence of the nuisance; but the persons who cause it may still be indicted at common law, for it is provided, that nothing in the Act shall impair any power of abating nuisances at common law.

Ib. s. 43.

Proceedings
at law or
equity.
Ib. s. 28.

The person complained against under sect. 27 may oust the jurisdiction of the justices to determine the complaint if, on his appearance before them in obedience to the summons, he object to have the matter determined by them, and enter into recognizances, with sufficient sureties, to abide the event of any proceeding at law or in equity that may be had against him on account of the subject-matter of the complaint. And the local authority are thereupon to abandon all proceedings before the justices, and forthwith to take proceedings at law or in equity for preventing or abating the nuisance complained of. The above provision is confined to proceedings under sect. 27, and does not extend to those which are provided for by sect. 12 of the Act.

Ib. s. 30.

By a subsequent clause, the local authority are empowered, within the area of their jurisdiction, to direct any proceedings to be taken at law or in equity in cases coming within the purview of the Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under the Act.

The clause is imperative in directing the local authority to institute proceedings in law or in equity, as the case may require; and it is obvious that unless they do so it will be in the power of any person complained of under sect. 27 to defeat proceedings taken against him before the justices under that section, by conforming to the provision of sect. 28.

In proceedings under either section, each distinct offence must be proved; it will not suffice merely to prove a previous conviction for the same offence; for a summary conviction under the 16 and 17 Vict. c. 128, s. 1 (the Smoke Nuisance Abatement Act), for carrying on the same trade so as to occasion noxious effluvia "without using the best practicable means of preventing or counteracting the smoke or other annoyance," was held not admissible in evidence upon the trial of an indictment for a nuisance at common law in carrying on a trade. (1)

Where a suit by information was laid at the relation of the clerks of a Local Board for the district of Oldbury, and by bill in which the same clerks were plaintiffs, for the purpose of

(1) *Reg. v. Fairie*, 8 E. & B. 486; 4 Jur. (N. S.) 300; 8 C. C. C. 66.

restraining the Staffordshire Copper Extracting Company from 18 & 19 Vict. carrying on the copper works recently established by them c. 121, s. 30. within the township, so as to occasion the emission of any vapours, gases, or smoke to the injury or damage of the inhabitants of the township or any of them, Wood, V.C., held upon the frame of the suit that the bill was improperly filed, and that proceedings for the purpose of restraining a nuisance to the inhabitants within the area of the jurisdiction of the Board should be by information at the relation of the Local Board or by indictment. He therefore dismissed the bill, but without costs; and in dealing with the merits of the case, regarding it as a suit by information only, he said it was not a case requiring the assistance of a jury (as had been suggested) after he had the evidence of no fewer than 260 witnesses, all speaking to the existence of the nuisances; upon the evidence he said the question was beyond dispute, and that he could not conceive anything more fallacious than the decision of a jury after a single view of the premises. If the jurymen had been living on the spot for six months there might have been some use in referring the matter to such a tribunal; but, as was clearly shown by some of the scientific evidence, everything would depend upon the particular day on which they were taken to view the premises, the emanations being much stronger and reaching further on some days than on others. (1)

The natural question in all such cases is whether the annoyance created is such as materially to interfere with the ordinary comfort of human existence. Where, therefore, the smoke and annoyance proceeding from works are a material addition to what previously existed in the neighbourhood, and do materially interfere with comfort, the Court will grant an injunction to restrain smoke or effluvia issuing from a factory so as to occasion nuisance, disturbance, or annoyance, and so also with regard to noise occasioned by the process of manufacture. (2)

Generally with regard to the carrying on of noxious trades in places under a Local Board of Health, see 11 & 12 Vict. c. 63, s. 64, *ante*, p. 298.

§ 14. REMOVAL OF MANURE AND REFUSE.

Where notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further

Periodical removal of manure in mews, etc. 29 & 30 Vict. c. 90, s. 53.

(1) *Attorney-General v. Staffordshire Copper Extracting Company*, 1 Weekly Notes, 258.

(2) *Crump v. Lambert*, 15 L. T.

(N. S.) 600; L. R. 3 Eq. (M. R.) 409. Affirmed on appeal, 17 L. T. (N. S.) 133 (see *ante*, p. 305).

Periodical
removal of
manure in
mews, etc.

accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority, or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of 20s. per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner. This, however, does not apply to any place where the Board of Guardians or overseers of the poor are the nuisance authority.

§ 15. OVERCROWDED DWELLING-HOUSES.

Proceedings
for abate-
ment of.
18 & 19 Vict.
c. 121, s. 29.

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

Penalty.

It will be remembered that by the Sanitary Act, 1866, s. 19, p. 477, the word "nuisances" under the Nuisances Removal Acts shall include "any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates."

Proceedings
for abate-
ment.

The Act gives no authority to appoint a medical officer of health; as to the appointment of such an officer, however, in places under Local Boards of Health, see 11 & 12 Vict. c. 63, s. 40. In districts where no such officer exists, the provision can only be carried into effect on the certificate of two "duly qualified medical practitioners." The local authority cannot take any steps without the proper certificate; but when they receive a proper certificate, the Act is imperative in requiring that they *shall* cause proceedings to be taken to abate the overcrowding of the house named in it. The house need not be what is commonly understood by the term "common lodging-house;" for the Act applies to any house the inhabitants whereof shall consist of more than one family. The proceedings are to be taken before "the justices," who may make such order as they may think fit, that is, they may order whatever they consider the exigencies of the case require. It is not, however, very apparent what justices are referred to. In the case of a stipendiary magistrate no difficulty will arise in this respect; but generally it would be safest for the "justices" not to act except in petty sessions. The Act does not indicate the nature of the proceedings which are to be taken by the local authority; but as they would be in the nature of a com-

plaint of an offence having been committed against the Act, it would seem that they should be taken under the 11 & 12 Vict. c. 43, the keeper or occupier of the house being in the first instance summoned to answer the complaint of the local authority. A difficulty, however, will arise in enforcing whatever order the justices may make. So far as it may order the keeper or occupier of the house to pay a penalty, it may be enforced by distress and sale; but if it be disobeyed in any other respects, there appears to be no mode of enforcing it, except by indictment. Practically, therefore, the provision will be inoperative, except in so far as upon every fresh certificate proceedings may be had against "the person permitting the overcrowding" for cumulative, or rather successive penalties for successive offences in permitting the overcrowding.

Proceedings
for abate-
ment.

As regards the overcrowding of common lodging-houses, and the means to be taken to prevent such overcrowding, see the Common Lodging-Houses Acts, 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41; the 11 & 12 Vict. c. 63, s. 66, and 29 & 30 Vict. c. 90, s. 41, *ante*, p. 243.

Common
lodging-
houses.

§ 16. CELLAR DWELLINGS.

By the Sanitary Act 1866, s. 42, the 67th section of the Public Health Act, 1848, relating to cellar dwellings, shall apply to every place in England where such dwellings are not regulated by any other Act of Parliament, and in applying that section to places where it is not in force at the time of the passing of the 29 & 30 Vict. c. 90, the expression "this Act" shall be construed to mean the Sanitary Act, 1866, and not the said Public Health Act, 1848. In construing the 67th section as applied by the 29 & 30 Vict. c. 90, nuisance authority shall be substituted for the Local Board.

The following is the provision above referred to in the Public Health Act, 1848, with regard to cellar dwellings:

No vault, cellar, or underground room built or rebuilt after the passing of the Public Health Act, 1848, or which shall not have been so let or occupied before the passing of that Act, is to be let or occupied separately as a dwelling; and no vault, cellar, or underground room whatsoever, can be let or occupied separately as a dwelling unless it be in every part at least seven feet in height, measured from the floor to the ceiling; nor unless it be at least three feet of its height above the surface of the street or ground adjoining or nearest to it; nor unless there be outside of and adjoining, and extending along the entire frontage, and upwards from six inches below the level of the floor up to the surface of the street or ground, an open area of at least two feet and six inches wide in every part; nor unless it be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor; nor unless there be appurtenant the use

Occupation of
cellars, etc.
11 & 12 Vict.
c. 63, s. 67.

Occupation
of cellars, etc.
11 & 12 Vict.
c. 63, s. 67.

of a water-closet or privy and an ashpit, furnished with proper doors and coverings, kept and provided according to the provisions of the Act (see *ante*, p. 145); nor unless it have a fire-place with a proper chimney or flue; nor unless it have an external window of at least nine superficial feet in area clear of the sash-frame, and made to open in such manner as shall be approved by the surveyor, except in case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which case the external window may be of any dimensions not being less than four superficial feet in area clear of the sash-frame. Whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, for hire or rent any vault, cellar, or underground room, contrary to the above-mentioned provisions, is liable for every offence to a penalty not exceeding 20s. for every day during which the premises continue to be so let or occupied after notice in writing from the Local Board. In any area adjoining a vault, cellar, or underground room there may be steps necessary for access thereto, if so placed as not to be over, across, or opposite to the external window, and so as to allow between every part of the steps and the external wall a clear space of six inches at the least, and that over or across any such area there be steps necessary for access to the building above to which the area adjoins, if so placed as not to be over, across, or opposite to any external window.

Penalty.
Ib.

Steps.
Ib.

What a
dwelling.
Ib.

Every vault, cellar, or underground room in which any person passes the night is to be deemed to be occupied as a dwelling within the meaning of the Act.

How in case
of cellars, etc.
already
occupied as
dwellings.
Ib.

The provisions of the Act, with respect to the letting and occupation of vaults, cellars, and underground rooms, so far as they relate to vaults, cellars, and underground rooms which have been let or occupied as dwellings before the passing of the Act, were not to come into force or operation until the expiration of one year from the passing of the Act; nor within any district until the expiration of six months from the time when the Act shall have been applied to such district.

Church-
wardens,
etc., to give
notice of
enactment.
Ib. s. 67.

All churchwardens and overseers of the poor from time to time are to cause public notice of its provisions with respect to the letting and occupation of vaults, cellars, and underground rooms, to be given in such manner as may appear to them to be best calculated to make them generally known.

Cases in
which two
convictions
have occurred
within three
months.
29 & 30 Vict.
c. 90, s. 36,

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

CHAPTER III.

§ 1. SERVICES OF NOTICES, ETC., AND PROOF OF
RESOLUTIONS OF LOCAL AUTHORITY.

WITH regard to procedure under the Nuisances Act, as before observed (p. 493), notices, summonses, and orders under it, may be served by delivering them to or at the residence of the persons to whom they are respectively addressed. Where they are addressed to the owner or occupier of the premises, they may also be served by delivering the original, or a true copy thereof, to some person upon the premises; if there be no person upon the premises who can be so served, they may be delivered by affixing them upon some conspicuous part of the premises. If, however, the person upon whom they are to be served shall reside at a distance of more than five miles from the office of the inspector, they may be served by a registered letter through the post.

Services of
notices, etc.,
on the
premises.
18 & 19 Vict.
c. 121, s. 31.

With regard to notices served by post, especially such notices as are contemplated by sect. 25 of the Act, it is to be observed that the computation of the time for the services of notices in this manner must commence from the time when by the ordinary course of the post office the letter containing the notice would be received by the person to whom it is addressed. (1)

By post.

It has already been observed (p. 483, *ante*), that the distance of five miles from the office of the inspector must be measured in a straight line from point to point in a horizontal plane, *i.e.*, "as the crow flies."

The Act also provides that copies of any orders or resolutions of the local authority or their committee (appointed under sect. 5), purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the persons signing such copies.

Proof of
orders or
resolutions of
local
authority.
Ib. s. 32.

§ 2. LEGAL PROCEDURE.

The local authority, within the area of their jurisdiction, may direct any proceedings to be taken at law or in equity, in cases coming within the purview of the Act. They may also order proceedings to be taken for the recovery of any penalties, and

Legal pro-
ceedings by
local autho-
rity at law or
in equity.

(1) *Reg. v. Slawston*, 21 L. J. 145; 16 Jur. 1066.

18 & 19 Vict.
c. 121, s. 30.
For recovery
of penalties
in relation
to appeals.

Ib.

Payment of
costs thereof.
Ib.

Proceedings
not to be
quashed for
want of form,
nor removed
by certiorari.
Ib. s. 39.

Proceedings
against joint
offenders.
Ib. s. 33.

Costs in such
case.
Ib. s. 19.

Proceedings
not to be
abated by
death of one
of them.
Ib. s. 39.

Proceedings
against joint
owners or
occupiers.
Ib. s. 34.

Designation
of owner or
occupier.
Ib. s. 35.

for the punishment of any persons offending against the provisions of the Act, or in relation to appeals under the Act; as to which, see *post*, p. 531. The expenses of all such proceedings may be paid by the local authority out of the rates or funds administered by them under the Act; that is, out of the funds before enumerated, see *ante*, p. 475.

No order, or any other proceeding, matter, or thing done or transacted in or relating to the execution of the Act shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of the Act be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior Courts (except in the case provided for in sect. 40 of the Act, as to which, see *post*, p. 534). The 39th sect. of the 18 & 19 Vict. c. 121, taking away the writ of *certiorari*, is, however, not applicable when the justices have acted without jurisdiction, and contrary to the Act. (1)

Where proceedings under the Act are to be taken against several persons in respect of one nuisance, caused by their joint act or default, the local authority may include them in one complaint, and the justices may include them in one summons. Any order subsequently made by the justices in the case may be made upon all or any of the persons included in the summons; and the costs of the proceedings may be distributed in such manner as the justices may deem fair and reasonable; who are also empowered to divide all costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable. It is also provided that proceedings against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but that all such proceedings may be carried on as if the deceased person had not been originally included in the summons. Where, however, two or more persons, being owners or occupiers of the premises, or partly the one or partly the other, are answerable jointly or in common, or severally, it will be sufficient to proceed against any one or more of them, without proceeding against any of the others, but the persons so proceeded against shall not be prevented from recovering contribution in any case in which they are entitled to contribution by law.

The persons against whom proceedings are taken under the Act need not be designated by name, for whenever in any proceeding it is necessary to refer to the owner or occupier of the premises, it is sufficient if he be designated as the "owner" or the "occupier" of the premises, without name or further description.

As a general rule it would be preferable to designate the person proceeded against by name, but when that cannot con-

(1) *Reg. v. Gosse*, 30 L. J. (N. S.) M. C. 41; 6 Jur. (N. S.) 1369.

veniently be done, the general description of "owner" or "occupier" will suffice. Where, however, the proceedings are likely to lead to the costs and expenses being made chargeable on the premises under sect. 19 (see *ante*, p. 500), the better plan would be not to describe the person proceeded against by name, but simply as the owner of the premises.

§ 3. PENALTIES.

Whoever refuses to obey an order of justices made under the Act for the admission on premises of the local authority or their officers (that is, under sect. 11 of the Act, as to which, see *ante*, p. 482), or wilfully obstructs any person acting under the authority or employed in the execution of the Act, is liable for every such offence to a penalty not exceeding £5.

If the occupier of any premises prevent the owner from obeying or carrying into effect the provisions of the Act, any justice to whom application is made in this behalf, by order in writing, is to require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of the Act. If within twenty-four hours after the service of the order in any of the modes specified in sect. 31, *ante*, p. 483, the occupier against whom it is made do not comply with it, he shall be liable to a penalty not exceeding £5 for every day afterwards during the continuance of such non-compliance.

These penalties, as well as all others imposed by the Act, may be recovered according to the provisions of the 11 & 12 Vict. c. 43; as to which it is necessary to remark that sect. 11 provides that in all cases where no time is specially limited for making any complaint, or laying any information, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

By the Sanitary Act, 1866, s. 54, penalties under that Act directed to be recovered in a summary manner may be recovered before two justices under the 11 & 12 Vict. c. 43.

All penalties recovered by the local authority under the Act are to be paid to them, and to be applied by them in aid of the expenses under the Act. Penalties recovered by other than the local authority are payable to the county treasurer under the 11 & 12 Vict. c. 43, s. 31.

Further, with regard to the penalties, see sections 14 and 27, *ante*, pp. 497–522.

§ 4. APPEALS.

The local authority may, within the area of their jurisdiction, direct any proceedings to be taken in relation to appeals under the Act, the expenses attending which they may order to be

Obstructing
execution of
Act.

18 & 19 Vict.
c. 121, s. 36.

Occupier
obstructing
owner.
Ib. s. 37.
Sch. Form G.

How
recovered.
Ib. s. 38.

Penalties.
Ib.

Power of
local
authority to
direct.

18 & 19 Vict. c. 121, s. 30. paid out of the rates or funds administered by them under the Act.

To quarter sessions. Appeals against anything done under the Act, that is, against orders of prohibition (ss. 13, 15); against order of abatement when structural works are required (s. 16); against assessment for sewers or structural works (s. 22); against conviction in respect of the carrying on of noxious trades, businesses, processes, or manufactures causing effluvia (s. 27), are to be made to the Court of Quarter Sessions held by the justices next after the making the order appealed against, and for this purpose the expression "quarter sessions" shall mean the Court of General or Quarter Sessions of the peace for a county, riding, or division of a county, city, or borough. If, however, there be not time to give notice of appeal and to enter into recognizances, then the appeal may be made to the next sessions at which it can be heard. Before an appellant can be heard in support of his appeal he must, within fourteen days after making the order appealed against, give to the local authority notice in writing, stating his intention to bring such appeal, and also a statement in writing of the grounds of appeal; and within two days after giving notice of appeal, enter into a recognizance before some justices of the peace, with sufficient sureties, conditioned to try the appeal, and to abide the order of and pay such costs as shall be awarded by the Court. The time for giving notice of appeal in the case of an order of abatement when structural works are required is, however, by sect. 16, limited to seven days from the date of the order.

Ib. s. 40.

Quarter sessions, what. Ib. s. 2.

Next practicable sessions. Ib. s. 40.

Notice and statement of grounds of appeal and recognizance. Ib.

Sunday is not to be excluded from the computation of the two days within which the appellant is to enter into recognizance, although Sunday happens to be the last of them: therefore, in a case where an appellant had given notice of an appeal on Friday, and did not enter into the recognizance till the following Monday, the sessions were held to be right in refusing to hear the appeal. (1)

Again, in the case of an appeal against a rate, the fourteen days within which notice of appeal must be given will run from the time of the service of the notice of the rate, and not from the time when the amount was fixed by the local authority. Therefore in a case where the assessment to a rate under sect. 22 of the 18 & 19 Vict. c. 121, was made on the 4th February, and notice thereof served on the appellant on the 6th, and on the 20th the appellant served the respondents with notice and grounds of appeal, the notice was held to be in time. (2) The legislature intended that the person assessed should have fourteen days at the least for appealing, and therefore those days cannot be made to run unknown to him.

By 18 & 19 Vict. c. 121, s. 40, and also by 12 & 13 Vict.

(1) *Ex parte Simkin*, 2 E. & E. 392; 29 L. J. (N. S.) M. C. 23; 6 Jur. (N. S.) 144. S. C. nom. *Reg. v.*

Leicestershire JJ., 1 L. T. (N. S.) 92. (2) *Reg. v. Middleton*, 21 L. J. (N. S.) M. C. 41; 32 L. T. 124.

c. 45, costs are to be given by that Court of Quarter Sessions Notice of which determines the appeal; and the taxation of costs can appeal only be advanced as ancillary to the giving of final judgment; where, therefore, there remains nothing of a judicial nature to be done by the Court of Quarter Sessions in the matter of an appeal against a conviction of a nuisance, by reason of the order of conviction being removed from that Court and entirely quashed, the Court of Quarter Sessions have no longer any power to tax the costs. (1)

No justice being a member of a local authority for the execu- Jurisdiction
tion of the Nuisances Removal Acts shall, by 29 & 30 Vict. of justices on
c. 41, s. 2, be deemed incapable of acting in cases under the appeals.
Nuisances Removal Acts. This apparently extends to appeals as well as to other proceedings, as the statute repeals the exception as to appeals in 23 & 24 Vict. c. 77, s. 16. It has since been enacted, by 30 & 31 Vict. c. 115, s. 2, that a justice of the peace shall not be incapable of acting as a justice at any petty or special, or general or quarter sessions, on the trial of an offence arising under an Act to put in execution by a municipal corporation or a Local Board of Health, or Improvement Commissioners or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

In every case of appeal (except against summary convictions, 12 & 13 Vict. orders of removal, orders relating to pauper lunatics, orders in c. 45, s. 1. bastardy, proceedings in relation to the excise, customs, stamps, taxes, or post office), to any Court of General or Quarter Sessions of the peace, fourteen clear days' notice of appeal at least must be given in writing, signed by the person or persons giving the same, or by his or their attorney on his, her, or their behalf, and the grounds of appeal must be specified in every such notice. And it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.

On the hearing of the appeal it is not competent for the The hearing.
appellant to go into, or for the Court to entertain, any other 18 & 19 Vict.
grounds of appeal than those set forth in the statement above c. 121, s. 40.
mentioned; and the Court upon the hearing and finally determining the matter of the appeal may, according to its discretion, award such costs to the appellant or respondent as they shall think proper; and its determination of the appeal, and the

(1) *Reg. v. Hampshire JJ.*, 32 *Commissioners*, 7 L. T. (N. S.) 391;
L. J. (N. S.) M. C. 46. S. C. *Isle of* 8 Jur. (N. S.) 1212.
Wight Ferry Company v. Ryde

award of costs, is to be conclusive and binding on all persons to all intents and purposes whatsoever. As to the recovery of costs, see sect. 38, *ante*, p. 531, and the 12 & 13 Vict. c. 45, s. 5; and also ss. 1 and 3 of that Act as to amendment of statement of grounds of appeal.

Where the quarter sessions make an order giving a successful appellant his costs, the course pointed out by the 11 & 12 Vict. c. 43, s. 27, and 12 & 13 Vict. c. 45, s. 5, must be pursued, although the respondents (public Commissioners) say they have no funds out of which to pay the costs, and that they dispute the validity of the order. (1)

Forms of
notices and
orders.
18 & 19 Vict.
c. 121, s. 41.
Special case,
certiorari.
Ib. s. 40.

It may be observed here, that the forms contained in the schedule to the Act, or any forms to the like effect, varied as circumstances may require, may be used for instruments under the Act, and shall be sufficient for the purpose intended.

12 & 13 Vict.
c. 45, s. 11.

Instead of determining the matter of the appeal, the Court of Quarter Sessions may, if they think fit, state the facts specially for the determination of the Court of Queen's Bench, in which case the proceedings may be removed by writ of *certiorari*, or otherwise, into that Court. The parties at any time, after giving notice of appeal to the Court of General or Quarter Sessions, may also, by consent and by order of any judge of one of the superior Courts of Common Law at Westminster, state the facts of the case in the form of a special case for the opinion of such superior Court, and agree that a judgment in conformity with the decision of such Court, and for such costs as such Court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall be given; and such judgment when so entered shall be of the same effect in all respects as if it had been given by the Court of General or Quarter Sessions upon an appeal duly entered and continued.

Rule to
justices.
11 & 12 Vict.
c. 44, s. 6.

Case stated
on a point of
law for
opinion of
superior
Court.
20 & 21 Vict.
c. 43, s. 2.

Ib. s. 6.

If in relation to any proceedings under the Act any justice or justices refuse to do an act, the Court of Queen's Bench may by rule order him or them to do it; and thereupon no action shall be brought for having obeyed the rule or done the act thereby required. So after the hearing or determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, either party to the proceeding before the justice or justices may, if dissatisfied with the determination as being erroneous in point of law, apply in writing, within three days after the same, to the justice or justices, to state and sign a case setting forth the facts, and the grounds of such determination, for the opinion thereon of one of the superior Courts of law to be named by the party applying. The appellant, or party applying, must within three days after receiving the case transmit it to the Court named in his application, or to a judge sitting

(1) *Austin v. Milton-next-Sittingbourne*, 29 J. P. 760. S. C. Ex parte *Austin*, 13 L. T. (N. S.) 443.

in chambers, first giving notice in writing of the appeal, with a copy of the case so stated and signed, to the respondent or other party to the proceeding. The superior Court is thereupon to determine the questions on the case, and their determination is to be final and conclusive on all parties.

The course of procedure under 20 & 21 Vict. c. 43, will be found in the third edition of Glen's Jervis's Acts.

§ 5. PROTECTION OF LOCAL AUTHORITY AND THEIR OFFICERS.

The local authority, and any officer or person acting under the authority and in execution or intended execution of the Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to Local Boards of Health and their officers by the law in force for the time being. On this point see the provisions of the Public Health Act, ss. 139, 140, *ante*, page 446.

Nature of
protection.
18 & 19 Vict.
c. 121, s. 42.

Construction
of Act
20 & 21 Vict.
c. 43, s. 2.

Application
of Act
20 & 21 Vict.
c. 43, s. 2.

Definition
of sewer
authority.
20 & 21 Vict.
c. 43, s. 2.

20 & 21 Vict.
c. 43, s. 2.
20 & 21 Vict.
c. 43, s. 2.

P A R T V.

SEWAGE UTILIZATION.

§ 1. SEWER AUTHORITIES.

Object of
the Sewage
Utilization
Act.

THE intention of the Sewage Utilization Act, 1865, amended by the Sanitary Act, 1866 (Part 1), and the 30 & 31 Vict. c. 113, is to afford facilities for the drainage of districts, urban and suburban, to which it would be impracticable or inexpedient to apply the provisions of the Public Health and Local Government Acts. Indeed these Acts, it will readily be perceived, are not practically applicable to other than urban districts containing something more than the population of a mere village. The Act of 1865 extends the powers for drainage purposes to suburban and country parishes, as contradistinguished from towns, and in fact places them upon the same footing for drainage purposes as towns in which the Public Health and Local Government Acts have been adopted.

Construction
of Acts.
29 & 30 Vict.
c. 90, s. 3.

The first part of the Sanitary Act, 1866, shall be construed as one with the Sewage Utilization Act, 1865, and the expression "The Sewage Utilization Act, 1865," shall mean the said Sewage Utilization Act, 1865, as amended by the Sanitary Act, 1866.

Application
of Act.
28 & 29 Vict.
c. 75, s. 2.
Definition
of sewer
authority.
Ib. s. 3.
29 & 30 Vict.
c. 90, s. 2.
30 & 31 Vict.
c. 113, s. 2.

The Acts which form the subject of this portion of the work do not extend to any part of the metropolis as defined by the 18 & 19 Vict. c. 120.

The expression "sewer authority" means the persons or bodies of persons referred to in the first column hereunder; the term "district," in relation to a sewer authority, as respects each authority, means the place in that behalf referred to in the second column.

The expression "sewer authority" in the Sewage Utilization Act, 1867, has the same meaning as in the Sewage Utilization Act, 1865, and in addition shall include a Local Board, and shall in both Acts include any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers, and any public department of the Government. Any person appointed by the Secretary of State in pursuance of the 49th section of 29 & 30 Vict. c. 90, to perform the duty of a sewer authority or Local Board that has been guilty of a default as therein mentioned, shall, in the performance of such duty and for the purposes thereof, be invested

with all the powers of the sewer authority or Local Board in default, except the power of levying rates.

"Local Board" means a Local Board authorised in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of those Acts.

The following are the sewer authorities under the Act:—

Definition
of sewer
authority.

Sewer authorities.
28 & 29 Vict.
c. 75, Sch.

Description of local authority.	Description of places.	Rate of fund out of which expenses to be paid.
The mayor, aldermen, and burgesses, acting by the Council.	In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board.	The borough fund or borough rate.
The Commissioners, trustees, or other persons intrusted by any local Act of Parliament with powers of improving, cleansing, lighting, or paving the town.	The boroughs of Oxford and Cambridge, and any town or place not included within the above descriptions, and under the jurisdiction of Commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, lighting, or paving any town.	Any rate leviable by the Commissioners, trustees, or other persons.
The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	In parishes not within the jurisdiction of any sewer authority hereinbefore mentioned, and in which a rate is levied for the maintenance of the poor.	The poor rate (30 & 31 Vict. c. 113, s. 17).
Local Board, Collegiate, or other Corporate body, required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers.	—	—
Any public department of the Government.	—	—
Persons appointed by the Secretary of State, under 29 & 30 Vict. c. 90, s. 49.	—	—

30 & 31 Vict.
c. 113, s. 2.

Ib.

Ib.

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

Incorporation of
11 & 12 Vict.
c. 63, as to
private im-
provement
expenses.
31 & 32 Vict.
c. 115, s. 6.
Incorporation
of sanitary
authorities.
29 & 30 Vict.
c. 90, s. 46.
Appearance
of sewer
authority in
legal pro-
ceedings.
Ib. s. 48.

The provisions of the Public Health Act, 1848, *ante*, p. 379, relating to private improvement expenses, as amended by any subsequent Act of Parliament, shall be deemed to be incorporated with the Sanitary Act, 1868, so far as may be required for carrying into effect any provision of the Act.

Sewer authorities, if not already incorporated, shall be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on sewer authorities.

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

The language of the above provision would seem to give every sewer authority acting "by its clerk," or other person duly authorised, the same powers as a nuisance authority has under the Nuisances Removal Acts. This, however, could scarcely have been the intention of the legislature; and it will be seen that the 28 & 29 Vict. c. 75, and 29 & 30 Vict. c. 90, nowhere empower a sewer authority to appoint and pay "*its clerk*."

§ 2. COMMITTEES OF SEWER AUTHORITIES.

Sewer autho-
rity may
form com-
mittee of its
own members
and others.
Ib. s. 4.

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

Powers of
committee.
Ib.

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

Chairman of
committee.
Ib.

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

Meetings of
committee.
Ib.
Quorum of
committee.
Ib.

A committee may meet and adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members.

Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question;

and in case of an equal division of votes the chairman shall have a second or casting vote. Questions how to be determined.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members. 29 & 30 Vict. c. 90, s. 4.

A sewer authority may from time to time add to or diminish the number of the members or otherwise alter the constitution of any committee formed by it, or dissolve any committee. Vacancies not to invalidate proceedings.

A committee of the sewer authority shall be deemed to be the agents of that authority, and the appointment of such committee shall not relieve the sewer authority from any obligation imposed on it by Act of Parliament or otherwise. Ib.

The above provisions are perhaps not required in boroughs or places under Local Improvement Acts; but they are very necessary in the case of a suburban parish, or in any parish not under a Town Council or Improvement Commissioners, as they enable such a parish to adopt a standing administrative body for drainage purposes. Alteration of number of committee. Ib. Obligations of committee. Ib.

§ 3. RATES IN DRAINAGE DISTRICTS.

Where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry, or select vestry, such authority shall for the purpose of defraying any expenses incurred in carrying into effect the Sewage Utilization Act, 1865, or 30 & 31 Vict. c. 113, issue their precept to the overseers of the parish of which they are the authority, requiring such overseers to pay over the amount specified in such precept to the sewer authority, or to their officer named in the precept, or into some bank mentioned in such precept. In parishes a separate rate to be levied for sewage purposes. 30 & 31 Vict. c. 113, s. 17.

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

A separate rate under 30 & 31 Vict. c. 113, shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against the

In parishes
a separate
rate to be
levied for
sewage
purposes.
30 & 31 Vict.
c. 113, s. 17.

Penalty on
non-payment
of rates by
overseers.
Ib. s. 18.

same, and all other incidents thereof except the purposes to which it is applicable, be deemed to be a rate levied for the relief of the poor.

The expression "overseers" shall include any officer authorised to levy a rate in a special drainage district, and any person or body of persons authorised or required to levy rates for the relief of the poor.

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

§ 4. SPECIAL DRAINAGE DISTRICTS.

Formation
of special
drainage
district.
29 & 30 Vict.
c. 90, s. 5.

In order to enable a parish to constitute the urban centre of it, for the purposes of drainage, a separate district managed by a vestry of its own body, and levying a rate upon the urban district, it is enacted that—where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry, it may, by resolution at any meeting convened for the purpose after twenty-one clear days' notice affixed to the places where parochial notices are usually affixed in its district, form any part of such district into a special drainage district for the purposes of the Sewage Utilization Act, and thereupon such special drainage district shall, for the purposes of the Sewage Utilization Act, 1865, and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the 58 Geo. III. c. 69, and the Acts amending the same.

Levy of rates
in special
district.
Ib.

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

The officers so appointed will be overseers within the meaning of the word "overseers" in 30 & 31 Vict. c. 113, s. 17, *ante*, p. 540, and will make the rate in conformity with that provision, and be subject to the same liability as overseers under section 18 of the same statute.

It will readily be seen that when the above provision is acted upon, the rural district will not be called upon to pay for the drainage of the urban district, with which it may happen that it has no common interest in a sanitary point of view.

Where the sewer authority of any place has formed a special drainage district as above mentioned, if any number of the inhabitants of the place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands, presented within three months after the date of the resolution forming the district, bring their case under the consideration of one of Her Majesty's principal Secretaries of State, who may after due investigation annul the formation of the special drainage district or modify its boundaries as he thinks just.

Appeal
against
constitution
of special
drainage
district.
29 & 30 Vict.
c. 90, s. 6.
30 & 31 Vict.
c. 113, s. 9.

The following is the form of order made by the Secretary of State when he dismisses the petition and modifies the boundaries of the district:—

SANITARY ACT, 1866.

Whereas a special drainage district has been duly formed under the powers and provisions of the Sanitary Act, 1866, by a committee exercising the powers of the vestry as a sewer authority under the said Act for the , of , in the county of , and whereas a petition under the provisions of the said Act has been addressed to the Right Honourable , as one of Her Majesty's principal Secretaries of State by a number of the inhabitants of the said (not being less than twenty in number), praying that the formation of the said special drainage district should be annulled; and whereas due investigation has been made into the allegations of the said petition, and report has been made thereon by , Esq., the inspector appointed for that purpose: Now, therefore, I, as one of Her Majesty's principal Secretaries of State, do hereby, under my hand, order that the said petition be dismissed, and that the boundaries of the said special drainage district be modified, and be as described in the schedule to this order, and as set out on the plan of the said district attached thereto.

Given under my hand, &c.

Home Office, Whitehall.

Schedule above referred to. (Containing a description of the modified boundaries of the district).

A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the parish, and by advertising notice thereof in some newspaper published or circulating in the county in which the district is situate. The production of a newspaper containing such ad-

Evidence of
formation
of special
drainage
district.
29 & 30 Vict.
c. 90 s. 7.

vertisement or a certificate under the hand of the clerk or other officer performing the duties of clerk for the time being of the sewer authority which passed the resolution forming the district, shall be evidence of the formation of the district, and after the expiration of three months from the date of the resolution forming the district such district shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatever.

Constituting
part of parish
a special
drainage
district.
30 & 31 Vict.
c. 113, s. 7.

Where part of a parish as above defined in the schedule to the Sewage Utilization Act, 1865, as amended by 30 & 31 Vict. c. 113, is at the time of the passing of that Act (20 August, 1867) subject to the jurisdiction of a Local Board in pursuance of the Local Government Act, 1858, the portion of such parish which is not subject to the jurisdiction of any Local Board shall for the purposes of the Sewage Utilization Act, 1865, and 30 & 31 Vict. c. 113, be deemed to be by that Act constituted a special drainage district, unless the Secretary of State, upon petition presented to him in manner provided by sect. 6 of the Sanitary Act, 1866 (*ante*, p. 541) within three months after the 20th August, 1867, otherwise directs.

It shall not be necessary in the case of part of a parish which is so constituted a special drainage district, to give the notices required by sect. 7 of the Sanitary Act, 1866 (*ante*, p. 541).

Application
to be con-
stituted a
special
drainage
district.
Ib. s. 8.

Any inhabited place not having a known or defined boundary may petition one of Her Majesty's principal Secretaries of State in manner provided in the 16th section of the Local Government Act, 1858 (*ante*, p. 15), to settle its boundaries for the purposes of the Sewage Utilization Act, 1865, and of the 30 & 31 Vict. c. 113; and the Secretary of State may, by order made in manner provided by 21 & 22 Vict. c. 98, s. 16, settle the same accordingly, and from and after the date of such order the place shall be deemed to have been constituted a special drainage district for the purposes of the said Sewage Utilization Act, 1865, and 30 & 31 Vict. c. 113.

A copy of the order of the Secretary of State shall be published in manner provided by the 7th section of the Sanitary Act, 1866 (*ante*, p. 541), and that section shall be construed in reference to a special drainage district formed under 30 & 31 Vict. c. 113, s. 8, as if the order of the Secretary of State were substituted for "resolution of a sewer authority."

§ 5. UNION OF SEWAGE DISTRICTS.

Constitution
of joint
sewerage
district.
Ib. s. 10.

Where it appears to the sewer authority of any district that it would be for the advantage of such district, and of any district or districts adjoining or lying within the same drainage area, or otherwise conveniently situate, that all such districts should be formed into a united district for the purposes of the Sewage Utilization Act, 1865, and of the 30 & 31 Vict. c. 113,

or for any of such purposes, such sewer authority may, with the consent of the sewer authority of every district affected, apply to one of Her Majesty's principal Secretaries of State for an order forming such districts into one united district, and the Secretary of State, if satisfied of the expediency of such union of districts, may make an order accordingly.

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

Advertise-
ment of in-
tention to
form united
district.

30 & 31 Vict.

c. 113, s. 11.

Constitution
of joint
sewerage
Board.

Ib. s. 12.

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

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

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

Powers of
joint sewerage
Board.

Ib. s. 13.

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

Expenses of
joint sewerage
board how de-
frayed.

Ib. s. 14.

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

§ 6. POWERS OF SEWER AUTHORITIES.

Powers of
sewer autho-
rities.
28 & 29 Vict.
c. 75, s. 4.

Sewer authorities have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained; and, as respects all sewers constructed by them or under their control, whether they were made before or after the passing of the Act, have all the powers that Local Boards have, in respect of sewers vested in or constructed by them under sections 45 and 46 of the Public Health Act, 1848 (*ante*, pp. 93, 94), section 30 of the Local Government Act, 1858 (*ante*, p. 94), and section 4 of the Local Government Act, 1858, Amendment Act, 1861 (*ante*, p. 94), subject to the provisions of sections 5 and 6 of the last-mentioned Act (*ante*, pp. 94, 95), and to the saving clauses in the Local Government Act, 1858," mentioned, from 68 to 74 (*ante*, pp. 106-109), both inclusive.

Powers of
sewer autho-
rities as to
sewerage.
31 & 32 Vict.
c. 115, s. 5.

A sewer authority shall within their district have all the powers vested in a Local Board by the 32nd section of the Local Government Act, 1858 (*ante*, p. 141), as amended by any subsequent Act of Parliament, so far as relates to—

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

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

Where the sewer authority and the nuisance authority are different bodies of men, the jurisdiction of the nuisance authority in such district shall cease in respect to all matters over which the sewer authority acquires powers by this section.

Powers of
sewer
authority.
Ib. s. 4.

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

- (1.) The 51st section (*ante*, p. 151), requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient water-closet or privy and ashpit (as to earth closets, see 31 & 32 Vict. c. 115, s. 7, *ante*, p. 153):
- (2.) And the 54th section (*ante*, p. 145), as amended by any subsequent Act of Parliament, providing that the Local Board of Health shall see that drains, water-closets, privies, and ashpits within their district do not become a nuisance:

shall extend to the district of every sewer authority in which there is no enactment of any public or private Act of Parliament to the like effect in force; and the said sections when so extended shall be so construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "Local Board,"

and any officer for the time being appointed by the sewer authority to examine any premises shall be deemed to be the surveyor within the meaning of the said sections.

Powers of
sewer
authorities.
31 & 32 Vict.
c. 115, s. 4.

Where the sewer authority and the nuisance authority of a district are different bodies of men, the jurisdiction of the nuisance authority shall cease within such district in relation to all matters within the purview of the said sections of the Public Health Act, 1848; and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with efficient sewers.

The sewer authority have the powers of entry conferred by section 143 of the Public Health Act, 1848 (*ante*, p. 90), for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in that section.

Power of
entry.
28 & 29 Vict.
c. 75, s. 5.

A sewer authority may, without their district, provide any works and do any act for the purpose of receiving, storing, disinfecting, or distributing sewage which they may provide or do within their district, subject to the conditions to which they would be subject in providing such works or doing such acts within their district, and to the conditions imposed on Local Boards in carrying into effect the 4th section of 24 & 25 Vict. c. 61, as to which see *ante*, p. 94.

Sewer au-
thority may
exercise
without their
district
powers in
relation to
distribution
of sewage.
30 & 31 Vict.
c. 113, s. 3.

Where complaint is made to one of Her Majesty's principal Secretaries of State that a sewer authority has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, the Secretary of State, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting the time for the performance of its duty in the matter of such complaint. If such duty is not performed by the time limited in the order, the Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

Mode of
proceeding
where sewer
authority
has made
default in
providing
sufficient
sewers, etc.
29 & 30 Vict.
c. 90, s. 49.

The costs of this proceeding on the part of the Secretary of State are provided for, as will be seen, *ante*, p. 89.

If any person wilfully damages any works or property be-

Penalty for wilful damage of works.
29 & 30 Vict. c. 90, s. 45.
Payment of expenses.
28 & 29 Vict. c. 75, s. 6.

longing to any sewer authority he shall be liable to a penalty not exceeding £5.

A sewer authority shall pay all expenses incurred by them in carrying the Act into effect out of the fund or rate mentioned in the third column of the table, *ante*, p. 537, and shall have all such powers of borrowing money on the security of such fund or rate as Local Boards have of borrowing money under the Local Government Act, 1858, and the Acts amending that Act (see *ante*, p. 403), on the security of the funds or rates in those Acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by Local Boards under such Acts.

Power to take lands.
Ib. s. 7.

A sewer authority, for the purposes of the Act, have the powers of taking lands conferred on Local Boards by section 75 of the Local Government Act, 1858, and any Act amending the same (as to which see *ante*, p. 412).

Purchase of land for distribution of sewage.
30 & 31 Vict. c. 113, s. 4.

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

Public Works Loan Commissioners may lend money to sewer authorities.
28 & 29 Vict. c. 75, s. 12.

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

Compensation
Ib. s. 8.

Full compensation shall be made out of any fund or rate applicable to the purposes of the Act, to all persons sustaining any damage by reason of the exercise of any of the powers of the Act; and in case of dispute as to the amount, the same shall be settled by arbitration, as provided in the Public Health Act, 1848, or any Act amending the same (see *ante*, p. 432), or if the compensation claimed do not exceed the sum of £20, the same may be ascertained by and recovered before justices in a summary manner, as provided by those Acts (as to which see *ante*, p. 432).

Power of sewer authorities to combine.
28 & 29 Vict. c. 75, s. 9.

Two or more sewer authorities, including under that expression Local Boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly.

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

Powers of
Act cumu-
lative.
28 & 29 Vict.
c. 75, s. 13.

A Local Board as defined, *ante*, p. 537, does not come within the description of a sewer authority, *ante*, p. 537; it is however invested by the Public Health and Local Government Acts with full powers effectually to provide for the sewage of their district.

§ 7. DISTRIBUTION OF SEWAGE.

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

Power for
sewer au-
thority to
deal with
land appro-
priated to
sewage
purposes.
30 & 31 Vict.
c. 113, s. 5.

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

Contract for
utilization of
sewage.
28 & 29 Vict.
c. 75, s. 14.

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

Application
of 27 & 28
Vict. c. 114,
to works
etc., for
supply of
sewage.
Ib. s. 15. *

§ 8. USER OF SEWERS OF SEWER AUTHORITIES.

Any owner or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the sewer authority

Power to
drain into
sewers of
sewer
authority.
29 & 30 Vict.
c. 90, s. 8.

Power to
drain into
sewers of
sewer
authority.
29 & 30 Vict.
c. 90, s. 8.

to superintend the making of such communications. Any person causing any drain to empty into any sewer of a sewer authority without complying with these provisions shall incur a penalty not exceeding £20, and the sewer authority may close any communication between a drain and sewer made in contravention of the section, and recover in a summary manner from the person so offending any expenses incurred by them under the section.

Use of sewers
by persons
beyond
district.
Ib. s. 9.

Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by the Public Health Act, 1848 (*ante*, p. 432), in respect of matters by that Act authorised or directed to be settled by arbitration.

As to the
drainage of
houses.
Ib. s. 10.

If a dwelling-house within the district of a sewer authority is without a drain, or without such drain[as is sufficient for effectual drainage, the sewer authority may by notice require the owner of such house within a reasonable time therein specified to make a sufficient drain emptying into any sewer which the sewer authority is entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the house of such owner; but if no such means of drainage are within that distance then emptying into such covered cesspool or other place, not being under any house, as the sewer authority directs. If the person on whom such notice is served fails to comply with the same, the sewer authority may itself, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner.

Owner
defined.

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

Service of
notices.

By sect. 11 of the Sanitary Act, 1868, notices may be served for the purposes of the first part of the Sanitary Act, 1866, in the same manner in which they are required to be served under the second part of that Act, that is to say, in the manner

required by the 18 & 19 Vict. c. 121, s. 31, "by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person on the premises who can be served, by fixing the same upon some conspicuous part of the premises; or if the person shall reside at a distance of more than five miles from the office of the inspector, then by a registered letter through the post."

Serving of
notices.
31 & 32 Vict.
c. 115, s. 11.

The foregoing provisions give in effect the same powers of compelling persons to use the drains provided by sewer authorities as are given to Local Boards by sections 47, 48, and 49, of the Public Health Act, 1848, *ante*, pp. 104, 105, 146.

§ 9. PREVENTION OF POLLUTION OF RIVERS.

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

Sewer
authority
may take
proceedings
to prevent
pollution
of streams.
28 & 29 Vict.
c. 75, s. 10.

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

Sewers not
to drain into
any stream
or water-
course.
Ib. s. 11.

§ 10. SUPPLY OF WATER BY SEWER AUTHORITIES.

A sewer authority within its district shall have the same powers in relation to the supply of water that a Local Board has within its district, and the provisions of the sections hereinafter mentioned shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "Local Board of Health" or "Local Board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the Local Board; that is to say, sections 75 to 80, both inclusive, of the Public Health Act, 1848 (*ante*, pp. 212-229), sections 51, 52, and 53 of the Local Government Act, 1858 (*ante*, pp. 214-226), and section 20 of the Local Government Act, 1858, Amendment Act, 1861 (*ante*, p. 226).

Supply of
water to
district of
sewer autho-
rity.
29 & 30 Vict.
c. 90, s. 11.

The sewer authority may, if it think it expedient so to do,

Supply of water to district of sewer authority.
29 & 30 Vict. c. 90, s. 11.

provide a supply of water for the use of the inhabitants of the district by

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

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

Expenses of sewer authority in supplying water.
Ib.

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

Recovery of expenses of water supply from owners of premises supplied.
Ib. s. 50.

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

When wells, etc., shall be vested in sewer authority.
Ib. s. 13.

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

§ 11. POWER OF SEWER AUTHORITIES TO PROVIDE HOSPITALS.

Power to provide hospitals.
Ib. s. 37.
30 & 31 Vict. c. 113, s. 16.

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

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

It may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of its district, on payment by the sewer authority of such annual or other sum as may be agreed upon.

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

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital; and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by

them respectively in carrying into effect the purposes of the Act.

As to the supply of hospital tents and ambulances by the authorities of the War Office, see *ante*, p. 488.

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

Supply of medicines, etc.
31 & 32 Vict.
c. 115, s. 10.

§ 12. SAVING AS TO POWERS.

All powers given by 29 & 30 Vict. c. 90, and 30 & 31 Vict. c. 113, shall be deemed to be in addition to and not in derogation of any other powers conferred on any authority by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if the 31 & 31 Vict. c. 113, had not passed.

29 & 30 Vict.
c. 90, s. 55.
30 & 31 Vict.
c. 113, s. 19.

§ 13. RECOVERY OF PENALTIES.

Penalties under any section incorporated with the Sanitary Act, 1868 (see *ante*, p. 544), shall be recovered in manner directed by the Act passed in the Session holden in the eleventh and twelfth years of the reign of Her present Majesty, c. 43.

31 & 32 Vict.
c. 115.

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

Ib. s. 9.

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

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

Ib.

P A R T V I.

PREVENTION OF DISEASES.

§ 1. WHEN THE PRIVY COUNCIL MAY PUT THE DISEASES PREVENTION ACT IN FORCE.

THE prevention of epidemic, endemic, or contagious diseases forms the subject of the concluding part of this work.

Order in
Council.
18 & 19 Vict.
c. 116, s. 5.

Whenever any part of England appears to be threatened with, or is affected by, any formidable epidemic, endemic, or contagious disease, the Lords and others of Her Majesty's Privy Council, or any three or more of them (the Lord President of the Council, or one of Her Majesty's principal Secretaries of State being one), may, by order or orders to be by them from time to time made, direct that the provisions contained in the Diseases Prevention Act, 1855, for the prevention of diseases, be put in force in England, or in such parts thereof as in the order or orders respectively may be expressed. The Order of Council so made is to be in force for six calendar months, or for such shorter period as shall be expressed in it, and the order may at any time be revoked or renewed in like manner. The order, when made, shall be certified under the hand of the clerk of the Council, and shall be published in the *London Gazette*, which publication is to be conclusive evidence of the order to all intents and purposes. Orders in Council so issued may extend to parts and arms of the sea lying within the jurisdiction of the Admiralty; and they are to be laid before both Houses of Parliament forthwith upon the issuing thereof, if Parliament be then sitting; but if not, then within fourteen days next after the commencement of the then next session of Parliament.

Publication
of in 'London
Gazette.'
Jurisdiction
of the Admi-
ralty.
Ib. s. 11.
To be laid
before
Parliament.
Ib. s. 10.

As Orders in Council and regulations issued by the Privy Council under the Diseases Prevention Act continue in force for a limited time only, they are not included in this work but are published separately.

The diseases
defined.

Epidemic.

Endemic.

There are three classes of diseases to which the Act applies; and they are thus defined in Hoblyn's Medical Dictionary:—
Epidemic, that is, diseases which are not *native* diseases, but which arise from a general cause, as excessive heat, and are generally prevalent; endemic, that is, diseases peculiar to the

inhabitants of the country, or which prevail locally, as from marsh miasma, when they are called *native* diseases; and contagious, that is, diseases which are propagated from one individual to another, generally by contact, as distinguished from infection, which is the propagation of disease by effluvia from patients crowded together. Contagious.

The following is an extract from a circular letter of instructions addressed, on the 21st December, 1858, by the Registrar-General of Births, Deaths, and Marriages, to the Registrars of Births and Deaths, with reference to epidemic and contagious diseases :—

“The powers of the General Board of Health having been vested by 21 & 22 Vict. c. 97, in Her Majesty’s Privy Council, to whom authority is given to cause inquiries to be made in relation to any matters concerning the public health in any place, I am desired by the Registrar-General further to request that on the outbreak of any epidemical disease in your sub-district, especially an epidemic of fever (including typhus, typhoid, infantile, remittent or relapsing fever), *small-pox*, *cholera*, *diarrhœa*, or *dysentery*, you will furnish immediately information of the fact to him, in order that he may, without loss of time, report the same to the Lord President of the Council, with a view to the adoption of measures for the protection of the public health.”

§ 2. DIRECTIONS AND REGULATIONS OF THE PRIVY COUNCIL.

The provisions of the Act having been put in force by an Order in Council in the manner above stated, and whilst such order continues in force, the Privy Council may issue directions and regulations as they shall think proper—

For the speedy interment of the dead :

For house to house visitations :

For the dispensing of medicines :

Guarding against the spread of disease :

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

If the Order in Council extend to parts and arms of the sea lying within the jurisdiction of the Admiralty, the Privy Council may also issue under the Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea as upon inland waters. Cleansing,
etc., ships.
18 & 19 Vict.
c. 116, s. 11.

The General Board of Health having ceased to exist, all powers which were vested in that Board under the Diseases Prevention Act, 1855, are now vested in Her Majesty’s Privy Council, and the provisions of that Act having reference to the Powers of
General Board
of Health
transferred to

Privy Council.
21 & 22 Vict.
c. 97, s. 1.
How to be exercised.
Ib. s. 7.

Order, etc.,
how to be made.
Ib.

Signature of Orders in Council in the absence of the clerk in ordinary.
22 & 23 Vict.
c. 1.

Their authentication.
21 & 22 Vict.
c. 97, s. 7.

For what time regulations are to continue in force.
18 & 19 Vict.
c. 116, s. 6.
Publication of, in 'London Gazette.'
Ib. s. 7.
To be laid before Parliament.
Ib. s. 10.

Penalty for obstructing execution of Act.
Ib. s. 14.

General Board of Health and the regulations and directions issued by them, except section 13, which has ceased to be operative, are to be construed as referring to the Privy Council, and the regulations and directions issued by them. The powers so vested in the Privy Council are to be exercised by any three or more of the Lords and others of the Council, the Vice-president of the Committee of Council on Education being one of them; and all orders, regulations, directions, and acts of the Council under the Act shall be sufficiently made and signified by a written or printed document signed by one of the clerks of the Council, or such officer as may be appointed by the Council in that behalf.

By a subsequent Act, whenever Her Majesty shall, with the advice of Her Privy Council, make provision for the performance of the duties of the clerk of the Council in ordinary in the event of his absence, any person acting under the authority of the Order in Council in that behalf shall, in relation as well to the signing, certifying, and issuing of orders of Her Majesty in Council, or of the Lords and others of Her Majesty's Privy Council, under any Acts of Parliament, as to the other duties of the office, have and perform all the powers and functions, and be in the place of the clerk of the said Council in ordinary.

All orders, regulations, directions, and acts made or signified by any written or printed document purporting to be so signed, shall be deemed to have been duly made, issued, and done by the Privy Council, and are to be received in evidence in all Courts and before all justices and others without further proof, until it be shown that the document was not duly signed by the authority of the Privy Council.

The directions and regulations issued by the Privy Council may from time to time be revoked, renewed, or altered, as to the Council appears expedient, and are to continue in force only for so long a time as the provisions of the Act shall, under the Order in Council, be applicable. When issued they are to be published in the *London Gazette*, and the production of a copy of the *Gazette* in which they were published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes. They are also to be laid before both Houses of Parliament, forthwith upon their being issued, if Parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of Parliament.

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

But now by the Documentary Evidence Act, 1868, *prima facie* evidence of any proclamation, order, or regulation issued

before or after the passing of that Act by Her Majesty, or by the Privy Council, may be given in all Courts of justice, and in all legal proceedings whatsoever, in all or any of the following modes, that is to say :

- (1.) By the production of a copy of the *Gazette* purporting to contain such proclamation, order, or regulation.
- (2.) By the production of a copy of such proclamation, order, or regulation purporting to be printed by the Government printer.
- (3.) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty or by the Privy Council, of a copy or extract purporting to be certified to be true by the clerk of the Privy Council or by any one of the Lords or others of the Privy Council.

Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing, and no proof shall be required of the handwriting or official position of any person certifying, in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

If any person commits any of the offences following, that is to say,—

- (1.) Prints any copy of any proclamation, order, or regulation, which falsely purports to have been printed by the Government printer, or tenders in evidence any copy of any proclamation, order, or regulation which falsely purports to have been so printed, knowing that the same was not so printed ; or,
- (2.) Forges or tenders in evidence, knowing the same to have been forged, any certificate by the Act authorised to be annexed to a copy of or extract from any proclamation, order, or regulation ;

he shall be guilty of felony, and shall on conviction be liable to be sentenced to penal servitude for such term as is prescribed by the Penal Servitude Act, 1864, as the least term to which an offender can be sentenced to penal servitude, *i. e.*, five years, 27 & 28 Vict. c. 47, s. 2, or to be imprisoned for any term not exceeding two years, with or without hard labour.

§ 3. LOCAL AUTHORITIES AND THEIR POWERS.

Sects. 2 and 3 of the Diseases Prevention Act, 1855, and every other enactment constituting a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the 18 & 19 Vict. c. 120, the Metropolis Local Management Act, are repealed by the 10th section of the 23 & 34 Vict. c. 77.

The following are the local authorities for executing the Diseases Prevention Act.

Guardians of
the poor.
23 & 24 Vict.
c. 77, s. 11.
Overseers of
the poor.
Ib.

Guardians
defined.

Union of
local au-
thorities for
executing
Diseases
Prevention
Act.
29 & 30 Vict.
c. 90, s. 40.

The Board of Guardians for every union, or parish not within a union, in England, shall be the local authority for executing the Diseases Prevention Act in every place within their respective unions and parishes; and in every parish and place in England not within a union, and for which there is no Board of Guardians, the overseers of the poor shall be the local authority to execute the Act.

The 23 & 24 Vict. c. 77, being incorporated with the 18 & 19 Vict. c. 121, it follows that according to sect. 2 of that Act the term "guardians" includes "the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cognizance of any such officer arises."

By the Sanitary Act, 1866, where in any place two or more Boards of Guardians or local authorities have jurisdiction, the Privy Council may, by any order made under the Diseases Prevention Act, 1855, authorize or require such Boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof.

The above provisions was made because, where a borough or other place comprises parts of two or more unions, great difficulty arose from a conflict of authority, and the intention was to empower the Privy Council to enable the guardians of such unions to act jointly. The section would, however, fail in its object unless the word "place" is construed to mean a "city," "borough," or "town," comprising two or more unions. It has been so construed by the Privy Council in the case of the city of Oxford, to which the Council issued the following order:—

At the Council Chamber, Whitehall, the 5th day of September, 1866, by the Lords of Her Majesty's Most Honourable Privy Council. Present: Lord President, Mr. Secretary Walpole, Mr. Corry.

Whereas by "The Diseases Prevention Act, 1855," it is (among other things) enacted (sect. 5) as follows (reciting the section):

And whereas by an order, dated the 14th day of July, 1866, the Lords of the Council ordered that the provisions contained in "The Diseases Prevention Act, 1855," and the Act for amending the same in that order described, should, from and after the date of that order, be put in force within the whole and every part of England:

And whereas by "The Sanitary Act, 1866," it is (among other things) enacted (sect. 40) as follows (reciting the section as above):

And whereas in the city of Oxford, within the district under the authority of the Local Board of Health for the city, three Boards of Guardians, namely, the Board of Guardians of the incorporation of the united parishes of the city of Oxford, the Board of Guardians of the Headington Union, and the Board of Guardians of the Abingdon Union, have jurisdiction:

And whereas the said three Boards of Guardians have requested the Lords of the Council to make, with respect to them, such an order as is described in the last-recited enactment, which it seems to the Lords of the Council expedient to do:

Now, therefore, the Lords of Her Majesty's Most Honourable Privy Council, by virtue of the powers in this behalf by the recited enactments or otherwise in them vested, do order, and it is hereby ordered, as follows:—

1. Until it is otherwise ordered, the said three Boards of Guardians are

hereby authorized to act together for the purposes of "The Diseases Prevention Act, 1855," and the mode of such joint action, and of defraying the costs thereof, shall be such as is prescribed in the subsequent articles of this order.

2. Each of the said Boards may, by writing, under the hand of their clerk, with the consent of the others of the said Boards in writing, under the hands of their respective clerks, define the parts of their union within the district of the Local Board of Health for the city of Oxford to be comprised in this order, and may, in like manner, extend or alter the limits so defined, within the same district, from time to time as occasion requires.

3. A joint committee of management for executing this order shall be appointed, consisting of six members of the Oxford Board and four members of each of the other Boards.

4. The services of the medical and relieving officers of the three unions shall be had in common for the purposes of the joint action authorized by this order; and the relief administered to out-patients under this order shall be charged to the union to which such patients respectively belong.

5. The cost of erecting a temporary hospital (if that should become necessary) shall be borne by the three several unions in proportion to the rateable value of the parts of each union for the time being comprised in this order.

6. The cost of the treatment of patients in any such temporary hospital, or in the Oxford Workhouse Infirmary, shall be divided among the three unions according to the number of such patients belonging to each union.

7. If any difference arises with respect to the mode of execution of this order, or with respect to the mode of defraying the costs of the execution thereof, the same shall be referred to the determination of the Poor Law Board.

(Signed)

ARTHUR HELPS.

The expenses incurred in the execution of the Diseases Prevention Act by the Board of Guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the Board of Guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place.

Every such Board of Guardians shall, for the execution of the Act for the Prevention of Diseases, "have the like powers of appointing committees, with the like authority," and where any such committee is appointed the expenses thereof and of the Board shall be paid in the same manner as is provided where such a Board is the local authority for the execution of the Nuisances Removal Act; that is to say, "the expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor."

If, therefore, committees should be appointed for particular parishes in the union it will follow that the expenses which may be incurred by the committee will fall to be borne by the particular parishes, and not by the common fund of the union, as in the case of expenses incurred by the whole Board of Guardians.

In respect of any place where, under the 23 & 24 Vict. c. 77, Privy Council the local authority for executing the Nuisances Removal Act is any other body than the Board of Guardians or the overseers

Expenses
how to be
defrayed.
23 & 24 Vict.
c. 77, ss. 4, 11.

Appointment
of committees.
Ib. s. 11.
Expenses
how to be
defrayed.
Ib.
Ib. s. 4.

may sub-
stitute other

bodies as
local
authority.
23 & 24 Vict.
c. 77, s. 11.

of the poor, the Privy Council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the Board of Guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act. The other bodies who may be so authorized are those mentioned *ante*, p. 469. The manner in which the powers of the Privy Council are to be exercised under the Public Health Act, 1858, are specified in sect. 7 of that Act, *ante*, p. 554.

It does not seem that any provision is made for the payment of the expenses of the Local Board of Health if they should be substituted for the guardians of the union as the local authority under the Diseases Prevention Act within their district. Probably, however, they will be payable out of the general district rate. Still the district will not be absolved from the expenses incurred by the guardians throughout the union, as they are payable out of the common fund of the union.

The metro-
polis.
Ib.

As regards the metropolis, the vestries and district Boards under the Metropolis Management Act, 18 & 19 Vict. c. 120, within their respective parishes and districts, shall continue to be the local authorities for the execution of the Diseases Prevention Act, 1855, and their charges and expenses shall be defrayed as if the 23 & 24 Vict. c. 77, had not been passed. The powers of the vestries and district Boards in this respect, given by sect. 134 of the 18 & 19 Vict. c. 120, are therefore preserved to them by the 23 & 24 Vict. c. 77, s. 11.

In the City of London there are, however, neither vestries nor district Boards under the Local Management Act, and the Guardians of the three City of London Unions are therefore the local authority under the Diseases Prevention Act.

Power of
entry.
Ib. s. 4.

The local authority and their officers shall have "power of entry" for the purposes of the Act, and for executing or superintending the execution of the regulations and directions of the Privy Council issued under the Act (*ante*, p. 553).

Penalty for
obstructing
local
authority.
18 & 19 Vict.
c. 116, s. 14.

Whosoever wilfully obstructs any person acting under the authority, or employed in the execution of the Act, and whosoever wilfully violates any direction or regulation issued by the Privy Council, shall be liable to a penalty not exceeding £5; and probably that provision would apply in the case of the local authority or their officers being obstructed in the exercise of the power of entry given to them by the Act.

Execution of
directions
and regula-
tions of Privy
Council.
Ib. s. 8.

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

The local authority may also from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation; that is to say, the local authority is to take proceedings before the justices for the recovery of a penalty not exceeding £5 from whomsoever shall wilfully obstruct any person acting under the authority or employed in the execution of the Act, or shall wilfully violate any direction or regulation of the Privy Council issued under the Act.

Proceedings for the recovery of any such penalty are to be taken in the manner before stated with regard to penalties under the Nuisances Removal Act, 1855 (*ante*, p. 531), and the provisions of that Act with regard to the service of notices (*ante*, p. 529), and the proof of orders or resolutions of the local authority (*ante*, p. 529), are extended to the 18 & 19 Vict. c. 116.

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

The Poor Law Board, in their circular of October 10th, 1860, say that the expense so incurred will be chargeable upon the common fund in unions. They also say that they think that the legislature intended that this provision should not be limited to the period when the Board of Guardians are called upon to exercise their duties for the prevention of diseases under an Order in Council, but that it should be of general application. See, however, the new provision in 29 & 30 Vict. c. 90, s. 24, *ante*, p. 504.

§ 4. OFFICERS OF HEALTH.

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

The medical officer so appointed shall from time to time report to the Privy Council, in relation to any matters concerning the public health, or such matters as may be referred to him for that purpose, and also shall, in or before March in each year, report to the Privy Council the proceedings had and taken under the Act during the preceding year ending on the 31st day of December; which report is to be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if not, then within four

Legal proceedings.
18 & 19 Vict.
c. 116, s. 9.
Penalties.
Ib. s. 14.

Recovery of penalties.
Ib. s. 15.
Service of notices.
Ib.
Proof of orders, etc.
Ib.

Carriages for conveyance of infected persons.
23 & 24 Vict.
c. 77, s. 12.

Medical officer of Privy Council.
21 & 22 Vict.
c. 97, s. 4.
His duties.
Ib. s. 5.

Annual report.
Ib. s. 6.

teen days after the next meeting of Parliament, together with all other reports made by the medical officer under the Act, during the period to which the annual report relates.

Inquiries
concerning
public health.
21 & 22 Vict.
c. 97, s. 3.

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

Appointment
of officers
of health
under Local
Boards of
Health.
11 & 12 Vict.
c. 63, s. 40.

It will be seen in the former part of this work, *ante*, p. 64, that Local Boards of Health may from time to time, if they think fit, appoint a fit and proper person, being a legally qualified medical practitioner, or a member of the medical profession, to be and be called the officer of health. The person so appointed shall be removable by the Local Board, and the Act required that he should perform such duties as the General Board of Health should direct. As, however, the latter Board no longer exists, it would seem that the duties of the officer of health must be defined by the authority by whom he is appointed and by whom his salary is to be paid.

Officers of
health in the
metropolis.
18 & 19 Vict.
c. 120, s. 132.
Their duties.
Ib.

It will, however, ordinarily be expedient to require an officer of health to discharge the duties enumerated in the Metropolis Local Management Act; which enacts that every vestry and district Board in the metropolis shall, from time to time, appoint one or more legally qualified medical practitioner or practitioners, of skill and experience, to inspect and report periodically upon the sanitary condition of their parish or district; to ascertain the existence of diseases, more especially epidemics, increasing the rate of mortality; and to point out the existence of any nuisance or other local causes which are likely to originate and maintain such diseases, and injuriously affect the health of the inhabitants; and to take cognizance of the fact of the existence of any contagious or epidemic diseases, and to point out the most efficacious mode of checking or preventing the spread of such diseases; and also to point out the most efficient modes for the ventilation of churches, chapels, schools, lodging-houses, and other public edifices within the parish or district; and to perform any other duties of a like nature which may be required of him or them.

Ib.

The persons so appointed shall be called "medical officers of health;" and it shall be lawful for the vestry or district Board to pay to every such officer such salary as they shall think fit; and also to remove any such officer at the pleasure of the vestry or Board.

By the Towns Improvement Clauses Act, 1847, Commissioners under sect. 12 may, if they think fit, subject to the approval of a Secretary of State, appoint with a salary a person of competent skill and experience, who shall be styled "the officer of health," and who is to discharge the duties specified in the section. Unless, however, the Act be incorporated with any local Act applicable to the district it will not be in force. Sections 101

and 102 of the same Act also impose certain things to be done on the certificate of the officer of health with regard to the removal of filth, cleansing and purifying of houses.

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

Guardians of union empowered to procure sanitary reports. 23 & 24 Vict. c. 77, s. 14.

With reference to the foregoing the Poor Law Board, in their circular of Oct. 10, 1860, observe that:—

“Hitherto the Board of Guardians have not been able to obtain any sanitary report, except as regarded the poor in receipt of relief, unless through the voluntary and gratuitous communications of their medical officer. But henceforth they will be empowered to employ and remunerate him for the information which he can obtain and render to them in peculiar emergencies, when this information may be of great value, either in dispelling unfounded alarms, or in stimulating to exertion for the repression of local epidemic diseases.”

See also *ante*, p. 274, as to the appointment of an officer of Health under the 31 & 32 Vict. c. 130.

§ 5. MEDICAL AID TO SICK ON BOARD VESSELS.

Besides the regulations which the Privy Council may make for the purposes mentioned in the 18 & 19 Vict. c. 116, s. 6 (*ante*, p. 553), they are empowered to make regulations under the Act for the supply of medical aid to sick persons on board vessels. When such regulations are in force, and whenever, in compliance with them, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor (*i.e.*, medical officer of any union or parish, appointed by a Board of Guardians) shall perform any medical service on board any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed; and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick. It will, however, in most cases be impracticable for the medical officer to regulate his charge for such attendance in accordance with the scale of payment which he receives from the union or parish. With very few exceptions, the medical officers are paid by annual salaries for their attendance on the sick poor and the supply of medicines, and it is therefore manifestly impossible for them to regulate their charge for the casual services to be rendered to sick persons on board vessels by their rate of allowance from the union or parish. Again, the expression “general rate of allowance” is one of very uncertain meaning, it is indeed so general that it is not capable of being brought down to any standard of certainty. Any

Regulations. 18 & 19 Vict. c. 116, s. 12.

Payment of medical officer for services. *Ib.* s. 12.

Medical aid to sick on board vessels. *Ib.*

Medical aid
to sick on
board vessels.
18 & 19 Vict.
c. 116, s. 12.

reasonable expenses for the treatment of the sick are also to be paid by the captain of the vessel on behalf of the owners; but to whom such expenses are to be paid, or by whom or in what way the payment of them shall be enforced, or by whom they may be incurred, the Act fails to indicate, or to afford any clue.

Payment of
other medical
men for
services.
Ib.

A distinction is made between a medical man who is a union or parish medical officer and one who is not. The medical officer is restricted in his charges; at any rate the intention evidently was to restrict him to charge no more than he would be paid by the guardians if the persons on whom he attends on board ship were paupers; on the other hand, the Act enables the medical practitioner who is not a union or parish medical officer to charge for any service rendered on board ship, with extra remuneration on account of distance, at the same rate as he is in the habit of receiving from private patients of the class of those attended and treated on ship-board, to be paid by the captain on account of the owners; he is to be paid at the same rate as he is "in the habit of receiving, etc.;" therefore it will be for the medical attendant in case of dispute to prove what rate of payment he is in the habit of receiving from the class of persons referred to; at the same time, it will be observed from what follows, that the justices are empowered to determine summarily as to the amount which is reasonable, according to the accustomed rate of charges for attendance on patients of the like class.

Recovery of
sums
charged.
Ib.

If any charges made by either class of medical practitioners above mentioned be disputed, the dispute may, where the charges do not exceed £20, be determined summarily, at the place where the dispute arises, as in cases of seamen's wages not exceeding £50, according to the provisions of the law in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made. As regards the recovery of seamen's wages, it is enacted by the Merchant Shipping Act, 1854, that any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice, not exceeding £50 over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable. Every order made by the justices in the matter is final, and the time for commencing the proceeding for the recovery of the money is limited to six months after the cause of complaint arises. If the money be not paid, it may be recovered by distress and sale of the ship, her tackle, furniture, and apparel. Where the

17 & 18 Vict.
c. 104, s. 188.

Ib. s. 525.

Ib. s. 523.

charges exceed £20, the summary remedy for their recovery provided by the Act will not be available, and they must therefore be sued for in the County or in a superior Court.

§ 6. QUARANTINE.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the 6 Geo. IV. c. 78, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom. The Lords and others of Her Majesty's Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's principal Secretaries of State being one), may, by order or orders to be by them from time to time made, make such rules, orders, and regulations as to them shall seem fit, and every such order shall be certified under the hand of the clerk in ordinary of Her Majesty's Privy Council, and shall be published in the *London Gazette* and such publication shall be conclusive evidence of such order to all intents and purposes; and such orders shall be binding and be carried into effect as soon as the same shall have been so published, or at such other time as shall be fixed by such orders, with a view to the treatment of persons affected with cholera and epidemic, endemic, and contagious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of coasts thereof, as on land. The Privy Council may also declare and determine by what nuisance authority or authorities such orders, rules, and regulations shall be enforced and executed; and any expenses incurred by such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisance Removal Acts.

Description of vessels within Quarantine Act. 29 & 30 Vict. c. 90, s. 52.

All penalties imposed by the Act of the 6 Geo. IV. c. 78, may be reduced by the justices or Court having jurisdiction in respect of such penalties to such sum as the justices or Court think just.

Power to reduce penalties imposed by Quarantine Act. Ib. s. 51.

The Quarantine Act, 6 Geo. IV. c. 78, is necessarily applicable only to seaport towns, and is, moreover, only incidental to the principal subject of this work. See the Act in the Appendix, *post*.

§ 7. PUBLIC EXPOSURE OF PERSONS LABOURING UNDER INFECTIOUS DISEASES.

In point of law, if a person unlawfully, injuriously, and with full knowledge of the fact, exposes in a public highway a person infected with a contagious disease or disorder, it is a common nuisance, and indictable as such; as where a person was indicted

Public exposure of diseased persons.

Public exposure of diseased persons.

for unlawfully and injuriously carrying a child infected with the small-pox along a public highway in which persons were passing, and near to the habitation of the King's subjects. (1). So also if a person cause persons infected with a contagious disease to be carried along a public street; as where the defendant caused patients inoculated with the small-pox to be brought to his surgery whilst infected with the disease. (2) These were convictions for exposing on the King's highway persons infected with small-pox; but it is equally an offence indictable at common law to expose in public persons labouring under any other infectious disease, whereby the health of the public may be endangered.

Penalty on any person with infectious disorder exposing himself, or on any person in charge of such sufferer causing such exposure. 29 & 30 Vict. c. 90, s. 38.

But now by the Sanitary Act, 1866, any person suffering from any dangerous infectious disorder who wilfully exposes himself, without proper precaution against spreading the disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver, conveyed any such sufferer, and any person who without previous disinfection gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction of such offence before any justice, be liable to a penalty not exceeding £5: No such proceedings shall, however, be taken against persons transmitting with proper precautions any such bedding, clothing, rags, or other things for the purpose of having the same disinfected.

The nuisance authority are, under 29 & 30 Vict. c. 90, s. 23 (*ante*, p. 503), empowered to provide means of disinfection, and by sect. 24 (*ante*, p. 504), carriages for the conveyance of infected persons. See also sect. 25 of the same Act (*ante*, p. 504), imposing a penalty on any person suffering from infectious disorder entering a public conveyance without notice to the driver.

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

If any person knowingly lets any house, room, or part of a house in which any person suffering from any dangerous infectious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection. disinfected to the satisfaction of a qualified medical practitioner as testified by a certificate given by him, such person shall be liable to a penalty not exceeding £20. For the purposes of this provision the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn.

(1) *Rex v Barnett*, 4 M. & S. 272.

(2) *Rex v. Vantandillo*, 4 M. & S. 37.

§ 8. PUBLIC VACCINATION.

It is not necessary in this place to refer in detail to the provisions of the several statutes which have been passed to extend the practice of vaccination, as the local authorities (other than Boards of Guardians and overseers) acting in the matter of the removal of nuisances injurious to health are not concerned in the execution of those Acts. The Acts by which the practice of public vaccination were formerly regulated were, the 3 & 4 Vict. c. 29; 4 & 5 Vict. c. 32; 16 & 17 Vict. c. 100; 21 & 22 Vict. c. 25, s. 7; 21 & 22 Vict. c. 97, s. 2; and 24 & 25 Vict. c. 59. These statutes have now, however, been repealed, and public vaccination is now regulated by the Consolidated Statute, 30 & 31 Vict. c. 84 (The Vaccination Act of 1867).—See the Editions of this Act by Mr. Danby P. Fry, and Mr. A. C. Bauke.

With regard to the preventative powers of vaccination against small-pox, it suffices to say that there is no difference of opinion amongst medical men as to the value of vaccination in this respect; almost without exception they are agreed that the practice of vaccination is of the utmost importance as a protection from small-pox.

Every parent or person having the custody of a child who shall neglect to take such child or to cause it to be taken to be vaccinated, or after vaccination to be inspected, according to the provisions of the Act, and shall not render a reasonable excuse for his neglect, shall be guilty of an offence, and be liable to be proceeded against summarily, and upon conviction to pay a penalty not exceeding twenty shillings.

Penalty on parent, etc. neglecting to procure vaccination of the child. 30 & 31 Vict. c. 84, s. 29.

A person having been fined for neglecting to have a child vaccinated under the former Acts, it was held that no further proceedings could be taken against him though the child remained unvaccinated. (1)

But now, if any registrar, or any officer appointed by the guardians to enforce the provisions of this Act, shall give information in writing to a justice of the peace that he has reason to believe that any child under the age of fourteen years, being within the union or parish for which the informant acts, has not been successfully vaccinated, and that he has given notice to the parent or person having the custody of such child to procure its being vaccinated, and that this notice has been disregarded, the justice may summon such parent or person to appear with the child before him at a certain time and place, and upon the appearance, if the justice shall find, after such examination as he shall deem necessary, that the child has not been vaccinated, nor has already had the small-pox, he may, if he see fit, make an order under his hand and seal directing such child to be vaccinated within a certain time; and if at the expiration of such time the child shall not have been so vaccinated, or shall not be shown to be then unfit to be vaccinated, or to

Justices may make an order for the vaccination of any child under fourteen years. 30 & 31 Vict. c. 84, s. 31.

(1) *Pilcher v. Stafford*, 33 L. J. (N. S.) M. C. 113.

Penalty for disobedience.

be insusceptible of vaccination, the person upon whom such order shall have been made shall be proceeded against summarily, and, unless he can show some reasonable ground for his omission to carry the order into effect, shall be liable to a penalty not exceeding 20s.

Proviso for costs to person improperly summoned.

Provided that if the justice shall be of opinion that the person is improperly brought before him, and shall refuse to make any order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider to be a fair compensation for his expenses and loss of time in attending before the justice.

Half-yearly proceedings by registrars and guardians. 30 & 31 Vict. c. 84, s. 27.

The registrar of each district shall, within one week after the first day of January and the first day of July in each year, make a list of all cases in which certificates of vaccination have not been duly received by him during the last preceding half-year, and shall submit the same to the next meeting of the guardians of the union or parish wherein he acts, and the said guardians shall forthwith make inquiry into the circumstances of the cases contained in the list, and if they find that the provisions of the Act have been neglected shall cause proceedings to be taken against the persons in default.

Power to guardians to pay certain expenses out of their funds. Ib. s. 28.

The guardians of any union or parish may pay out of their funds all reasonable expenses incurred by them in causing notices to be printed and circulated as to the provisions of the Act, and in and about inquiries and reports as to the state of small-pox or vaccination in their union or parish, and in taking measures to prevent the spread of small-pox and to promote vaccination upon any actual or expected outbreak of that disease therein, and may pay any officer appointed by them to prosecute persons charged with offences against this Act, or otherwise to enforce its provisions.

Penalty upon persons inoculating with small-pox. Ib. s. 32.

Whilst the practice of vaccination is being encouraged to the greatest possible extent, it should be remembered that persons wilfully producing small-pox by any means are liable to severe punishment. It is enacted that any person who shall after the passing of this Act produce or attempt to produce in any person by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully by any other means whatsoever produce the disease of small-pox in any person, shall be guilty of an offence, and shall be liable to be proceeded against summarily, and upon conviction to be imprisoned for any term not exceeding one month.

Contagious Diseases Act, 1866.

The Contagious Diseases Act, 1866 (29 & 30 Vict. c. 35), provides for another class of contagious diseases. It is at present confined in its operation to certain naval and military stations; and its administration is left entirely to the naval and military authorities and to the police.

APPENDIX (A).

SANITARY AND LOCAL GOVERNMENT ACTS.

11 & 12 VICT. c. 63.

An Act for promoting the Public Health.

[31st August, 1848.]

WHEREAS further and more effectual provision ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and it is expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof, should, as far as practicable, be placed under one and the same local management and control, subject to such general supervision as is hereinafter provided: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act may from time to time be applied, in manner hereinafter provided, to any part of England and Wales, except the parts next hereinafter mentioned; (that is to say,) the City of London and the liberties thereof, the parts within the limits of certain Commissions of Sewers bearing date at Westminster the thirtieth day of November in the year of our Lord One thousand eight hundred and forty-seven, also the parts within the limits of a certain other Commission of Sewers bearing date at Westminster the fourth day of December in the year last aforesaid, and the parts subject to the jurisdiction of the Commissioners acting in the execution of an Act of the fifth year of the reign of King George the Fourth, for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, and in the execution of the several Acts for extending the jurisdiction of such Commissioners.

Part to which
this Act may
be applied.

II. And be it enacted, that in the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject-matter in which such words or expressions occur; (that is to say,)

Words importing the singular number shall include the plural Number:

	number, and words importing the plural number shall include the singular number :
Gender :	Words importing the masculine gender shall include females :
" Person :"	The word " person," and words applying to any person or individual, shall apply to and include corporations, whether aggregate or sole :
" Lands :"	The word " lands" and the word " premises" shall include messuages, buildings, lands, and hereditaments, of any tenure :
" Premises :"	
" Owner :"	The word " owner" shall mean the person for the time being receiving the rackrent of the lands or premises in connection with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent :
Rackrent :"	The expression " rackrent" shall mean rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises ; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent :
" Month :"	The word " month" shall mean calendar month :
" Commis- sioners of the Treasury :"	The expression " Commissioners of Her Majesty's Treasury" shall mean the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them, or the Lord High Treasurer of the United Kingdom of Great Britain and Ireland for the time being :
Superior Courts :"	The expression " Superior Courts" shall include Her Majesty's Superior Courts of Record at Westminster, and the Court of Common Pleas of the County Palatine of Lancaster, and the Court of Pleas of the County of Durham :
" Justice :"	The word " justice" shall mean any justice of the peace acting for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of the " justice," arises :
" Two Jus- tices."	The expression " two justices" shall mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police magistrate acting in any Police Court, for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of " two justices," arises :
" Court of General or Quarter Ses- sions :"	The expression " Court of General or Quarter Sessions" shall mean the Court of General or Quarter Sessions of the Peace having jurisdiction over the whole or any part of the district or place, as the case may be, in which the matter requiring the cognizance of the " Court of General or Quarter Sessions" arises :
" Arbitrators :"	The word " arbitrators" shall include a single arbitrator ; and the words " arbitrators" and " arbitrator" shall include an umpire :
" Oaths :"	The word " oath" shall mean and include an affirmation in the case of Quakers, and a declaration in the case of per-

sons allowed by law to make a declaration in lieu of an oath:

The expression "corporate borough" shall mean any corporate borough mentioned in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales," and any borough incorporated by charter granted or to be granted in pursuance of that or any subsequent Act: (1)

The word "district" shall mean the entire area, places or parts of places comprised within the limits of any district to which this Act or any part thereof shall be applied by Order in Council or provisional order of the General Board of Health, sanctioned by Parliament:

The expression "corporate district" shall mean a district which the powers, authorities, and duties of the Local Board of Health of the district are exercised and executed by the Council of a corporate borough:

The expression "noncorporate district" shall mean a district which the powers, authorities, and duties of the Local Board of Health of the district are not exercised and executed by the Council of a corporate borough:

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

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

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

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

The term "slaughter-house" shall mean and include the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for

(1) It is further enacted by the 12 & 13 Vict. c. 94, with respect to the terms "corporate borough" and "burgesses," as follows:—"§ 10. And be it declared and enacted, that the expression 'corporate borough' whenever used in the Public Health Act, 1848, shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the

Fourth, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' and to any city, borough, port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the word 'burgesses' wherever used in the said Public Health Act shall be construed to mean citizens in the case of a city."

Construction of certain expressions used in the Public Health Act, 1848.

slaughtering cattle, horses, or animals of any description for sale :

"Waterworks company:"

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

"Water-works:"

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

"The Local Board of Health:"

The expression "the Local Board of Health" shall mean the persons authorized to execute in each district all or any of the powers, authorities, and duties vested in or imposed upon the Local Board of Health by this Act :

"The clerk:" etc.

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

Mode of citing this Act.

III. And be it enacted that in citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Public Health Act, 1848."

IV. *General Board of Health to be constituted* (Expired).

V. *Power to General Board of Health to appoint officers and servants, subject to approval of Treasury, and to cause a seal to be made* (Expired).

VI. *Power to appoint superintending inspectors, subject to approval of Treasury* (Expired).

VII. *Power to Treasury to grant salaries, etc., to General Board of Health, superintending inspectors, etc.* (Expired).

Upon petition of a certain proportion of householders, etc., or when the deaths in any city, etc., appear, upon the Registrar-General's returns, to be above a certain proportion, superintending inspector to make local inquiry.

VIII.* And be it enacted, that from time to time after the passing of this Act, upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, parish, or place having a known or defined boundary, not being less than thirty in the whole, or where it shall appear or can be ascertained from the last return for the time being made up by the registrar-general of births, marriages, and deaths, from the deaths registered in a period of not less than seven years, that the number of deaths annually in any city, town, borough, parish, or place during the period in respect whereof such return shall have been made have on an average exceeded the proportion of twenty-three to a thousand of the population of such city, town, borough, parish, or place, the General Board of Health may, if and when they shall think fit, direct a superintending inspector to visit such city, town, borough, parish, or place, and to make public inquiry, and to examine witnesses, as to the sewerage, drainage, and supply of water, the state of the burial-grounds, the number and sanitary condition of the inhabitants, and as to any local Acts of Parliament in force within such city, town, borough, parish, or place, for paving, lighting, cleansing, watching, regulating, supplying with water, or improving the same, or having relation to the purposes of this Act, also

* Sections 8 to 11 are superseded by the 21 & 22 Vict. c. 98, *post*.

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

IX. And be it enacted, that before proceeding upon such inquiry the said inspector shall give fourteen days' notice of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of such inquiry, by advertisement in some one or more of the public newspapers usually circulated in the parts to which the inquiry will relate, and by causing such notice to be affixed on the doors of the principal churches, chapels, public buildings, and places where public notices are usually affixed within such parts, and in such other manner as may appear to the said inspector to be necessary; and so soon as can be after the completion of such inquiry he shall report in writing to the General Board of Health, in such manner as they may direct, upon the several matters with respect to which he has been directed to inquire as aforesaid, and upon any other matters with respect to which he may deem it expedient to report for the purposes of this Act; and if upon such report it appear to the said General Board that the boundaries which may be most advantageously adopted for the purposes of this Act are not the same as those of the city, town, borough, parish, or place with respect to which inquiry has been made, they shall cause the same or some other superintending inspector to visit the parts within the boundaries proposed to be adopted for the purposes of this Act, and after having given such notice as is hereinbefore prescribed, to hear all persons desirous of being heard before him upon the subject of the said report, and to make such further inquiry and report to the said Board as they may direct; and upon the presentation of such report or further report, the said Board shall cause copies thereof respectively to be published in the parts to which such report or further report respectively relate, in such manner as they may direct, and shall also cause other copies thereof respectively to be deposited with the town-clerk of any corporate body affected thereby, and with the clerk to the commissioners or trustees acting under any local Act of Parliament in force within such parts for lighting, paving, cleansing, watching, regulating, supplying with water, or improving such parts or any of them, or in anywise relating to the purposes of this Act, and with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the Board of Guardians of the union or parish the whole or part of which may be affected thereby; and if such report or further report relate to parts not being within any corporate borough, the said Board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and the copies so published or deposited shall be accompanied by a notice stating that within a certain time, not being less than one month from the time of such publication and deposit, written statements may be forwarded to the said Board with respect to any matter con-

Inspector to give notice of inquiry, and report to General Board the result of the same.

Upon such report General Board may, if they think fit, cause inspector to make further inquiries respecting boundaries, and present a further report, which shall be published, etc.

tained in or omitted from the said report or further report, or any amendment proposed to be made therein; and all such statements shall be deposited with such town clerk, clerk to justices, clerk to the Board of Guardians, and with such churchwardens or overseers respectively, in like manner as the said copies, and shall, together with such copies, be open to public inspection from the hour of eleven in the forenoon till the hour of three in the afternoon every day during the time specified in the last mentioned notice, Sundays, Christmas-days, Good Fridays, and days appointed for general fasts or thanksgivings only excepted; and any town clerk, clerk to justices, clerk to the Board of Guardians, churchwardens, or overseers who shall refuse to receive any document or copy of any document directed to be deposited with him or them, as aforesaid, or to allow such inspection, shall be liable for every such offence to a penalty not exceeding five pounds; and after the expiration of such last mentioned notice the said Board may, if they think fit, direct such further inquiry and report as to them may seem necessary and proper.

Cases in which
Act shall be
put in force by
Order of Her
Majesty in
Council.

X. And be it enacted, that if after such inquiry, or further inquiry as aforesaid, it appear to the said General Board of Health to be expedient that this Act or any part thereof should be applied to the city, town, borough, parish, or place with respect to which inquiry has been made, upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local Act of Parliament in force for paving, lighting (otherwise than for the profit of proprietors or shareholders), cleansing, watching, regulating, supplying with water, or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this Act, they shall report to Her Majesty accordingly; and at any time after presentation of such report it shall be lawful for Her Majesty, by and with the advice of her Privy Council, to order that this Act or any part thereof shall be applied to and be put in full force and operation within such city, town, borough, parish, or place; and if after such inquiry or further inquiry as aforesaid it appear to the said General Board to be expedient that this Act or any part thereof should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded, or within boundaries where no petition has been presented from such inhabitants as aforesaid, or within any city, town, borough, parish, or place in which any such local Act of Parliament as aforesaid is in force, they shall make a provisional order (1) under their hands and seal of office accordingly,

Cases in which
Act shall be
put in force by
provisional
order of
General Board,
and sanctioned
by Parliament.

Printed copies
of provisional
orders to be
delivered to
both Houses of
Parliament.

General Board
to furnish
copies of pro-
visional orders
to parties re-
quiring the
same.

(1) The 12 & 13 Vict. c. 94, s. 9, enacted "That every provisional order issued by the General Board of Health relating to any city, borough, or place, which shall be included under or enumerated in the schedule of any Bill for confirming certain provisional orders of the General Board of Health, shall be printed, and printed copies thereof shall be delivered to the doorkeepers of both Houses of Parliament, for the use of the Members of such Houses

respectively, before the first reading of such Bill." And the 13 & 14 Vict. c. 90, s. 4, "That whenever under the provisions of the Public Health Act, 1848, any Bill has been or shall be brought into Parliament for the confirming of any provisional order of the General Board of Health, a copy or copies of every order included in the schedule of such Bill shall be furnished by the said General Board to all parties applying for the same

with such provisions, regulations, conditions, and restrictions with respect to the application and execution of this Act or any part thereof, and with respect to any such local Act and the repeal, alteration, extension, or future execution of the same, and in all respects whatsoever as they may think necessary under all the circumstances of the case; and such provisional order shall be published in the parts to which the same relates in such manner as the said General Board may direct, and shall be deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any such local Act; also with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the Board of Guardians of the union or parish the whole or part of which may be affected thereby; and if such provisional order relate to parts not being within any corporate borough, the said Board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and in case it shall be enacted by any Act of Parliament hereafter to be passed that the whole or part of any provisional order or orders of the General Board of Health shall be confirmed and be absolute, the whole or part of such provisional order or orders which shall be so confirmed shall be as binding and of the like force and effect as if the same had been expressly enacted by Parliament, and every such Act shall be deemed a Public General Act; but no such provisional order shall have any force or effect, nor shall this Act or any part thereof be applied in either of the cases last aforesaid, except for the purposes of such inquiry, further inquiry, report, or provisional order, without the previous authority of Parliament; and no such provisional order, or any altered or amended order, shall be made with respect to any local Act of Parliament under which any waterworks company is empowered to construct waterworks or supply water for their own profit, without the consent of the waterworks company empowered by such local Act first had and obtained: provided always, that except for the purposes of main sewerage, no corporate borough or any part thereof shall be included in any district not exclusively consisting of the whole or part of one such borough without the previous consent of the Council under the common seal of the borough; but nothing herein contained shall be construed to require such consent to the constitution of a district exclusively consisting of the whole or part of one such borough for all or any of the purposes of this Act, nor to hinder or prevent the application of all or any of the provisions of this Act to parts exclusively consisting of the whole or part of one such borough, although the same parts or any of them may have been already included within a district for the purposes of main sewerage: provided also, that, except for the purposes of main sewerage, no parts beyond the boundaries of a corporate borough shall be included in any district comprising the whole or part of any such borough, except upon the petition of a majority of the owners of property and ratepayers who would

Exception with respect to certain local Acts for supplying water. Consent of Town Council, etc., in certain cases.

between the hours of eleven and five, at the office of the said General Board, or by letter addressed to the said Board, on payment by such parties

of the cost of making or furnishing such copy or copies. *See also* 21 & 22 Vict. c. 98, s. 75, No. 5, s. 77, No. 6, and s. 78, *post*.

be qualified to vote in the election of members of a Local Board of Health for the parts proposed to be so included; but nothing herein contained shall be construed to require such petition in order to the constitution of a district exclusively consisting of parts not within the boundaries of any such borough, nor to hinder or prevent the application of all or any of the provisions of this Act to a district exclusively consisting of such last mentioned parts, although the same parts or any of them may have been already included within a district for the purposes of main sewerage.

Costs of preliminary inquiry, etc., with consent of Treasury, to become a charge upon the General District Rates.

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

Town Council to be the Local Board in districts consisting of one borough, etc.
Selection, etc., of Local Boards by Town Councils.

XII. And be it enacted, that in every district exclusively consisting of the whole or part of one corporate borough, the mayor, aldermen, and burgesses of such borough shall be by the Council of the borough, within and for such district, the Local Board of Health under this Act, and such Council shall exercise and execute the powers, authorities, and duties of such Local Board, according to the laws for the time being in force with respect to municipal corporations in England and Wales; and in every district exclusively consisting of two or more of such boroughs, or of one or more of such boroughs and also of part of any other such borough or boroughs, or exclusively consisting of part of two or more of such borough or boroughs, the mayors for the time being of the boroughs whereof the whole or part is within such last mentioned district, and such number of other persons as shall be fixed by such provisional order as aforesaid to be selected by each of such Councils respectively out of their own number, or from persons qualified to be councillors of the borough in respect of which the selection is to be made, and shall be named and selected by such Councils accordingly, shall, within and for such district, be the Local Board of Health under this Act; and in every district comprising the whole or part of any such borough or boroughs and also parts not within the boundaries of any such borough, the mayor or mayors for the time being of the borough or boroughs whereof the whole or part is within such last mentioned district, and such number of other persons as shall be fixed by such provisional order to be selected by such Council or each of such Councils respectively out of their own number, or from the persons qualified to be councillors of the borough in respect whereof the selection is to be made, and shall be named and selected by such Council or Councils accordingly, shall, together with such number of persons as shall be elected as hereinafter mentioned in

Selection of part of Local Board by Town Councils, and part by owners and ratepayers.

respect of such noncorporate parts, be, within and for such district, the Local Board of Health under this Act; and the first selection by any such Council in pursuance of this Act shall be made on a day to be appointed by Parliament; and each person selected by the Council out of their own number shall be a member of the Local Board with which he is selected to act so long as he continues without re-election to be a member of the Council from whom he was selected, and no longer; and each person selected by the Council otherwise than out of their own number shall be a member of the Local Board with which he is selected to act for one year from the date of his selection, and no longer; and in case of any vacancy in the number selected, some other person or persons (as the case may require) shall be selected by the Council by whom the person or persons causing the vacancy was or were selected, within one month after the occurrence of the vacancy; and the meeting of any Council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of an Act passed in the sixth year of the reign of King William IV., intituled "An Act for the Regulation of Municipal Corporations in England and Wales."

5 & 6 Will. IV.
c. 76.

XIII. And be it enacted, that in every district comprising the whole or part of any corporate borough or boroughs as aforesaid, and also any part or parts not within the boundaries of any corporate borough or boroughs, such number of persons, qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid to be elected for such part or parts or for each of such parts respectively, shall from time to time be elected in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, together with the persons selected as aforesaid in respect of the corporate parts of such district, and shall be, within and for such district, the Local Board of Health under this Act; and in every district not comprising the whole or part of any corporate borough or boroughs, but being a district to which this Act may be applied by Order of Her Majesty in Council, such number of persons, qualified as hereinafter prescribed in this behalf, as shall be fixed by such Order in Council, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the Local Board of Health under this Act; and in every district not comprising the whole or part of any corporate borough or boroughs, and being a district to which this Act cannot be applied without the authority of Parliament, such number of persons, qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the Local Board of Health under this Act; and the first election for any district or part of a district shall take place on a day to be appointed by Order of Her Majesty in Council or by Parliament (as the case may require); and one-third of the number elected for the whole or any part or parts of a district respectively shall go out of office on such day in each year (1) subsequently to

Election of
members of
Local Board by
owners and
ratepayers.

(1) It is enacted by the 15 & 16 Vict. c. 42, s. 14, that "The word 'year' shall, for the purpose of the Interpretation election of Local Boards of Health of 'year.'"

that of the first election as shall be appointed by such Order in Council or provisional order as aforesaid (as the case may require); and the order in which the persons first elected shall go out of office shall be regulated by each Local Board: provided always, that if the number of persons to be elected be not divisible by three the proportion to go out of office in each year shall be regulated by such Order in Council or provisional order (as the case may require) so that as nearly as may be one-third shall go out of office in each year; and if the number of persons to be elected for any part of a district be less than three the persons elected shall go out of office on such day in each year, or at such other period, not being less than a year, as such Order in Council or provisional order (as the case may require) shall direct; but no person elected shall in any case continuously remain in office for more than three years; and on the days appointed for going out of office a number of persons shall be elected equal to the number of those so going out; and so many others as may be necessary to complete the full number of the Local Board of Health in respect of which the election is to be made.

Regulations as to the number of persons to be selected or elected members of Local Boards.

In case of vacancies, remaining members may act.

Persons both selected and elected, etc., to serve in respect of one title only.

Members elected for part of a sewerage district to constitute separate Board for other purposes of the Act.

XIV. And be it enacted, that the number of persons to be selected or elected for the whole or any part of a district shall from time to time be regulated by such Order in Council or provisional order as aforesaid (as the case may require), due regard being had to the size and circumstances of each district, as may appear to be just and proper; and that any member of the Local Board of Health, after going out of office, resigning, or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected (as the case may require); and in the event of any vacancy in the number of persons elected, by death, resignation, or otherwise, between the times appointed for election as aforesaid, or if at any time the said Local Board be without its full number of members, the remaining members shall continue and be as competent to act until the time appointed for election, or until the full number is selected or elected (as the case may require), as if no vacancy had occurred; and if any person be both selected and elected to be a member of the Local Board of Health, he shall, within three days after notice thereof from the clerk, choose, or in default of such choice the Local Board of which he is so selected and elected to be member shall determine the title in respect of which he shall serve, and immediately upon such choice or determination the person so selected and elected shall be deemed to be a member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

XV. Provided always, and be it enacted, that if any corporate borough or part thereof be included only for the purposes of sewerage in any district comprising any part or parts not within the boundaries of any such borough, and the last mentioned part or parts, or any of them, be constituted a district or districts for any other purposes of this Act, the persons elected for such sewerage district shall, within and for the separate district within which they shall have been so elected, be and constitute the Local

acting in execution of the Public Health Act, 1848, and of the continuance in office of the members of such Boards,

be taken to mean the interval between any day of election of any such Board and the day of election next ensuing."

Board of Health in the same manner and as fully to all intents and purposes as if they had been expressly elected to constitute the same.

XVI. And be it enacted, that every person elected as aforesaid shall, at the time of his election, and so long as he shall continue in office by virtue of such election, be resident within the district for which or for part of which he is elected, or within seven miles thereof, and be seised or possessed of real or personal estate, or both, to such value or amount as shall be fixed by such Order in Council or provisional order as aforesaid (as the case may require), within the limits next hereinafter provided, or be so resident, and rated to the relief of the poor of some parish, township, or place, of which some part is within such district or part of a district, upon such annual value as shall be fixed by such Order in Council or provisional order (as the case may require), within the limits next hereinafter provided: provided always, that it shall not be lawful to require that any person be seised or possessed as aforesaid to a value or amount exceeding One thousand pounds, or to require that any person be rated upon an annual value exceeding Thirty pounds; provided also, that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property which if equally divided between them would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated, may be elected; but the same property shall not at the same time qualify both the owner and the occupier thereof.

Qualification
of elected
members.

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

Declaration to
be made by
members of
Local Boards
before acting.

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

"(Signed) A. B.

Made before us, C. D. and E. F., Members of the Local Board of Health for the District of this day of]."

And such Declaration shall be made and signed by the person making the same, and shall be filed and kept by the clerk; and any person who shall falsely or corruptly make and subscribe the said Declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

False declara-
tion a mis-
demeanour.

XVIII. And be it enacted, that any person elected as aforesaid, or selected by any Council otherwise than out of their own number, who neglects to make and subscribe the Declaration required by this Act for the space of three months next after his selection or election, and any person selected or elected under this Act who during three successive months is absent from all meetings and committees of the Local Board of Health of which he is elected or selected to be a member, shall be deemed to have refused to act,

Person neglect-
ing to make
declaration or
to act for three
months to cease
to be a mem-
ber.

Disqualifica-
tions,

and shall cease to be a member of such Local Board, and his office as such shall thereupon become vacant.

XIX. And be it enacted, that no bankrupt, insolvent, or other person not qualified as aforesaid shall be capable of being elected as aforesaid; and if any person, after being so elected or selected by any Council otherwise than out of their own number, shall lose or discontinue to hold his qualification, or shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief or protection of insolvent debtors, or shall compound with his creditors, or if any member selected or elected under this Act shall accept or hold any office or place of profit under the Local Board of Health of which he is member, or shall in any manner be concerned in any bargain or contract entered into by such Board, or participate in the profit thereof, or of any work done under the authority of this Act in or for the district for which he is member, then and in every such case such person shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant; and any person who, not being duly qualified to act as member of the said Local Board, or who has not made and subscribed the Declaration required of him by this Act, or who after being disqualified or disabled from acting by any provision of this Act shall so act, shall for every such offence be liable to a penalty of Fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; and in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member; and the burden of proving qualification, and the making and subscription of the Declaration, or negating disqualification, by reason of non-residence, or not being seised or possessed of the requisite real or personal estate, or both, shall be upon the defendant: provided always, that no person, being a proprietor, shareholder, or member of any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature, shall be disabled from being, continuing, or acting as member of the said Local Board by reason of any contract into between such company or concern and such Board; but no such person shall vote as a member of the said Local Board upon any question in which such company or concern is interested: provided also, that all acts and proceedings of any person disqualified, disabled, or not duly qualified as aforesaid, or who has not made and subscribed the said Declaration, shall, if done previously to the recovery of the last-mentioned penalty, be valid and effectual to all intents and purposes whatsoever.

Qualification
of electors, and
scale of voting.

XX. And be it enacted, that at every such election as aforesaid the ratepayers in respect of property in the district or part of a district for which the election is held, and the owners of such property, shall be entitled to vote according to the scale following; (that is to say,) if the property in respect of which the person is entitled to vote be rated upon a rateable value of less than fifty pounds he shall have one vote, if such rateable value amount to fifty pounds and be less than one hundred pounds he shall have two votes, if it amount to one hundred pounds and be less than one hundred and fifty pounds he shall have three votes, if it amount to one hundred and fifty pounds and be less than two

hundred pounds he shall have four votes, if it amount to two hundred pounds and be less than two hundred and fifty pounds he shall have five votes, and if it amount to or exceed two hundred and fifty pounds he shall have six votes; and any person who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation; and the votes shall be given, taken, collected, and returned according to the directions hereinafter contained; and the majority of the votes actually collected and returned shall be binding on the district or part of a district for which the election is had; and whosoever shall not vote or shall not comply with such directions shall be omitted in the calculation of votes, and be deemed to have had no vote: provided always, that the word "owner" and "owners," when used in this Act in relation to the right of voting at any election under this Act, shall respectively be construed to mean any person or persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor, and not let to him or them at a rackrent, or any person or persons receiving, either on his or their own account, or as mortgagee or mortgagees, or other incumbrancer or incumbrancers, in possession, the rackrent of any such property; and no person shall be deemed a ratepayer or be entitled to vote as such at any such election unless he shall have been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and shall have also paid all rates made upon him for the relief of the poor in such district or part of a district for the period of one whole year, and shall have also paid all such rates, and all rates due from him under this Act, before that day, in such district or part of a district, except rates which shall have been made or become due within the six months immediately preceding: provided also, that in case of property belonging to a corporation aggregate, or to a joint-stock or other company, or to any body of proprietors or undertakers, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be one owner for the purpose of voting under this Act, and shall vote by proxy appointed in writing under the common seal (in case of a corporation), or (in any other case) under the hands of three directors or other persons in the direction or management of the company or concern; and no member of such corporation, nor any proprietor or person interested in such company or concern, shall be entitled to vote individually as owner in respect of such property; and no owner whosoever shall be entitled to vote as such, unless, fourteen days at least previously to the day of tendering his vote, he shall have delivered to the clerk, or (in case of the first election) to such person within the district in which the qualification to vote is situate as shall be directed by such Order in Council or provisional order (as the case may require), a statement in writing of his name and address, and containing a description of the nature of his interest or estate in the property giving the qualification, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay the same; and no such corporation aggregate, joint-stock or other company, body of proprietors or undertakers, shall be entitled to vote unless such statement contain the

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

Elections, by
whom to be
conducted.

name and address of the proxy appointed, and a true copy of the appointment of such proxy.

XXI. And be it enacted, that at every election by owners of property and ratepayers under this Act the chairman of the Local Board of Health, or, in case of the first election, such person as shall be appointed by Order of Her Majesty in Council, or by provisional order of the General Board of Health (as the case may require), shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act; and in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed, or in case the chairman or person appointed as last aforesaid, from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed (in case of the first election) by such Order in Council or provisional order, or (in any other case) by the Local Board of Health, shall exercise or perform such of the said powers and duties as then remain to be exercised or performed; and the said Local Board, or (in case of the first election) the person appointed by such Order in Council or provisional order, shall, before or during the election, appoint a competent number of persons to assist and attend upon the chairman or the person so appointed (as the case may require) in conducting and completing the same.

Production of
parochial books,
etc., for pur-
poses of elec-
tion.

XXII. And be it enacted, that the clerk of the Board of Guardians of any Union, and the overseers or other officers of every parish, wholly or in part within the parts for which any such election shall be held, and having the custody of any books or papers relating to the election of guardians of the poor, or the poor-rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the said chairman, or (in case of the first election) by any person appointed by such Order in Council or provisional order as aforesaid; and the said chairman may, if he shall see fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

List of voters,
etc., to be
made, if neces-
sary.
Publication
of notices
previously to
election.

XXIII. And be it enacted, that the said chairman shall, before every such election, prepare, sign, and publish a notice, which shall contain the particulars following; (that is to say,) the number and qualification of the persons to be elected, the persons by whom and the places where the nomination papers hereinafter mentioned are to be received, and the last day on which they are to be sent, the mode of voting in case of a contest, and the days on which the voting papers will be delivered and collected, and the time and place for the examination and casting up of the votes; and he shall also cause such notice to be affixed on such places in the parts for which the election is to be held as are ordinarily made use of for affixing thereon notices of parochial business: provided always, that whenever the day appointed for the performance of any act in relation to any such election shall be on a Sunday, Christmas-day, or Good Friday, or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following.

XXIV. And be it enacted, that any person entitled to vote may

nominate for the office of member of the Local Board of Health himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected); and every such nomination shall be in writing, and shall state the names, residence, calling, or quality of the persons nominated, and shall be signed by the party nominating, and be sent to the said chairman; and if the number of persons nominated shall be the same or less than the number of persons to be elected, such person (if duly qualified) shall be deemed to be elected, and shall be certified accordingly by the said chairman under his hand; but if the number so nominated exceed the number to be elected, the said chairman shall cause voting papers, in the form contained in the schedule (A) to this Act annexed, to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated; and the said chairman shall, three days before the day of election, cause one of such voting papers to be delivered by the persons appointed for that purpose to the address in the parts for which the election is to be held of each owner and proxy, and at the residence of each ratepayer entitled to vote therein: provided always, that if any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the Local Board of Health, and if in consequence of such refusal the number of persons nominated shall be the same as or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand.

Nomination
and election of
candidates.

XXV. And be it enacted, that each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper; and when any person votes as a proxy he shall in like manner write his own initials, and sign his own name, and state also in writing the name of the corporation, company, or body of proprietors or undertakers for which he is proxy: provided always, that if any voter cannot write he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

Mode of voting.

XXVI. And be it enacted, that the said chairman shall cause the voting papers to be collected on the day of election by the persons appointed or employed for the purpose in such manner as he shall direct; but no voting paper shall be received or admitted unless the same have been delivered at the address or residence as aforesaid of the voter within the parts for which the election is had, nor unless the same be collected by the persons appointed or employed for that purpose, except as next hereinafter provided: provided always, that if any person qualified to vote shall not have received a voting paper as aforesaid, he shall, on application before that day to the said chairman, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him: provided also, that in case any voting paper duly delivered shall not have been collected,

Regulations as
to collection of
voting papers.

through the default of the said chairman, or the persons appointed or employed to receive the same, the voter in person may deliver the same to the said chairman before twelve o'clock at noon on the day, or the first day (as the case may be) appointed for the examination and casting up of the votes.

Regulations
as to examina-
tion of votes
and elections
of Local Boards.

XXVII. And be it enacted, that the chairman shall on the day immediately following the day of the election, and on as many days immediately succeeding as may be necessary, attend at the office of the Local Board of Health, and ascertain the validity of the votes, by an examination of the rate-books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate; and the candidates to the number to be elected who, being duly qualified, shall have obtained the greatest number of votes shall be deemed to be elected, and shall be certified as such by the said chairman under his hand; and to each person so elected the said chairman shall send or deliver notice of such election; and the said chairman shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting paper which he shall have received, to the Local Board of Health at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward; and the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made.

Notice to be
sent to persons
elected.

List of persons
elected, etc.,
to be trans-
mitted to Local
Boards, who
shall deposit
the same,
which shall
be open to
inspection.

Penalty upon
persons con-
ducting elec-
tions neglecting
to comply
with provisions
of this Act.

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

Defects in elec-
tions, etc., not
to invalidate
proceedings.

XXIX. And be it enacted, that all proceedings of the Local Board of Health, and of any person acting as member or under the authority thereof, shall, notwithstanding any defect in the selection or election of such Board or any member thereof, be as valid and effectual as if no such defect had ever existed.

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

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

XXXI. Provided always, and be it enacted, that nothing hereinbefore contained with respect to the appointment, selection, or election of any Local Board of Health, or member thereof, shall apply to the city of Oxford, or the parts within the jurisdiction of the Commissioners for amending certain mileways leading to Oxford, and making improvements in the University and City of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement (which Commissioners are hereinafter called the Oxford Commissioners), or to the borough of Cambridge, or the parts within the jurisdiction of the Commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third, for amending and enlarging the powers of a former Act of the same reign, for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing of obstructions and annoyances, and for widening the streets, lanes, and other passages, within that town (which Commissioners are hereinafter called the Cambridge Commissioners); and if the city of Oxford, or the parts within the first-mentioned jurisdiction, become a district under this Act, the same shall be called the Oxford district, and the said Oxford Commissioners for the time being shall, within and for such district, be the Local Board of Health under this Act; and if the borough of Cambridge, or the parts comprised within the jurisdiction secondly above mentioned, become a district under this Act, the same shall be called the Cambridge district, and the said Cambridge Commissioners for the time being shall, within and for such district, be the Local Board of Health under this Act.

Local Board of Health in Oxford and Cambridge to consist of Oxford and Cambridge Improvement Commissioners.

52 Geo. III.

c. lxxi.

34 Geo. III.

c. civ.

XXXII. And be it declared and enacted, that whenever by any such provisional order as aforesaid the Commissioners or trustees acting under any local Act of Parliament are constituted the Local Board of Health under this Act, such Commissioners or trustees shall, within and for the district to which such provisional order applies, exercise and execute the powers, authorities, and duties vested in or imposed on the Local Board of Health by this Act, and so much of this Act as relates to the appointment, election, or selection of Local Boards of Health shall not apply to such district.

With respect to the execution of the Act by Commissioners under Local Acts in other cases.

XXXIII. And be it enacted, that if, after the application of this Act to any district, the parts constituting the district shall afterwards become or be entirely comprised within the limits of a corporate borough, the mayor, aldermen, and burgesses of such borough shall [from and after such day as shall have been specified in the charter of incorporation in this behalf (1)] be, by the Council of the borough, the Local Board of Health within and for such district; and [in case any day shall have been so specified, but not otherwise (1)] the powers, authorities, duties, properties, and liabilities of any other persons as such Local Board shall [from and after that day (1)] absolutely cease and determine, and be vested in such mayor, aldermen, and burgesses, as fully to all intents and purposes as if they had always been the Local Board of Health from the time when the district was originally constituted.

Local Board of Health, in case of a district afterwards becoming a corporate borough.

XXXIV. And be it enacted, that the Local Board of Health of

(1) The parts of this section between brackets were repealed by the 21 & 22 Vict. c. 98, s. 26.

Meetings of
Local Boards
of noncorporate
districts, and
regulation of
business, etc.

every noncorporate district shall hold an annual meeting, and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing its powers and duties under this Act, and shall from time to time make bye-laws with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business by such Board under this Act: provided always, that no business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, except in either of the districts to be called the Oxford and Cambridge districts, in which cases business may be transacted if at least seven members be present; and all questions shall be decided by a majority of votes; and the names of the members present, as well as of those voting upon each question, shall be recorded; and the said Local Board shall at their first meeting under this Act, and afterwards from time to time at their annual meeting, appoint one of their number to be chairman for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat; and in case the chairman appointed as first aforesaid die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer; and the chairman at any meeting shall have a second or casting vote in case of an equality of votes; but nothing herein contained with respect to the appointment of chairman shall apply to any district to be called the Oxford or Cambridge district, and in such districts the Oxford or Cambridge Commissioners respectively shall appoint a chairman as heretofore.

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

XXXV. And be it enacted, that the Local Board of Health shall from time to time provide and maintain such offices as may be necessary for transacting their business and that of their officers and servants under this Act, and (in the case of a noncorporate district) shall cause to be made a seal for the use of such Board in the execution of this Act; and documents or copies of documents purporting to proceed from the said Local Board, and to be signed by any five or more members thereof, and to be sealed or stamped with such seal, or (in the case of a corporate district) to be sealed with the common seal, shall be received as *prima facie* evidence in all Courts and places whatsoever.

Committees
may be ap-
pointed.

XXXVI. And be it enacted, that the Local Board of Health may from time to time appoint out of their own number so many persons as they may think fit, for any purposes which in the opinion of the said Local Board would be better regulated and managed by means of a committee: provided always, that the acts of every such committee shall be submitted to the said Local Board for their approval.

Power to Local
Boards to ap-
point surveyor,
inspector of

XXXVII. And be it enacted, that the Local Board of Health shall from time to time appoint fit and proper persons to be surveyor, inspector of nuisances, clerk, and treasurer for the purposes of this Act, and shall appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and shall make bye-laws for regula-

ting the duties and conduct of the several officers and servants so appointed or employed; and the said Local Board may pay, out of the general district rates to be levied under this Act, to such officers and servants, such reasonable salaries, wages, or allowances as the said Local Board may think proper; and every such officer and servant shall be removable by the said Local Board at their pleasure, subject, nevertheless, in the case of the removal of the surveyor, to the approval of the General Board of Health (1): provided always, that the same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of treasurer; and whosoever offends in any of the cases enumerated in this proviso shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt.

nuisances,
clerk, trea-
surer, etc.

Same person
may be sur-
veyor and
inspector of
nuisances, but
not clerk and
treasurer.

XXXVIII. And be it enacted, that no officer or servant appointed or employed by or under the Local Board of Health shall in anywise be concerned or interested in any bargain or contract made with such Board for the purpose of this Act; and if any such officer or servant be so concerned or interested, or shall, under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt.

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

XXXIX. And be it enacted, that before any such officer or servant enters upon any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the Local Board of Health by whom he is appointed shall require and take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof; and every such officer or servant employed in the collection of rates under the authority of this Act shall, within seven days after he shall have received any moneys on account of such rates, pay over the same to the treasurer, and shall, as and when the said Local Board may direct, deliver a list, signed by him, containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them; and every officer and servant appointed or employed by or acting under the said Local Board shall respectively, when and in such manner as shall be required by such Board, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such moneys have been disposed of; and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him upon the balance of

Officers, etc.,
entrusted with
money to give
security, and
to account.

(1) See 21 & 22 Vict. c. 98, s. 8, *post*.

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

accounts; and if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such moneys as aforesaid, or if for the space of five days after being thereunto required he fail to deliver up to the said Local Board all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this Act, or belonging to such Board, then and in every such case a justice shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices at a time and place to be specified in the summons; and upon the appearance of the party charged, or upon proof that the summons was personally served upon him, or left at his last known place of abode or business, and if it appear to the last-mentioned justices that he has failed to render any such accounts, or to produce and deliver up any such vouchers or receipts, or any such papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, they may, by warrant under their hands and seals, commit the offender to gaol, there to remain without bail, until he shall have rendered such accounts, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made; and if it appear that the party charged has failed to pay over any such moneys as aforesaid, and that he still fails or refuses so to do, the last mentioned justices may by a like warrant cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress commit him to gaol, there to remain without bail, for a period of three months, unless such moneys be sooner paid: provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, such justice may, without previous summons, by warrant under his hand and seal, cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: provided also, that no such proceeding shall be construed to relieve or discharge any surety of the offender from any liability whatsoever.

Power to appoint an officer of health.

XL. And be it enacted, that the Local Board of Health may, from time to time, if they shall think fit, appoint a fit and proper person, being a legally qualified medical practitioner or a member of the medical profession, to be and be called the Officer of Health, who shall be removable by the said Local Board, and shall perform such duties as the said General Board shall direct; and the same person may be officer of health for two or more districts; and the Local Board or Boards of Health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates to be levied under this Act, such remuneration by way of annual salary or otherwise as the said Local Board or Boards may by order in

writing determine and appoint, and (in case of a joint appointment for two or more districts) in such proportions as the said General Board may, by order in writing, determine and appoint: provided always, that the appointment and removal of the officer of health shall be subject to the approval of the said General Board. (1)

XLII. And be it enacted, that the said Local Board of Health may, if they shall think fit, cause to be prepared, or to procure, a map exhibiting a system of sewerage for effectually draining their district for the purposes of this Act, upon a scale to be prescribed by the General Board of Health, (2) and every such map shall be kept at the office of the said Local Board, and shall at all reasonable times be open to the inspection of the ratepayers of the district to which it applies. Map exhibiting system of sewerage.

XLIII. And be it enacted, that the expense of surveys, maps, or plans made, prepared, or procured by the Local Board of Health for the purposes of this Act shall be defrayed out of the general district rates to be levied under this Act. Expense of surveys, etc.

XLIII. And be it enacted, that all sewers, whether existing at the time when this Act is applied, or made at any time thereafter (except sewers made by any person or persons for his or their own profit or for the profit of proprietors or shareholders, and except sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land and sewers under the authority of any Commissioners of Sewers appointed by the Crown), together with all buildings, works, materials, and things belonging or appertaining thereto, shall vest in, belong to, and be entirely under the management and control of the Local Board of Health. Sewers, etc., vested in Local Board.

XLIV. And be it enacted, that the Local Board of Health may, if they shall think fit, purchase the rights, privileges, powers, and authorities vested in any person for making sewers, or contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, work, materials, and things belonging or appertaining thereto; and any person to whom any such rights, privileges, powers, authorities, sewers, buildings, works, materials, or things belong may sell and dispose of the same to or otherwise contract with the said Local Board; and in case of any such sale the purchase money shall be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of such sale, and the property purchased shall vest in and belong to the Local Board of Health purchasing the same, anything to the contrary notwithstanding: provided always, that, notwithstanding any such purchase, any person who previously thereto may have acquired perpetual right to use any sewer so purchased shall be entitled to use the same, or any other sewer substituted in lieu thereof, in as full and ample a manner as he would or might have done if such purchase had not been made. Power to purchase, etc., certain sewers.

XLV. And be it enacted, that the Local Board of Health shall from time to time repair the sewers vested in them by this Act, and shall cause to be made such sewers as may be necessary for

(1) See 21 & 22 Vict. c. 98, s. 8, *post*.

(2) The Local Board must now fix the scale themselves.

of sewers
vested in Local
Board.

effectually draining their district for the purposes of this Act; and the said Local Board may carry any such sewers through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after reasonable notice in writing in that behalf (if upon the report or the surveyor it should appear to be necessary), into, through, or under any lands whatsoever; and the said Local Board may from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them by this Act, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary: provided always, that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance; and if by reason thereof any person is deprived of the lawful use of any sewer the said Local Board shall provide some other sewer as effectual for his use as the one of which he is so deprived.

As to cleansing
and emptying
sewers, etc., by
Local Board.

XLVI. And be it enacted, that the Local Board of Health shall cause the sewers vested in them by this Act to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied; and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause all or any of such sewers to communicate with and be emptied into such places as may be fit and necessary, or to cause the sewage and refuse therefrom to be collected for sale for any purpose whatsoever, but so as not to create a nuisance.

Penalty for
making un-
authorized
sewers, and
building over
sewers, and
under streets.

XLVII. And be it enacted, that it shall not be lawful to cause any sewer or drain to communicate with or to be emptied into any sewer of the Local Board of Health, nor to cause any building to be newly erected over any such last mentioned sewer, nor to cause any vault, arch, or cellar to be newly built or constructed under the carriageway of any street, without the written consent of the said Local Board first had and obtained; and whosoever offends against this enactment shall forfeit to the said Local Board the sum of five pounds, and a further penalty of forty shillings for every day during which the offence is continued after notice in writing from them in this behalf; and if any sewer, drain, building, vault, arch, or cellar, be made, erected, or constructed contrary to this enactment, the said Local Board may cause the same to be altered, pulled down or otherwise dealt with as they may think fit, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in the summary manner hereinafter provided.

Use of sewers
by persons
beyond district.

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

No new house
to be built with-
out drains, etc.

XLIX. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any house which may have been pulled down to or below the floor commonly called the ground

floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as upon the report of the surveyor shall appear to be necessary and sufficient for the proper and effectual drainage of the same and its appurtenances; and if the sea, or a sewer of the Local Board of Health, or a sewer which they are entitled to use, be within one hundred feet of any part of the site of the house to be built or rebuilt, the drain or drains so to be constructed shall lead from and communicate with such one of those means of drainage as the said Local Board shall direct, or if no such means of drainage be within that distance, then the last mentioned drain or drains shall communicate with and be emptied into such covered cesspool or other place, not being under any house, and not being within such distance from any house as the said Local Board shall direct; and whosoever erects or rebuilds any house or constructs any drain contrary to this enactment shall be liable for every such offence to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; and if at any time, upon the report of the surveyor, it appear to the said Local Board that any house, whether built before or after the time when this Act is applied to the district in which it is situated, is without any drain, or without such a drain or drains communicating with the sea or a sewer as is or are sufficient for the proper and effectual drainage of the same and its appurtenances, and if the sea, or a sewer of the said Local Board, or a sewer which they are entitled to use, be within one hundred feet of any part of such house, they shall cause notice in writing to be given to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to construct and lay down, in connection with such house and one of those means of drainage, one or more covered drain or drains, of such materials and size, at such level, and with such fall as upon the last mentioned report shall appear to be necessary; and if such notice be not complied with the said Local Board may, if they shall think fit, do the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said Local Board, shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided.

Local Board may, upon report of surveyor that any house is without a drain, cause one to be constructed, etc.

L. And be it enacted, that if it shall appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census in which this Act shall not have been applied by Order in Council or provisional order as aforesaid, assembled at a public meeting to be called as is hereinafter provided, that it would contribute to the health and convenience of the inhabitants that any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up, or that a sewer should be made or improved, a well dug, or a pump provided, for the public use of the inhabitants, the churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works, or any of them, and shall lay

As to construction of sewers, wells, pumps, etc., for parishes, etc., with less than 2000 inhabitants, and in which this Act is not otherwise applied.

the same before another public meeting of such rated inhabitants to be called as is hereinafter provided; and if the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at such last mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place: provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act, and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.⁽¹⁾

Penalty on persons erecting houses without water-closets, etc. Local Board may, upon report of surveyor, order waterclosets, etc., to be erected in houses, whether built before or after this Act is applied, etc.

LI. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the floor commonly called the ground floor, without a sufficient water-closet or privy ⁽²⁾ and an ashpit, furnished with proper doors and coverings; and whosoever offends against this enactment shall be liable to a penalty not exceeding twenty pounds; and if at any time, upon the report of the surveyor, it appear to the Local Board of Health that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without a sufficient water-closet or privy and an ashpit, furnished with proper doors and coverings, the said Local Board shall give notice in writing to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to provide a sufficient water-closet or privy and an ashpit so furnished as aforesaid, or either of them, as the case may require; and if such notice be not complied with, the said Local Board may, if they shall think fit, cause to be constructed a sufficient water-closet or privy and an ashpit, or either of them, or do such other works as the case may require; and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said Local Board shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided: provided always, that where a water-closet or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the said Local Board, a water-closet or privy may be so used, they need not require the same to be provided for each house.

Certain water-closets to be constructed in factories, etc.

LII. And be it enacted, that if at any time it appear to the Local Board of Health, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above twenty in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the said Local Board may, if they shall think fit, by notice in writing to the owner or occupier of such house, require them or either of them, within a time to be specified in such notice, to construct a sufficient number of water-closets or privies for the separate use of each sex; and whosoever neglects or refuses to comply with any such notice shall be liable for each

(1) See 23 & 24 Vict. c. 77, ss. 7, 8.

(2) See 31 & 32 Vict. c. 115, s. 7, *post*.

default to a penalty not exceeding twenty pounds, and a further penalty not exceeding forty shillings for every day during which the default is continued.

LIII. *Notice of building and rebuilding, with respect to levels of houses, situation of privies, etc.* (Repealed by 21 & 22 Vict. c. 98, s. 34.)

LIV. And be it enacted, that the Local Board of Health shall see and provide that all drains whatsoever, and the water-closets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health; and the surveyor may by written authority of the said Local Board (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, water-closet, privy, cesspool, or ashpit in respect of which the application is made is a nuisance or injurious to health but not otherwise), and after twenty-four hours' notice in writing, or in case of emergency without notice to the occupier of the premises to which such drain, water-closet, privy, cesspool, or ashpit is attached or belongs, enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, water-closet, privy, cesspool, or ashpit; and if the drain, water-closet, privy, cesspool, or ashpit in respect of which such examination is made be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said Local Board; but if upon such examination such drain, water-closet, privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment [he shall cause the ground to be closed, (1)] and the said Local Board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the said Local Board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said Local Board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided.

Local Board to provide that drains, water-closet, etc., do not become a nuisance.

LV. *Cleansing of streets, removal of dust, etc.* (Repealed by 21 & 22 Vict. c. 98, s. 32.)

LVI. And be it enacted, that the Local Board of Health may, in their discretion, provide, in proper and convenient situations, boxes or other conveniences for the temporary deposit and collection of dust, ashes, and rubbish, and also fit buildings and places for the deposit of the sewerage, soil, dung, filth, ashes, dust, and rubbish collected by such Board. (2)

Local Board to cause places for deposit of dust, soil, etc., to be provided.

LVII. And be it enacted, that the Local Board of Health may, if they think fit, provide and maintain, in proper and convenient

Public necessities.

(1) See 21 & 22 Vict. c. 98, s. 33, repealed by the 21 & 22 Vict. c. 98, *post.* s. 33, *post.*

(2) The remainder of this section was

situations, water-closets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of the district rates to be levied under this Act.

Offensive
ditches, drains,
etc., to be
cleansed or
covered.

LVIII. And be it enacted, that the Local Board of Health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health; and they shall cause a written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require; and if the person to whom such notice is given fail to comply therewith, the said Local Board shall execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner, or by order of the said Local Board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided: provided always that the said Local Board may order that the whole or a portion of the expenses incurred in respect of any such last mentioned works be defrayed out of the *special* or general district rates to be levied under this Act, and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly.

Penalties for
keeping swine,
etc., in im-
proper situa-
tions, allowing
waste water to
remain in
cellars, etc.

LIX. And be it enacted, that whosoever keeps any swine or pigsty in any dwelling-house, so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the Local Board of Health to remove the same, and whosoever allows the contents of any water-closet, privy, or cesspool, to overflow or soak therefrom, shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty of five shillings for every day during which the offence is continued; and the said Local Board shall abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided; (1) and if at any time it appear to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to shall be vested in and be sold or disposed of by the said Local Board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned.

Removal of
filth on certifi-
cate of inspector
of nuisances.

Houses to be
purified, on
certificate of

LX. And be it enacted, that if upon the certificate of the officer of health (if any), or of any two medical practitioners, it appear to the Local Board of Health that any house or part thereof is in

such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious or contagious disease, the said Local Board shall give notice in writing to the owner or occupier of such house or part thereof to whitewash, cleanse, or purify the same, as the case may require; and if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the said Local Board may, if they shall think fit, cause such house, building, or part thereof, to be whitewashed, cleansed, or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided.

LXI. *Slaughter-houses to be registered.* (Repealed by 21 & 22 Vict. c. 98, s. 48.)

LXII. And be it enacted, that the Local Board of Health may from time to time, if they shall think fit, provide premises for the purpose of being used as slaughter-houses, (1) and they shall make bye-laws for and with respect to the management and charges for the use of the premises so provided, and with respect to the inspection of all slaughter-houses, and for keeping the same in a cleanly and proper state: provided always, that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by any local Act of Parliament passed before the passing of this Act for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough, or place.

LXIII. And be it enacted, that the inspector of nuisances may, and he is hereby empowered, at all reasonable times, with or without assistants, to enter into and inspect any shop, building, stall, or place kept or used for the sale of butcher's meat, poultry, or fish, or as a slaughter-house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish, which may be therein; and in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same may be seized; and if it appear to a justice, upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food; and the person to whom such animal, carcase, meat, poultry, game, flesh, or fish belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, so found, which penalty may be recovered before two justices in the manner hereinafter provided with respect to penalties the recovery whereof is not expressly provided for.

LXIV. And be it enacted, that the business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other

officer of health, or of two medical practitioners.

Local Board may provide slaughter-houses, and make bye-laws with respect to slaughter-houses in general.

Power to inspector of nuisances to enter places used for sale of butcher's meat, etc.

Offensive trades newly established

(1) The portion of this section relating to bye-laws was repealed by 21 & 22 Vict. c. 98, s. 48, *post*.

to be subject
to regulation
of Local Board
of Health.

noxious or offensive business, trade, or manufacture, shall not be newly established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent of the Local Board of Health [*unless the said General Board shall otherwise direct* (1)]; and whosoever offends against this enactment shall be liable for each offence to a penalty of fifty pounds, and a further penalty of forty shillings for each day during which the offence is continued; and the said Local Board may from time to time make such bye-laws with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof.

Act not to
affect present
law as to
nuisances.

LXV. And be it declared and enacted, that nothing in this Act shall be construed to render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

Common
lodging-
houses to be
registered.

LXVI. And be it enacted, that it shall not be lawful to keep any common lodging-house unless the same be registered as next hereinafter mentioned; and the Local Board of Health shall cause a register to be kept in which shall be entered the name of every person applying to register any common lodging-house kept by him, and the situation of every such house; and the said Local Board shall from time to time make bye-laws for fixing the number of lodgers who may be received into each house so registered, for promoting cleanliness and ventilation therein, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made; and the person keeping any such lodging-house shall give access to the same when required by any persons who shall produce the written authority of the said Local Board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process, and the expenses incurred by the said Local Board in so introducing or using any disinfecting process shall be recoverable by them in a summary manner from the person keeping the lodging-house in which the same shall have been used or introduced; and whosoever shall receive lodgers in any common lodging-house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon, any person authorised by the said Local Board as last aforesaid, shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty on
neglect.

Cellars, etc.,
newly built
not to be let
as dwelling-
rooms.
No cellars, etc.,
to be let except
under certain
conditions.

LXVII. And be it enacted, that it shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any vault, cellar, or underground room built or rebuilt after the passing of this Act, or which shall not have been so let or occupied before the passing of this Act; and it shall not be lawful to let or continue to let, or to occupy or suffer to be occupied, separately as a dwelling, any vault, cellar, or underground room whatsoever, unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, nor unless the same

(1) See 21 & 22 Vict. c. 98, s. 8, *post*.

(2) See 29 & 30 Vict. c. 90, s. 42.

be at least three feet of its height above the surface of the street or ground adjoining or nearest to the same, nor unless there be outside of and adjoining the same vault, cellar, or room, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof, up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part, nor unless the same be well and effectually drained by means of a drain the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, nor unless there be appurtenant to such vault, cellar, or room the use of a water-closet, or privy, and an ashpit, furnished with proper doors and coverings kept and provided according to the provisions of this Act, nor unless the same have a fireplace with a proper chimney or flue, nor unless the same have an external window of at least nine superficial feet in area clear of the sash-frame, and made to open in such manner as shall be approved by the surveyor, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room, as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash-frame; and whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, for hire or rent, any vault, cellar, or underground room, contrary to this Act, shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the Local Board of Health in this behalf: provided always, that in any area adjoining a vault, cellar, or underground room there may be steps necessary for access to such vault, cellar, or room, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room, a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window: provided also, that every vault, cellar, or underground room in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act: provided also, that the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms shall not, so far as the same relates to vaults, cellars, and underground rooms which shall have been let or occupied as dwellings before the passing of this Act, come into force or operation until the expiration of one year from the passing of this Act, nor within any district until the expiration of six months from the time when this Act shall have been applied thereto; and all churchwardens and overseers of the poor shall from time to time after the passing of this Act cause public notice of the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms to be given in such manner as may appear to them to be best calculated to make the same generally known.

Act not to come into operation until the expiration of a certain time, in case of cellars, etc., already occupied as dwellings. Churchwardens, etc., to give notice of enactment.

LXVIII. And be it enacted, that all present and future streets Management being, or which at any time become, highways within any district, of streets and the pavements, stones, and other materials thereof, and all

vested in Local Board.

buildings, implements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the said Local Board of Health; and the said Local Board shall from time to time cause all such streets to be levelled, paved, flagged, channelled, altered, and repaired, as and when occasion may require, and they may from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit, and place and keep in repair fences and posts for the safety of foot passengers; and whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the said Local Board, shall be liable for every such offence to a penalty not exceeding five pounds, and a further sum not exceeding five shillings for every square foot of the pavement, stones, or other materials so displaced, taken up, or injured. (1)

Power to compel paving, etc., of private streets.

LXIX. And be it enacted, that in case any present or future street, or any part thereof (not being a highway), be not sewered, levelled, paved, flagged, and channelled (2) to the satisfaction of the Local Board of Health, such Board may, by notice in writing to the respective owners or occupiers of the premises fronting, adjoining, or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, level, pave, flag, or channel the same within a time to be specified in such notice; and if such notice be not complied with, the said Local Board may, if they shall think fit, execute the works mentioned or referred to therein; and the expenses incurred by them in so doing shall be paid by the owners in default, according to the frontage of their respective premises, and in such proportion as shall be settled by the surveyor, or in case of dispute, as shall be settled by arbitration (having regard to all the circumstances of the case) in the manner provided by this Act; and such expenses may be recovered from the last mentioned owners in a summary manner, or the same may be declared by order of the said Local Board to be private improvement expenses, and be recoverable as such in the manner hereinafter provided. (3)

Certain streets not highways

LXX. And be it enacted, that if any present or future street, not being a highway at the time when this Act is applied to the

Local Board of Health may contract for lighting.

(1) Here may be inserted the provision in the 12 & 13 Vict. c. 94, regarding the power of Local Boards to contract for the lighting of streets:—"§ 8. And whereas it is expedient that the Local Boards of Health for the execution of the 'Public Health Act, 1848,' should be invested with certain powers not included in that Act: Be it therefore enacted, that the said Local Boards constituted under the said Public Health Act may contract for any period not exceeding three years at any one time with any company or person for the supply of gas or oil, or other means of lighting the streets, roads, and other open places, markets, and public buildings within their respective districts, and may provide such lamps, lamp-posts, and other materials and apparatus as such Local Boards respectively may think necessary for lighting the same; and the expenses incurred by any such Local Board in so doing shall be defrayed out of the general (or special*) district rates (as the nature of the case may require) levied under the said Public Health Act."

* See 21 & 22 Vict. c. 98, s. 54.
11 & 12 Vict. c. 63, ss. 68, 69, to apply to any highway repairable by the inhabitants.

(2) See 21 & 22 Vict. c. 98, s. 38.

(3) The 15 & 16 Vict. c. 42, s. 13, enacts "That the term 'highway,' in the sections of the 'Public Health Act, 1848,' numbered respectively 68 and 69 in the copies of the Act printed by the Queen's printers, shall mean any highway repairable by the inhabitants at large."

district in which it is situate, be sewered, levelled, paved, flagged, and channelled (1) to the satisfaction of the Local Board of Health, the said Local Board may, if they shall think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway, and be from time to time repaired by them out of the rates levied in that behalf under the authority of this Act; and every such notice shall be entered amongst the proceedings of the said Local Board: provided always, that no street shall become a highway as last aforesaid if within one month after notice in writing shall have been put up as last aforesaid the proprietor of such street, or the person representing or entitled to represent such proprietor, shall by notice in writing to the said Local Board object thereto. (2)

LXXI. And be it enacted, that if and when, for the purposes of this Act, the Local Board of Health deem it necessary to raise, sink, or otherwise alter the situation of any water or gas-pipes, mains, plugs, or other waterworks or gasworks laid in or under any street, they may by notice in writing require the person to whom the pipes, mains, plugs, or works belong, to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as shall be specified in such notice, and the expenses attendant upon or connected with any such alteration shall be paid by the said Local Board out of the general district rates levied under this Act; and if such notice be not complied with, the said Local Board may make the alteration required: provided always, that no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual: provided also, that where under any Local Act of Parliament the expenses attendant upon or connected with the raising, sinking, or otherwise altering the situation of any water or gas-pipes, mains, plugs, or other waterworks or gasworks, are or shall be directed to be borne by the person to whom such pipes or works belong, his liability in that respect shall continue, in the same manner and under the same conditions in all respects as if this Act had not been passed.

LXXII. *Notice to be given to Local Board before laying out new streets, who shall fix the levels and widths thereof.* (Repealed by 21 & 22 Vict. c. 98, s. 34.)

LXXIII. And be it enacted, that the said Local Board may by agreement, (3) purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, and any part of the premises so purchased which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account hereinafter mentioned. (4)

LXXIV. And be it enacted, that the Local Board of Health, with the approval of the said General Board, may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure grounds, and support or contribute towards any premises provided for such purposes by any person whomsoever.

LXXV. And be it enacted, that the Local Board of Health

(1) See 21 & 22 Vict. c. 98, s. 38.

(2) See *Ibid.* s. 42.

(3) See 29 & 30 Vict. c. 90, s. 47.

(4) See 21 & 22 Vict. c. 98, s. 36.

to provide sufficient supplies of water, and may erect water-works, etc.

In case of waterworks constructed by Local Board, the water may be kept constantly under pressure.

Local Board not to construct water-works, etc., if any water-works company within their district be able and willing to supply water upon terms.

Local Board may require that houses be supplied with water, etc., in certain cases.

may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act, and for private use to the extent required by this Act; and for those purposes, or any of them, the said Local Board may from time to time, with the approval of the General Board of Health,⁽¹⁾ contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such waterworks, and do and execute all such works, matters, and things as shall be necessary and proper; and any waterworks company may contract with the Local Board of Health to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their waterworks to any Local Board of Health willing to take the same; and the said Local Board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of clean and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district supplied: provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said Local Board shall give notice in writing to every waterworks company within whose limits the said Local Board may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the said Local Board; and it shall not be lawful for the said Local Board to construct or lay down any waterworks within such limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said Local Board, and upon such terms as shall be certified to be reasonable by the General Board of Health,⁽²⁾ after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate) upon such terms as shall be settled by arbitration in the manner provided by this Act; and in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said Local Board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act.

LXXVI. And be it enacted, that if upon the report of the surveyor it appear to the Local Board of Health that any house ⁽³⁾ is without a proper supply of water, and that such a supply of water can be furnished thereto at a rate not exceeding twopence per week, the said Local Board shall give notice in writing to the occupier,⁽⁴⁾ requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose; and if such notice be not complied with, the said Local Board may, if they shall think fit, do such works, and obtain such supply accordingly, and make and levy water-rates upon the premises, not exceeding in the whole the rate of twopence per week, in manner hereinafter provided, as if the

(1) See 21 & 22 Vict. c. 98, s. 8.

(2) Ibid.

(3) See Ibid. s. 51.

(4) Ibid.

owner or occupier of the premises had demanded a supply of water, and were willing to pay water rates for the same; and the expenses incurred by them in doing such works as last aforesaid shall be private improvement expenses, and be recoverable as such (1) in the manner hereinafter provided. (2)

LXXVII. And be it enacted, that the Local Board of Health may, if they shall think fit, supply water from any waterworks purchased or constructed by them under this Act to any public baths or washhouses, or for trading or manufacturing purposes, upon such terms and conditions as may be agreed upon between the said Local Board and the persons desirous of being so supplied.

Water for public baths, or trading or manufacturing purposes.

LXXVIII. And be it enacted, that the Local Board of Health may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water, other such works equally convenient; and the said Local Board may, if they shall think fit, construct any number of new cisterns, pumps, wells, conduits, and works for the gratuitous supply of any public baths or washhouses established otherwise than for private profit or supported out of any poor or borough rates.

Maintenance and construction of public cisterns for gratuitous use.

LXXIX. And be it enacted, that whosoever shall wilfully or carelessly break, injure, or open any lock, cock, waste-pipe, or waterworks belonging to or under the management or control of the Local Board of Health, or constructed, continued, or maintained under this Act, in any parish or place in which there shall be no Local Board of Health, or shall unlawfully flush, draw off, divert, or take water from any waterworks belonging to or under the management or control of the said Local Board, or so constructed, continued, or maintained in any such parish or place, or from any waters or streams by which such waterworks are supplied, or shall wilfully or negligently waste or cause to be wasted any water with which he is supplied by the said Local Board, shall for every such offence forfeit a sum not exceeding five pounds, and a further penalty of twenty shillings for each day whilst the offence is continued after written notice in that behalf, which penalties shall be paid to the said Local Board, or, in the case of a parish or place in which there shall be no Local Board of Health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place: provided always, that nothing herein contained shall prevent the owner or occupier of any premises through or by which any streams may flow from using the same as they would have been entitled to do if this Act had not been passed.

Penalty for injuring waterworks, diverting streams, or wasting water.

LXXX. And be it enacted, that whosoever shall bathe in any stream, reservoir, conduit, aqueduct, or other waterworks belonging to or under the management or control of the Local Board of Health, or in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained under this Act in any parish or place in which there shall be no Local Board of Health, or shall wash, cleanse, throw, or cause to enter therein

Penalties on persons for causing water in reservoirs to be fouled; and on proprietors of gasworks, etc.

(1) See 21 & 22 Vict. c. 98, s. 51.

(2) See 29 & 30 Vict. c. 90, s. 50.

any animal, rubbish, filth, stuff, or thing of any kind whatsoever, or shall cause or permit or suffer to run or be brought therein the water of any sink, sewer, drain, engine, or boiler, or other filthy, unwholesome, or improper water, or shall do anything whatsoever whereby any water belonging to the said Local Board or under their management or control, or whereby any water of or contained in any such reservoir, conduit, aqueduct, or other waterworks so constructed, continued, or maintained in any such parish or place as aforesaid shall be fouled, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum of twenty shillings for each day whilst the offence is continued, after written notice in that behalf; which penalties shall be paid to the said Local Board, or, in the case of a parish or place in which there shall be no Local Board of Health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place; and whosoever, being proprietor of any gasworks, or being engaged or employed in the manufacture or supply of gas, causes or suffers to be brought or to flow into any stream, reservoir, conduit, aqueduct, or waterworks belonging to or under the management or control of the said Local Board, or into any drain or pipe communicating therewith, any washing or other substance produced in the manufacture or supply of gas, or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks is fouled, shall forfeit to the said Local Board for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours' notice in writing from them in this behalf, a further sum of twenty pounds for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled; and every such penalty shall be recoverable, with full costs of suit, by action of debt; and if any water supplied by, belonging to, or under the management or control of the said Local Board be fouled in any manner by the gas of any such proprietor or person as last aforesaid, he shall forfeit to the Local Board for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for every day whilst the offence is continued after the expiration of twenty-four hours' notice in writing from the said Local Board in this behalf; and for the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person, the said Local Board may lay open and examine any pipes, conduits, and works from which the gas is supposed to escape; provided that before beginning so to do twenty-four hours' notice in writing be given to the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, of the time at which the examination is intended to be made; and if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, conduits, or works examined, the expenses of the examination shall be paid and borne by the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, and be recoverable from him in the summary manner hereinafter provided; but if it appear that the water has not been so fouled, then such expenses, and all damages occasioned by the examination, shall be paid by the said Local Board out of the general

district rates levied under this Act, and be recoverable from them in the summary manner hereinafter provided.

LXXXI. And for the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor, be it enacted, that the Local Board of Health may, if they shall think fit, provide, fit up, and make bye-laws with respect to the management and charges for the use of rooms or premises in which corpses may be received and decently and carefully kept previously to interment: and the said Local Board may, upon proper application, and subject to such regulations, and at such rates and charges as shall be prescribed by any such bye-laws, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment.

Power to provide premises for the reception of the dead previously to interment.

LXXXII. And be it enacted, that if upon the representation of the Local Board of Health, and after inquiry and report by a superintending inspector, notified to the Lord Bishop of the diocese, and made, notified, and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act, and after inquiry by such other ways and means as the General Board of Health may think fit to direct, the said General Board shall certify (such certificate to be published in the *London Gazette*, and in some one or more of the public newspapers usually circulated within the district), that any burial-ground situate within any district to which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same, by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within a convenient distance from such burial-ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit, or suffer to be buried, any further corpses or coffins in, within, or under the ground, church, or place of worship to which the certificate relates, except in so far as may be allowed by such certificate; and whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin, contrary to this enactment, shall for every such offence be liable to a penalty of twenty pounds.

Burial-grounds, etc., dangerous to health may be prohibited.

LXXXIII. And be it enacted, that no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any district after the passing of this Act, and no burial-ground shall be made or formed within any district after the passing of this Act, without the consent of the General Board of Health first had and obtained, unless the same be made or formed upon land purchased or authorised by Parliament to be appropriated for the purpose of being used as a burial-ground before the passing of this Act; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial-ground constructed, made, or formed, contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt.

As to interments within churches or burial-grounds newly erected or formed.

Power to
Local Boards to
purchase lands,
etc., under 8 &
9 Vict. c. 18.

LXXXIV. And be it enacted, that the Local Board of Health, by agreement, (1) may purchase, or take upon lease, sell, or exchange, any lands or premises for the purposes of this Act (2); and all lands and premises which shall be purchased, hired, or taken on lease by the Local Board of Health of any noncorporate district shall be conveyed, demised, and assured to such Local Board and their successors, in trust for the purposes of this Act, and shall be accepted, taken, and held by them as a body corporate. (3)

Contracts by
Local Board.

LXXXV. And be it enacted, that the Local Board of Health may enter into all such contracts as may be necessary for carrying this Act into execution; and every such contract whereof the value or amount shall exceed ten pounds shall be in writing, and (in the case of a noncorporate district) sealed with the seal of the Local Board by whom the same is entered into, and signed by five or more members thereof, and (in the case of a corporate district) sealed with the common seal, and shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed; and every contract so entered into, and duly executed by the other parties thereto, shall be binding on the Local Board by whom the same is executed, and their successors, and upon all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes: provided always, that the said Local Board may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such Local Board may seem proper: provided also, that before contracting for the execution of any works under the provisions of this Act the said Local Board shall obtain from the surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise; provided also, that before any contract of the value or amount of one hundred pounds or upwards is entered into by the said Local Board, ten days' public notice at the least shall be given expressing the nature and purpose thereof, and inviting tenders for the execution of the same; and the said Local Board shall require and take sufficient security for the due performance of the same.

Composition for
penalties in
respect of
breach of con-
tracts.

Estimates to be
made before
commencing
works.

As to contracts
above the value
of 100*l*.

LXXXVI. *Special district rate.* (Repealed by 21 & 22 Vict. c. 89, s. 54.)

District Fund
account to be
kept.

LXXXVII. And be it enacted, that the treasurer shall keep a separate account, to be called the "District Fund Account," and the moneys carried to such account under the directions of this

(1) See 29 & 30 Vict. c. 90, s. 47.

(2) The portion of this section relating to the Lands Clauses Consolida-

tion Acts was repealed by the 21 & 22 Vict. c. 98, s. 75.

(3) See 29 & 30 Vict. c. 90, s. 46.

Act shall be applied by the Local Board of Health in defraying such of the expenses incurred or to be incurred by the said Local Board in carrying this Act into execution, and not otherwise expressly provided for, as they may think proper; and the said Local Board shall from time to time, when and as often as occasion may require, make and levy, in addition to any other rate, a rate or rates to be called "General District Rates," for defraying such expenses as are charged upon that rate by this Act, and such other expenses of executing this Act in any district as are not provided for by any other rate, or defrayed out of the said district fund account.

LXXXVIII. *Property assessable to special and general district rates. If in any district there be no rate for relief of the poor, rates shall be made in manner prescribed by 6 & 7 Will. IV. c. 96. Exemptions under local Acts. (Repealed by 21 & 22 Vict. c. 98, s. 55.)*

LXXXIX. And be it enacted, that the Local Board of Health may make and levy the said (*special and* (1)) general district rates, or any or either of them, prospectively, in order to raise money for the payment of future charges and expenses, or retrospectively, in order to raise money for the payment of charges and expenses which may have been incurred at any time within six months before the making of the rate; and if at the time of making any general (*or special*) district rate any premises in any respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged upon any person in respect of the same whilst they continue to be unoccupied; and if any such premises are afterwards occupied during any part of the period for which the rate was made, and before the same shall have been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made; and if any owner or occupier assessed or liable to any such rate cease to be owner or occupier of the premises in respect whereof he is so assessed or liable before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier; and in every such case, if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable; and the said Local Board may from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the purposes of this Act, and make a separate assessment upon any such part for and in respect of all or any of the purposes for which the same is formed; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act: provided always, that if any expenses are incurred or to be in-

General district rate.

Rates may be prospective or retrospective.

Assessment to district rates in case of unoccupied premises.

Apportionment of rates between outgoing and incoming tenants, etc.

Parts of district may be separately assessed.

curred in respect of two or more parts of a district in common, the same shall be apportioned between them in a fair and equitable manner.

Private improvement rates.

XC. And be it enacted, that whenever the Local Board of Health have incurred or become liable to any expenses which by this Act are or by the said Local Board shall be declared to be private improvement expenses, the said Local Board may, if they shall think fit, make and levy upon the occupier of the premises in respect of which the expenses shall have been incurred, except in the cases hereinafter provided, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds in the hundred, in such period not exceeding thirty years as the said Local Board shall in each case determine: provided always, that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge upon and be paid by the owner of the premises so long as the same continue to be unoccupied.

Proportion of private improvement rate may be deducted from rent.

XCI. And be it enacted, that if the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is made under the provision last aforesaid is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired, but not otherwise, he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof; provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him. (1)

Redemption of special district and private improvement rates.

XCII. Provided always, and be it enacted that at any time before the expiration of the period for which any (special district rate or (2)) private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same by paying to the Local Board of Health the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same. (3)

Water-rate.

XCIII. And be it enacted, that whenever and so long as any premises are supplied with water by the Local Board of Health, for the purposes of domestic use, cleanliness, or drainage, they shall

(1) See 21 & 22 Vict. c. 98, s. 58.

(2) See *Ibid.* s. 54.

(3) See *Ibid.* s. 58.

make and levy, in addition to any other rate, a water-rate upon the occupier, except as hereinafter provided; and the rate so made shall be assessed upon the net annual value of the premises, ascertained in the manner hereinbefore prescribed with respect to the said special and general district rates; and when several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses shall be charged with the payment of water-rates in the same manner as if each house had been supplied with water by a separate pipe; provided always, that in any district to be called the Oxford or Cambridge district the Local Board of Health, with the consent of the said General Board, may supply water to any hall, college, or premises of the University within such district, upon such terms with respect to the mode of paying for such supply as shall from time to time be agreed upon between such University, or any hall or college thereof, and the said Local Board.

Agreements
with Univer-
sities.

XCIV. And be it enacted, that the said water-rate shall be payable in advance; and whenever any person supplied with water under the provisions of this Act neglects to pay the water-rate due from him, upon demand, the Local Board of Health may prevent the water from flowing into the premises of the defaulter in such manner as they may think fit, and may recover the arrears due, together with the expenses of stopping the supply, in the manner hereinafter provided with respect to the recovery of rates made under the authority of this Act: provided always, that the stopping or cutting off any supply of water by the said Local Board under this enactment shall not relieve any person from any penalty or liability to which he would have been otherwise subject.

Water-rate
payable in
advance.

Power to stop
water in case of
non-payment of
rates.

XCV. *Composition for and recovery of rates upon tenements under the annual value of ten pounds, etc.* (Repealed by 21 & 22 Vict. c. 98, s. 55.)

XCVI. Provided also, and be it enacted, that it shall be lawful for the Local Board of Health to reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Power to re-
duce or remit
rates on account
of poverty.

XCVII. Provided also, and be it enacted, that nothing in this Act shall alter, interfere with or effect any lease, contract, or agreement which shall have been made or entered into between landlord and tenant before this Act is applied to the district in which the premises are situate in respect of which the lease, contract, or agreement was made.

Act not to affect
existing agree-
ments between
landlord and
tenant.

XCVIII. And be it enacted, that the Local Board of Health, before proceeding to make any general or special district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing the several sums required for each of such purposes, the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value; and the estimate so made shall forthwith, after being approved of by the said Local Board, be entered in the rate-book, and be kept at their office, open to public inspection during office hours thereat.

Estimate to be
prepared before
making rates.

XCIX. And be it enacted, that public notice of intention to make any general (or special (1)) district rate, and of the time at

Notice of rate.

(1) See 21 & 22 Vict. c. 98, s. 54.

which it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the Local Board of Health in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto; but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given.

Rates to be open to inspection.

C. And be it enacted, that any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom, without fee or reward; and whosoever, having the custody of such estimate or rate, refuses to allow, or does not permit such inspection, or such copies or extracts to be taken, shall for every such offence be liable to a penalty not exceeding five pounds.

Description of owner or occupier in rates, if his name be unknown.

CI. And be it enacted, that whenever the name of any owner or occupier liable to be rated under this Act is not known to the Local Board of Health, it shall be sufficient to assess and designate him in the rate as "the owner," or "the occupier," of the premises in respect of which the assessment is made, without further description.

Rates may be amended.

CII. And be it enacted, that the Local Board of Health may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appear to the said Local Board that he has been underrated or overrated, or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate: provided always, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made, and with respect to him the amended rate shall be considered to have been made at the time when he first received notice of the amendment; and in the case of any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted as aforesaid, the rate shall not be payable by him until seven days after such notice shall have been given to him.

Rates made under this Act to be published as poor-rates, and collected as Local Board shall appoint.

Justices may summon persons for non-payment, and in default may

CIII. And be it enacted, that all rates made or collected under the authority of this Act shall be published in the same manner as poor rates, and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the Local Board of Health shall from time to time appoint; and if any person assessed to any such rate fail to pay the same when due, and for the space of fourteen days after the same shall have been lawfully demanded in writing, any justice may, and he is hereby empowered to, summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid; and in case the defaulter fail to appear according to the exigency of the summons, or no sufficient cause

for non-payment be shown, the justice may, by warrant under his hand and seal, cause the same to be levied by distress of the goods and chattels of the defaulter: provided always, that if no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom such warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the last-mentioned justice shall indorse his signature upon the said warrant, and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied off the last-mentioned goods and chattels, in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction; and if any person quit or be about to quit any premises without payment of any rate then due from him in respect of such premises under this Act, and refuse to pay the same after lawful demand thereof in writing, any justice having jurisdiction where such person resides or his goods are found may, and he is hereby empowered to, summon him to appear, at a time and place to be mentioned in the summons, to show cause why the rate so due should not be paid; and in case the defaulter fail to appear, or no sufficient cause for non-payment be shown, the justice may, by warrant under his hand and seal, cause the sum to be levied by distress of the goods and chattels of the defaulter.

CIV. And be it enacted, that warrants of distress for the recovery of any rate payable under the authority of this Act may be in the form contained in the schedule (D) annexed to this Act, or to the like effect; and any constable authorised by any such warrant who shall neglect or refuse to make distress or sale pursuant to the same, after being required so to do by a collector of the district in which the rate in arrear was made, shall be liable to a penalty not exceeding five pounds.

CV. Provided always, and be it enacted, that nothing in this Act shall be deemed to alter or interfere with the liability of the Universities of Oxford and Cambridge respectively to contribute in the proportion and manner specified in any local Act under which the Oxford and Cambridge Commissioners respectively now act towards the expense of paving and pitching, repairing, lighting, and cleansing, under the powers of any such local Act, the several streets, lanes, ways, alleys, passages, and places within the jurisdiction of such Commissioners respectively; and in case any difference shall arise between either of the said Universities and the Local Board of Health with respect to the proportion and manner in which the University shall contribute towards any expenses under this Act, and to which the University is not liable under any such local Act, the same shall be settled by the General Board of Health: provided also, that all rates, contributions, and sums of money which may become payable under this Act by the said Universities respectively, and their respective halls and colleges, may be recovered from such Universities, halls, and colleges, in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

CVI. And be it enacted, that the production of the books purporting to contain any rate or assessment made under this Act shall alone, and without any other evidence whatsoever, be re-

recover by
distress.Form of distress
warrant.Penalty upon
constables
refusing to levy.Quota of rates
to be paid by
the Universities,
etc.Evidence of
rates.

ceived as *prima facie* evidence of the making and validity of the rates mentioned therein.

CVII. *Rates may be mortgaged.* (Repealed by 21 & 22 Vict. c. 98, s. 57.)

Commissioners
of Public Works
may make ad-
vances to Local
Boards under
5 & 6 Vict. c. 9.

CVIII. And be it enacted, that the Commissioners acting in the execution of an Act passed in the second Session of the fifth year of Her Majesty's reign, intituled "An Act to authorise the advance of money out of the Consolidated Fund to a limited amount for carrying on public works and fisheries and employment of the poor," and to amend the Acts authorising the issue of Exchequer Bills for the like purposes, and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, may, if they shall think fit, make advances to the Local Board of Health of any district, for the purposes of this Act, upon the security of the rates to be levied by such Board under this Act, and without requiring any further or other security than a mortgage of such rates.

Money may be
borrowed at
lower rates of
interest, to pay
off securities
bearing a
higher rate.

CIX. And be it enacted, that if the Local Board of Health can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they shall think fit, so borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorised to mortgage under this Act with payment of the sum so borrowed, together with the interest thereon, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed upon mortgage.

Power to bor-
row money to
pay off former
mortgages.

CX. And be it enacted, that if at the time appointed by any mortgage deed for payment of the principal money secured thereby the Local Board of Health are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the said principal moneys, and may secure the repayment of the same, and the interest to be paid thereon, in the same manner in all respects as in the case of moneys borrowed for defraying costs, charges, and expenses incurred by the Local Board of Health in the execution of this Act.

Form of mort-
gage.

CXI. And be it enacted, that every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall (in the case of a noncorporate district) be sealed with the seal of the Local Board of Health, by or on the part of whom the same is executed, and be signed by five or more members thereof, or (in the case of a corporate district) be sealed with the common seal, and may be made according to the form contained in the schedule (B) to this Act annexed, or to the like effect; and there shall be kept at the office of the Local Board of Health a register of the mortgages upon each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same refusing to

Register of
mortgages.

allow such inspection, shall be liable to a penalty not exceeding five pounds. (1)

CXII. And be it enacted, that any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and consideration for the transfer; and such transfers may be according to the form contained in the schedule (C) to this Act annexed, or to the like effect; and there shall be kept at the office of the Local Board of Health a register of the transfers of mortgage charged upon each kind of rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk, who shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and upon any transfer being so registered the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby: and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby. (2)

CXIII. *Interest to be paid half-yearly, and mortgage debts to be paid off by means of sinking fund.* (Repealed by 21 & 22 Vict. c. 98, s. 57.)

CXIV. And be it enacted, that if at the expiration of six months from the time when any principal money or interest has become due upon any mortgage of rates made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are hereby empowered, after hearing the parties, to appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid, (3) and upon such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them: provided always, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

CXV. And be it enacted, that all bye-laws made by the Local

(1) See 21 & 22 Vict. c. 98, s. 59.

(2) See Ibid.

(3) See Ibid. s. 10.

Local Board not to be in force till confirmed by Secretary of State.

Notice of confirmation, etc.

Bye-laws to be printed, etc.

Local Board to be surveyors of highways;

but existing surveyors to recover rates in arrear.

Board of Health under and for the purposes of this Act shall be in writing under their seal, and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal; and the said Local Board may by any such bye-laws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of forty shillings for each day after written notice of the offence from the said Local Board; and the said Local Board may alter or repeal any such bye-laws, by any subsequent bye-laws, sealed and signed, or (in the case of a corporate district) sealed, as last aforesaid: provided always, that all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: provided also, that no such bye-laws shall be repugnant to the laws of England or to the provisions of this Act, and the same shall not be of any force or effect unless and until the same be submitted to and confirmed by one of Her Majesty's principal Secretaries of State, who is hereby empowered to allow or disallow the same, as he may think proper: provided also, that no such bye-laws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which such bye-laws relate one month at least before the making of such application; and for one month at least before any such application a copy of the proposed bye-laws shall be kept at the office of the Local Board of Health, and be open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward; and the clerk shall furnish every such ratepayer who shall apply for the same with a copy thereof or of any part thereof, on payment of sixpence for every one hundred words contained in such copy.

CXVI. And be it enacted, that all bye-laws made by the Local Board of Health in pursuance of this Act shall be printed, and hung up in the office of the said Local Board; and copies thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, upon his application for the same.

CXVII. And be it enacted, that the Local Board of Health within the limits of their district shall, exclusively of any other person whatsoever, execute the office of and be surveyor of highways, and have all such powers, authorities, duties, and liabilities as any surveyor of highways in England is now or may hereafter be invested with or be liable to by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act; and the inhabitants of any district shall not in respect of any property situate therein be liable to the payment of highway-rate or other payment, not being a toll, in respect of making or repairing roads or highways within any parish, township, or place, or part of any parish, township, or place situate beyond the limits of such district: provided always, that the several persons who at the time when this Act is applied to any district are surveyors of highways within the same district may recover any highway-rate made in respect of the same district, and then remaining unpaid, in the same manner as if this Act had not been

passed; and the money so recovered shall be applied, in the first place, in reimbursing themselves any expenses incurred by them as such surveyors, and in discharging any debts legally owing by them on account of the highways within their jurisdiction; and the surplus (if any) shall be paid by them to the treasurer, and carried to the district fund account mentioned in this Act: (1) provided also, that neither the allowance by justices, nor the signature by the Local Board of Health, shall be necessary in the case of any rate made by the Local Board of Health under this Act. (2)

CXVIII. And be it enacted, that, notwithstanding the application of this Act to any district, the liability of any person whomsoever to defray or contribute towards the expense of making, completing, altering, amending, or maintaining any sewer, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving, or flagging, or putting in order any street or part thereof within the district, shall, if incurred previously to the time when this Act is so applied, continue, and the same may be enforced, as if this Act had not been passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

CXIX. *Mortgage of rates to be made only with approval of General Board.* (Repealed by 21 & 22 Vict. c. 98, s. 57.)

CXX. And be it enacted, that if in any case in which the Local Board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improvement expenses, any person shall deem himself to be aggrieved by the decision of the said Local Board thereupon, he may, within seven days after notice of such decision, address a memorial to the said General Board, (3) stating the grounds of his complaint; and the said General Board may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive upon the said Local Board; and if the said Local Board shall have proceeded to recover such expenses in a summary manner, the said General Board may, if they shall think fit, direct the said Local Board to pay to the person so proceeded against such sum as they may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

CXXI. And be it enacted, that during any inquiry by a superintending inspector (4) under this Act he may and he is hereby empowered to summon before him any persons whomsoever, and to examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry, and he may by any such summons require any parochial officer, or any officer of or acting under any corporation, guardians, or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of Parliament in force within the district or place to which any such inquiry may relate, to produce before him any surveys, plans, sections, rate-books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of such inquiry, and such inspector may examine, inspect, or take copies of any such books,

Existing liabilities to make sewers, etc., not to be discharged.

Parties aggrieved by proceedings of Local Board as to recovery of certain expenses may appeal to the General Board.

Superintending inspectors may summon witnesses, call for plans, rates, etc.

(1) See 21 & 22 Vict. c. 98, s. 37.

(2) Ibid.

(3) Ibid. s. 65.

(4) Ibid. s. 80.

surveys, plans, sections, and documents, or any of them, or part thereof; and whosoever wilfully disobeys any such summons, or prevents any such inspector from examining, inspecting, or taking copies as last aforesaid, or refuses to answer any question put to him by such inspector for the purposes of the said inquiry, shall be liable to a penalty not exceeding five pounds: provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him; and no person shall be required in any case, in obedience to any such summons, to travel more than ten miles from his place of abode.

CXXII. *As to audit of accounts.* (Repealed by 21 & 22 Vict. c. 98, s. 60.)

Mode of re-
ferring to arbi-
tration.

CXXIII. And be it enacted, that in case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorized or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator, to whom the matter shall be referred; and every such appointment when made on behalf of the Local Board of Health shall (in the case of a non-corporate district) be under their seal and the hands of any five or more of their number, or under the common seal in case of a corporate district, and on the behalf of any other party, under his hand, or if such party be a corporation aggregate, under the common seal thereof; and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same; and after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such matter shall have arisen, and notice in writing by one party who has himself duly appointed an arbitrator to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties; and the award of any arbitrator or arbitrators appointed in pursuance of this Act shall be binding, final, and conclusive upon all persons, and to all intents and purposes whatsoever.

Death, etc., of
one of several
arbitrators;

CXXIV. And be it enacted, that if before the determination of any matter so referred any arbitrator die, or refuse or become incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf the remaining arbitrator may proceed *ex parte*; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made; and in case a single arbitrator die or become incapable to act, before the making of this award, or fail to make his award within twenty-one days after his appointment, or within such extended time, if any, as shall have been duly appointed by him for that purpose, the matter referred to him shall be again referred to arbitration

of single arbi-
trator.

under the provisions of this Act, as if no former reference had been made.

CXXV. And be it enacted, that in case there be more than one Appointment of arbitrator, the arbitrators shall, before they enter upon the umpire by the reference, appoint by writing under their hands an umpire, and if parties; the person appointed to be umpire die, or become incapable to act, the arbitrators shall forthwith appoint another person in his stead; and in case the arbitrators neglect or refuse to appoint an by Quarter Sessions. umpire for seven days after being requested so to do by any party to the arbitration, the Court of General or Quarter Sessions shall, on the application of any such party, appoint an umpire; and the award of the umpire shall be binding, final, and conclusive upon all persons and to all intents and purposes whatsoever; and in case the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time, if any, as shall have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire; and the provisions of this Act with respect to the time for making an award, and with respect to extending the same, in the case of a single arbitrator, shall apply to an umpirage.

CXXVI. Provided always, and be it enacted, that the time for Time within making an award under this Act shall not be extended beyond the which award period of three months from the date of the submission or from must be made. the day on which the umpire shall have been appointed (as the case may be).

CXXVII. And be it enacted, that any arbitrator, arbitrators, Power to arbit- or umpire, appointed by virtue of this Act, may require the pro- trator to require duction of such documents in the possession or power of either production of party as they or he may think necessary for determining the documents. matters referred, and may examine the parties or their witnesses on oath; and the costs of and consequent upon the reference shall As to costs of be in the discretion of the arbitrator or arbitrators, or of the reference. umpire (in case the matters referred are determined by an umpire under the power hereinbefore contained in that behalf); and any Submission may submission to arbitration under the provisions of this Act may be be made a rule made a rule of any of the Superior Courts, on the application of of Court. any party thereto.

CXXVIII. And be it enacted, that before any arbitrator or Declaration to umpire shall enter upon any such reference as aforesaid he shall be made by make and subscribe the following declaration before a justice of arbitrator and the peace; (that is to say,) umpire.

"I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1848.
A. B."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanour.

CXXIX. And be it enacted, that in all cases in which the Recovery of amount of any damages, costs, or expenses is by this Act directed to damages, etc. be ascertained or recovered in a summary manner, the same may be ascertained by and recovered before two justices, together with such costs of the proceedings as the justices may think proper; and if the sums adjudged be not paid by the party against

whom the adjudication is made, the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication; and any penalty imposed by or under the authority of this Act, or any bye-law made under this Act, the recovery whereof is not otherwise expressly provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before two justices, together with such costs of the proceedings as they may think proper; and if the sums adjudged be not paid by the party against whom the adjudication is made, the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication; and such justices or either of them may order that any offender convicted as last aforesaid be detained and kept in safe custody until return can be conveniently made to the last-mentioned warrant, unless he give sufficient security, by way of recognizance or otherwise, for his appearance on the day appointed by the return, such day not being more than eight days from the time of taking the security; and if before issuing such warrant, or upon the return thereof, it appear to the satisfaction of the last-mentioned justices that no sufficient distress can be had within their jurisdiction, they may, by warrant under their hands and seals, cause the offender to be committed to gaol, there to remain, without bail, for any term not exceeding three months, unless such penalty and costs be sooner paid.

Form of conviction.

CXXX. And be it enacted, that the justices before whom any person is convicted of any offence against the provisions of this Act may cause the conviction to be drawn up according to the form and directions contained in the schedule (E) annexed to this Act, or to the like effect; and any conviction so drawn up shall be valid and effectual to all intents and purposes.

Mode of proceeding before justices.

CXXXI. And be it enacted, that in proceeding before any justice or justices under the provisions of this Act, in any case in which the mode of proceeding is not specially prescribed, any one justice may summon the party charged to appear before the justice or justices by whom the matter is to be determined at a time and place to be named; and upon the appearance of the party charged, or in his absence, upon proof of service of the summons upon him personally, or by leaving a copy thereof at his last known place of abode or business, the last-mentioned justice or justices may hear and determine the matter, and for that purpose examine the parties, or any of them, and their witnesses on oath; and the costs of all such proceedings shall be in the discretion of the last-mentioned justice or justices; and where in

Distress, how to be levied:

this Act any sum of money whatsoever is directed to be levied by distress and sale of the goods and chattels of any party, the overplus arising from such sale shall, after satisfying such sum, and the costs and expenses of the distress and sale, be returned to him,

not unlawful for want of form.

on demand; and no distress levied under the authority of this Act shall be unlawful, nor shall any party making the same be a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall he be a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case.

CXXXII. And be it enacted, that justices of the peace, being Justices, though also members of any Local Board of Health, may, if acting in members of Petty Sessions, notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under this Act, may act under this Act.

CXXXIII. And be it enacted, that no proceedings for the recovery of any penalty incurred under the provisions of this Act shall be had or taken by any person other than by a party grieved, or the Local Board of Health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where any such penalty is directed to be paid to the churchwardens and overseers of the poor), without the consent in writing of Her Majesty's Attorney-General first had and obtained; and no such penalty shall be recovered unless proceedings for the recovery thereof shall have been commenced within six calendar months after the commission or occurrence of the offence upon which the penalty attaches; and if the application of the penalty be not otherwise provided for, one-half thereof shall go to the informer, and the remainder to the Local Board of Health of the district in which the offence was committed: provided always, that if the said Local Board be the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered on account of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the district fund account mentioned in this Act. Common informers not to sue without consent of Attorney-General. Proceedings for penalties to be taken within six months.

CXXXIV. And be it declared and enacted, that, notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed. Application of penalties. Liability to penalty not to relieve from other liabilities.

CXXXV. And be it enacted, that any person who shall think himself aggrieved by any rate made under the provisions of this Act, or by any order, conviction, judgment, or determination of or by any matter or thing done by any justice or justices, in any case in which the penalty imposed or the sum adjudged shall exceed the sum of twenty shillings, may appeal to the Court of General or Quarter Sessions holden next after the making of the rate objected to, or accrual of the cause of complaint; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making and publication of the rate appealed against, or accrual of the cause of complaint, he give to the Local Board of Health or justice or justices by whose act he may think himself aggrieved notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal; and the said Court, upon hearing and finally determining the matter of the appeal, shall and may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents and purposes whatsoever: provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid before the sessions holden as last aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard: provided also, that on the hearing of the appeal no grounds of appeal Appeal to Quarter Sessions.

shall be gone into or entertained other than those set forth in such statement as aforesaid.

Power of Sessions upon appeals against rates.

CXXXVI. And be it enacted, that the said Court of General or Quarter Sessions shall upon appeals under this Act against any rate have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any Court of General or Quarter Sessions with respect to amending or quashing any rate or assessment, or awarding costs upon appeals with respect to rates for the relief of the poor; and the costs awarded by the said Court under this Act may be recovered in the same manner in all respects as costs awarded upon the last-mentioned appeals: provided always, that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the Court before whom the appeal is heard think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made.

No rate or proceeding to be quashed for want of form, etc.

CXXXVII. And be it enacted, that no rate, nor any proceeding to be had touching the conviction of any offender against this Act, nor any order, award, or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, or be removed or removable by certiorari or other writ or process whatsoever into any of the Superior Courts.

Proceedings in case of non-corporate districts.

CXXXVIII. And be it enacted, that the Local Board of Health of any non-corporate district may sue and be sued in the name of the clerk for the time being for or concerning any contract, matter, or thing whatsoever relating to any property, works, or things vested or to become vested in them by reason of the provisions of this Act, or relating to any matter or thing whatsoever entered into or done, or intended to be entered into or done, by them, under the provisions of this Act; and in any action of ejectment brought or prosecuted by such Local Board it shall be sufficient to lay the demise in the name of the said clerk; and in proceedings by or on the part of such Local Board against any person for stealing or wilfully injuring or otherwise improperly dealing with any property, works, or things belonging to them or under their management, it shall be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the said clerk, and all legal proceedings by, on the part of, or against such Local Board, under this Act, may be preferred, instituted, and carried on in his name; and no proceedings whatever shall abate or be discontinued by the death, resignation, or removal of the clerk, or by reason of any change or vacancy in such Local Board by death, resignation, or otherwise: provided always, that the clerk in whose name any such action or suit, complaint, information, or proceeding, may be brought, preferred, instituted, or defended as aforesaid, shall be fully reimbursed, out of the general district rates to be levied under this Act, all such costs, charges, damages, and expenses, as he shall or may be or become liable to pay, sustain, or be put unto by reason of his name being so used. (1)

Actions, etc., in name of clerk. Mode of describing property of Local Board.

Actions, etc., not to abate.

Clerk to be reimbursed expenses.

Notice of action.

CXXXIX. And be it enacted, that no writ or process shall be

(1) See 29 & 30 Vict. c. 90, s. 48.

sued out against or served upon any superintending inspector, or any officer or person acting in his aid, or under the direction of the General Board of Health, or against the Local Board of Health, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said Local Board, for anything done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of the action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last mentioned notice; and unless such notice be proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder; and any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney, or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar, and (by leave of the Court) with the general issue or other plea or pleas; and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the Court, at any time before trial, pay into Court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue or other plea or pleas, any rule of Court or practice to the contrary notwithstanding.

Limitation of actions.

Venue.

General issue.

Tender of amends, etc.

Money may be paid into Court.

CXL. And be it enacted, that no matter or thing done or contract entered into by the Local Board of Health, nor any matter or thing done by any superintending inspector, or any member of the said Local Board, or by the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said Local Board, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purposes of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by any such Local Board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting as last aforesaid, shall be borne and repaid out of the general district rates levied under the authority of this Act.

Persons acting in execution of Act not to be personally liable.

CXLI. *Orders in Council and provisional orders may be amended and districts extended.* (Repealed by 21 & 22 Vict. c. 98, s. 77.)

CXLII. And be it enacted, that all Orders in Council under this Act shall take effect and be in full force and operation within the district to which they apply from and after a day which shall

Publication of Orders in Council, etc.

Reports of
superintending
inspectors, etc.,
to be laid before
Parliament.

Entry upon
lands for the
purposes of this
Act.

Compensation
in case of
damage by
Local Board.

Local Board
may allow
owners time for

be specified in such orders for that purpose; and a copy of every such order shall be published in the *London Gazette*, and shall be laid before Parliament in the month of January in every year if Parliament be then sitting, or if Parliament be not then sitting then within one week after the next meeting thereof; and whenever any provisional order of the General Board of Health is submitted to Parliament for confirmation, the said General Board shall present to both Houses of Parliament a copy of all reports of any superintending inspector with respect to the parts to which the provisional order relates, and of all memorials forwarded to the said General Board with respect to such reports.

CXLIII. And be it enacted, that in case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises shall refuse to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the Local Board of Health may, upon notice to such owner or occupier, apply to two justices for an order authorizing the members of such Local Board, and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them; and if no sufficient cause shall be shown against the same the said justices may make an order authorizing the same accordingly, and thereupon any superintending inspector, the Local Board of Health, or any member thereof, the surveyor, and inspector of nuisances, and any person authorized by any such superintending inspector, Local Board, surveyor, or inspector of nuisances, may, at all reasonable times, between the hours of ten in the forenoon and four in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as shall be specified in the said order, without being subject to any action or molestation for so doing: provided always, that, except in case of emergency, no entry shall be made or works commenced under the powers of this enactment unless twenty-four hours at the least previously thereto notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

CXLIV. And be it enacted, that full compensation shall be made out of the general (*or special* (1)) district rates to be levied under this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount the same shall be settled by arbitration in the manner provided by this Act, or if the compensation claimed do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner.

CXLV. *Sewers, etc., of Commissioners of Sewers, private water-courses, etc., not to be used without consent.* (Repealed by 21 & 22 Vict. c. 98, s. 68.)

CXLVI. And be it enacted, that in any case in which the Local Board of Health may have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the

(1) See 21 & 22 Vict. c. 98, s. 54.

same are incurred is made liable by this Act, the said Local Board may, if they think fit, allow such owner time for repayment, and receive the same by such annual instalments not being less than one-thirtieth part of the entire sum, together with interest at the rate of five pounds in the hundred upon the sum from time to time remaining unpaid, as they, under the circumstances of each case, may consider to be just; but although time for repayment be allowed as last aforesaid, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment at the times respectively appointed for payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed.

CXLVII. And be it enacted, that every person who upon any examination on oath under the provisions of this Act shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

CXLVIII. And be it enacted, that whosoever wilfully obstructs any superintending inspector, or any member of the Local Board of Health, or any officer or person duly employed in the execution of this Act, or destroys, pulls down, injures, or defaces any board upon which any bye-law, notice, or other matter is inscribed, shall, if the same were put up by authority of the Local or General Board of Health, be liable for every such offence to a penalty not exceeding five pounds; and if the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing (which may be according to the form contained in the schedule (F) to this Act annexed, or to the like effect), require such occupier to permit the execution of the works required to be executed, provided that the same appear to such justice to be such as are necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal; and if the occupier of any premises, when requested by or on behalf of the Local Board of Health to state the name of the owner of the premises occupied by him, shall refuse or wilfully omit to disclose or wilfully misstate the same, any justice may, on oath made before him of such request, and refusal, omission or misstatement, summon the party to appear before him or some other justice at a time and place to be appointed in such summons, and if after being so summoned he neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or misstatement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding five pounds.

CXLIX. And be it enacted, that whenever the consent, sanction, or approval or authority of the General Board of Health is required by the provisions of this Act, the same shall be in writing under their seal and the hands of two or more members thereof; (1) and whenever the consent, sanction, approval, or

repayment of expenses.

False evidence punishable as perjury.

Penalty for obstructing officers, defacing boards, etc.

Upon occupiers preventing execution of works.

Occupiers to disclose owner's name.

Consents of Board of Health and Local Board to be in writing.

(1) This will be applicable only to past transactions.

authority of the Local Board of Health is so required the same shall (in the case of a non-corporate district) be in writing under their seal and the hands of five or more of them, or (in case of a corporate district) under their common seal.

Service of notice
upon Local
Board ;

notice upon
owners and
occupiers.

CL. And be it enacted, that any summons, notice, writ, or proceeding of any kind whatsoever to be served upon the Local Board of Health may be so served by being left at or sent through any post-office, directed to the Local Board of Health, at their office, or by being delivered there to the clerk personally ; and in all cases in which any notice is by this Act required to be given to the owner or occupier of any premises it shall be sufficient to address the notice to them (*sic*) by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description ; and the notice shall be served upon them or one of them, as the case may require, either personally or by delivering the same to some inmate of his or their place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown,) upon any inmate of the last mentioned premises, or if such premises be unoccupied, then, in case the notice is required to be served upon the occupier, (and in case of the owner also, if his residence be unknown,) it shall be sufficient to fix the notice upon some conspicuous part of the premises : provided always, in the case of notices to the owner, that, although his place of abode be known to the Local Board of Health, yet if it be not within the limits of their district, it shall be sufficient for them to transmit any notice directed to him by name, through the post.

Exemptions
from stamp
duty.

Exemptions
from window
duty in certain
cases.

CLI. And be it enacted, that no advertisement inserted or caused to be inserted by the General or Local Board of Health in the *London Gazette* or any paper or publication under this Act, or for the purpose of carrying the same into effect, nor any deed, award, submission, instrument, contract, agreement, or writing made or executed by the said General or Local Board, their officers or servants, under or for the purposes of this Act, nor any appointment by the General or Local Board of any officer or person under this Act, shall be chargeable with any stamp duty whatever ; and in case any vault, cellar, or underground room of any house containing, at the time of the passing of this Act, seven windows or lights only, shall have been let or occupied separately as a dwelling before the passing of this Act, without any external window, or such an external window as is required by the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms, and it shall become necessary, by reason of such provisions, to make such an external window as is required thereby, in order that such vault, cellar underground room may lawfully be let or occupied separately as a dwelling, the making only of such external window shall not render any person liable in respect of such house to the duties payable for a house having eight windows or lights, anything in any Act of Parliament to the contrary notwithstanding. (1)

(1) See 14 & 15 Vict. c. 36, by which the window duty was abolished.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A).

FORM OF VOTING PAPER.

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote he must in like manner write his initials, sign his own name, and state in writing the name of the Corporation or Company for whom he is proxy.

Initials of the Voter against the names of the Persons for whom he intends to vote.	Name of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nomi- nators.	Address of the Nomi- nators.
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I vote for the persons in the above list against whose names my initials are placed,

Signed _____

or the mark of _____

Witness to the mark,

or _____ Proxy for _____

SCHEDULE (B).

FORM OF MORTGAGE OF RENTS.

By virtue of the Public Health Act, 1848, the Local Board of Health for the district of _____ in consideration of the sum of _____ paid to the Treasurer of the said district by *A. B.* of _____ for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of _____ doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of _____ with interest at the rate of _____ per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of _____ at [*place of payment*]. Dated this _____ day of _____ one thousand eight hundred and _____.

[*In case of a non-corporate district, to be signed by five members at least of the Local Board of Health, and sealed with their seal; in case of a corporate district, to be sealed with the common seal.*]

SCHEDULE (C).

FORM OF TRANSFER OF MORTGAGE.

I *A. B.* of _____ in consideration of the sum of _____ paid to me by *C. D.* of _____ do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage bearing date the _____ day of _____ and made by the Local Board of Health for the district of _____ for securing the sum of _____ and interest thereon at _____ per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security*], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal, this _____ day of _____ one thousand eight hundred and _____.

A. B. (L.S.)

SCHEDULE (D).

FORM OF DISTRESS WARRANT.

To *A. B.* collector of rates, and to all constables and peace officers.
County of _____ } WHEREAS complaint hath been duly made by *A. B.*, one
[*or Borough, etc.*] } of the collectors for the district of _____
to wit. } under and by virtue of the Public Health Act, 1848,
that *C. D.* of, etc., hath not paid and hath refused to pay the sum of _____
duly assessed upon him in and by a certain rate bearing date on or about the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ although the same hath been duly demanded of him:
And whereas it appears to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the said county [*or Borough, etc.*], as well upon the oath of the said *A. B.* as otherwise, that the said sum of _____ hath been duly demanded in writing by him from the said *C. D.*, and that the said _____ hath refused to pay the same for the space of fourteen days after such demand made, and doth refuse to pay the same: And whereas the said *C. D.* hath been duly summoned to appear before me to shew cause why the said sum should not be paid by him, and not having shewn to me any sufficient

cause why the same should not be paid, These are, therefore, in Her Majesty's name, to command you to levy the said sum of _____ and also the sum of _____ the costs of proceeding to obtain this Warrant, by distress and sale of the goods and chattels of the said *C. D.*, and your reasonable charges of taking, keeping, and selling the said Distress, rendering to him the overplus (if any), on demand; and if sufficient distress cannot be found of the goods and chattels of the said *C. D.*, that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, the day of in the year of our
Lord

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

SCHEDULE (E).

FORM OF CONVICTION.

County of } Be it remembered, That on the day of
[or Borough, etc.] } in the year of our Lord A. B. is convicted before
to wit. } me [or us] one [or two] of Her
Majesty's justices of the peace in and for the county [or borough, etc.] of
[here describe the offence generally, and the time and place when and
where committed, in the words of this Act or as near thereunto as may be], contrary
to the Public Health Act, 1848; and I [or we] do adjudge that the said A. B.
hath forfeited for his said offence the sum of [amount of penalty adjudged], and
that he do pay to C. D. the further sum of as and for his costs in
this behalf.

Given under my hand and seal [*or our hands and seals*], the day and year first above written.

(Signed) (L. S.)
(L. S.)

SCHEDULE (F).

FORM OF ORDER TO PERMIT EXECUTION OF WORKS BY OWNERS.

County of } WHEREAS complaint hath been made to me, *E. F.*, Esq.,
[or Borough, etc.] } one of Her Majesty's justices of the peace in and for the
to wit. } county [or borough, etc.] of by *A. B.* owner
within the meaning of the Public Health Act, 1848, of certain premises, to
wit a house [as the case may be] situate in Street [as the case may be]
in the parish of in the said county [or borough, etc.], that *C. D.*, the
occupier of the said premises, doth prevent the said *A. B.* from obeying and
carrying into effect the provisions of the said Act in this, to wit, that he the
said *C. D.* doth prevent the said *A. B.* from [here describe the works generally,
according to circumstances, for instance, thus: constructing and laying down, in
connection with the said house, a covered drain, so as to communicate with a
[sewer or drain] of the Local Board of Health of the district of or a
sewer, etc., which the Local Board of Health of the district of are
entitled to use [as the case may require], such sewer being within one hundred
feet of the said house]: And whereas the said *C. D.*, having been duly sum-
moned to answer the said complaint, and not having shewn sufficient cause
against the same, and it appearing to me that the said works are necessary for
the purpose of enabling the said *A. B.* to obey and carry into effect the pro-
visions of the said Act, I do hereby order that the said *C. D.* do permit the
said *A. B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this _____ day of _____ in the year
of our Lord one thousand eight hundred and _____

E. F. (L. S.)

18 & 19 VICT. c. 116.

An Act for the better Prevention of Diseases.

[14th August, 1855.]

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

Short title.

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

II. *Local authority for execution of Act.* (1)

III. *Expenses of Act.* (1)

Power of entry.

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

Power to Privy Council to issue orders that provisions herein contained for prevention of diseases may be put in force.

V. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the Lords and others of Her Majesty's most honourable Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's principal Secretaries of State being one), may, by order or orders to be by them from time to time made, direct that the provisions herein contained, for the prevention of diseases, be put in force in England, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts to which any such order or orders extend, and in like manner, revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such Order of Her Majesty's Privy Council, or of any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of Her Majesty's Privy Council, and shall be published in the *London Gazette*; and such publication shall be conclusive evidence of such order, to all intents and purposes.

Power to General Board of Health to issue regulations to carry out such provisions.

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

For the speedy interment of the dead;

For house-to-house visitation;

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

And from time to time, in like manner, may revoke, renew, and alter any such directions and regulations as to the said Board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of disease shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts, and then to such parts as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such order, be applicable to the same parts.

Local extent
and duration of
regulations of
General Board.

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

Publication of
such regula-
tions.

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

The local
authority to see
to the execution
of such regula-
tions, etc.

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

And may direct
prosecutions for
violating the
same.

X. Every order of Her Majesty's Privy Council, and every direction and regulation of the General Board of Health, under this Act, shall be laid before both Houses of Parliament, forthwith, upon the issuing thereof, if Parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next sessions of Parliament.

Orders of
Council, direc-
tions, and regu-
lations to be
laid before Par-
liament.

XI. Orders in Council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts contained, in *Great Britain*, may extend to parts and arms of the sea lying within the jurisdiction of the Admiralty; and the Board of Health for *England* may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid as upon inland waters.

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

XII. Whenever, in compliance with any regulation of the General Board of Health, which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor, shall perform any medical service on board of any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the

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

habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined summarily, at the place where the dispute arises, as in the case of seamen's wages not exceeding fifty pounds, according to the provisions of the law in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place, for attendance on patients of the like class or condition as those in respect of whom the charge is made.

Authentication
of directions
and regulations
of General
Board of Health.

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

Penalty for
obstructing
execution of Act.

XIV. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by the General Board of Health as aforesaid, shall be liable for every such offence to a penalty not exceeding five pounds, to be appropriated in or towards the defraying the expenses of executing this Act.

Certain provi-
sions of Nui-
sances Removal
Act to apply to
this Act.

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

18 & 19 VICT. c. 121.

An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849.

[14th August, 1855.]

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and it is expedient to repeal the said Acts so far as relates to *England*, and to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Recited Acts
repealed as far
as relates to
England, except

I. From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to *England*: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the

said Acts; and all contracts or works undertaken by virtue of the said Acts, shall continue and be as effectual as if the said Acts had not been repealed.

as to proceedings commenced.

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

Interpretation of certain terms used in this Act.

PART I.

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

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

The local authority to execute this Act in places as herein stated, III. The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in *England*: (1)

In any place within which there is no such Local Board of Health, nor Council, body of trustees, or commissioners, and where there is or shall be a Board for the repair of the highways of such place, that Board:

In any place where there is no such Local Board of Health, Council, body of trustees, or commissioners, nor Highway Board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum.

As to filling of vacancies,

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

Power to local authority to appoint committees,

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

VI. *As to the execution of this Act in extra-parochial places, and VII. As to the defraying expenses of executing this Act, are repealed by 23 & 24 Vict. c. 77, s. 1.*

What are deemed nuisances under this Act.

VIII. The word "nuisances" under this Act shall include—Any premises in such a state as to be a nuisance or injurious to health:

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

(1) The whole of this section is repealed by the 23 & 24 Vict. c. 77, s. 1; but section 3 of that Act rendered it necessary to retain in the former

edition what follows of the section. See now, however, 29 & 30 Vict. c. 90, s. 17.

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

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

Any accumulation or deposit which is a nuisance or injurious to health (1):

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

IX. *Power to local authority to appoint a sanitary inspector and allow him a proper salary.* (Repealed by 23 & 24 Vict. c. 77, s. 1.)

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

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

XI. The local authority shall have power of entry, (2) for the following purposes of this Act, and under the following conditions:—

Power of entry to local authority or their officer.

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, (3) demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand, require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him, of belief in the existence of such nuisance, and of the fact of no person having custody of the premises can be discovered, by order under his hand, authorize the local authority, or their officers, to enter the premises between the hours aforesaid.

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

(1) See 29 & 30 Vict. c. 90, s. 19.

(2) Ibid. s. 31.

(3) Ibid. ss. 30-32.

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

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

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

PART II.

With regard to Removal of Nuisances.

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

Proceedings by local authority before justices in the case of nuisances likely to recur, etc.

If proved to justices that nuisances exist, etc., they shall issue order for abatement, etc.

XII. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance, in their opinion, did exist, at the time when the notice was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; (1) and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint: and if it be proved to their satisfaction that the nuisance exists or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

Justices' order for abatement.

XIII. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation,

(1) See 29 & 30 Vict. c. 90, s. 21.

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

Prohibitive
order against
future nuisance.

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

Penalty for con-
travention of
order of abate-
ment; and of
prohibition.

Local authority
may enter and
remove or abate
nuisance.

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

Appeal against
order of prohi-
bition.

XVI. When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted.

Appeal against
order of abate-
ment when
structural
works are
required.

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

Manure, etc., to be sold.

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

Proceedings before justices to recover expenses.

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

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

XIX. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any County or Superior Court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof.

XX. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned, upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon;

and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale.

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

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

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

Power to local authority to cover and improve open ditches, etc.

XXIII. Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other

Penalty for causing water to be corrupted by gas-washings.

substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in Superior Courts within six months.

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

Daily penalty during the continuance of the offence.

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

Penalty on sale of unwholesome meat, etc.

XXVI. Repealed by 26 & 27 Vict. c. 117, s. 1 (see *post*, p. 761).

As to nuisances arising in cases of noxious trades, businesses, processes, or manufactures.

XXVII. If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building, or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, (1) to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting, the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes an effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay

(1) See 29 & 30 Vict. c. 90, s. 18.

a sum of not more than five pounds, nor less than forty shillings, and upon a second conviction for such offence, the sum of ten pounds, and for each subsequent conviction, a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds: provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and ordered to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into the recognizances to try such appeal, and shall appeal accordingly: provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

XXVIII. Provided also, that if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject-matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's Superior Courts for preventing or abating the nuisance complained of.

Reference to
Superior Court
at the option of
the party com-
plained against.

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

On certificate
of medical
officer to local
authority that
house is over-
crowded, pro-
ceedings may be
taken to abate
the same.

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

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

PART III.

As to procedure under this Act.

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

Service of
notices, sum-
monses, and
orders.

XXXI. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises, they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises; or if the person shall reside at a distance of more than five miles from the office of the inspector, then by a registered letter through the post.

Proof of resolu-
tions of local
authority.

XXXII. Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same.

As to proceed-
ings taken
against several
persons for the
same offence.

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

One or more
joint owners
or occupiers
may be pro-
ceeded against
alone.

XXXIV. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one and partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

Designation of
"owner" or
"occupier."

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

Penalty for ob-
structing execu-
tion of this Act.

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

Penalty on
occupier ob-
structing owner.

XXXVII. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act: and if within twenty-four hours after the

service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance.

XXXVIII. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England, according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act. Penalties and expenses recoverable under 11 & 12 Vict. c. 43.

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

XL. Appeals under this Act shall be to the Court of Quarter Sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said Court, and to abide the order of and pay such costs as shall be awarded by the justices at such Court or any adjournment thereof; and the said Court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard: provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid: provided also, that in any case of appeal the Court of Quarter Sessions may, if they think fit, state the facts specially for the determination of Her Majesty's Court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of certiorari or otherwise, into the said Court of Queen's Bench. Appeals under this Act to be to Quarter Sessions.

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

XLII. The local authority, and any officer or person acting As to protec-

tion of local authority and its officers.

under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to Local Boards of Health and their officers by the law in force for the time being.

Act not to impair jurisdiction of Sewers Commissioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

XLIII. Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any Commissioners of Sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act, intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from Steam Vessels above London Bridge," or the Common Lodging Houses Act, the Act for the Regulation of Municipal Corporations, the Public Health Act, or any Improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any bye-laws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging Houses Acts, 1851 and 1853, (1) shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to affect navigation of rivers or canals.

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

Saving as to rights of mill-owners.

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

Short title.

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

(1) See 14 & 15 Vict. c. 28; also 16 & 17 Vict. c. 41.

SCHEDULE OF FORMS.

FORM (A).

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

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

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

Dated this day of , 18 .

A. B.

FORM (B).

Notice of Nuisance.

To the local authority [describing it].

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

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

[Signed by Complainant under sect. 10.]

FORM (C).

Notice to Owner or Occupier of Entry for Examination.

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

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

And further take notice, that after the expiration of twenty-four hours from the service of this notice the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for

enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

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

A. B.

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

FORM (D).

Summons.

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

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

FORM (E).

Order of Justices for Removal of Nuisances by Owner, etc.

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

County of [or } WHEREAS on the day of 'complaint was made
borough, etc., of , } before , esquire, one of Her Majesty's justices
or district of , or } of the peace acting in and for the county [or other
as the case may be, } jurisdiction] stated in the margin, or before the un-
undersigned, one of the magistrates of the Police Courts of the metropolis, [or as
the case may be,] by [or by on behalf of (the local authority, naming it, as
the case may be)] that in or upon certain premises situate at , in the dis-
trict under the Nuisances Removal Act for England, 1855, of the complaints
above named, the following nuisance existed [describing it]; and that the said
nuisance was caused by the act or default of the owner [or occupier] of the
said premises [or was caused by *A. B.*]. (If the nuisance have been removed,
say, the following nuisance existed on or about [the day the nuisance was ascer-
tained to exist], and that the said nuisance was caused, etc., and although the
same is now removed, the same or the like nuisance is likely to recur on the
said premises.)

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

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

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

And if the above order for abatement be not complied with [or if the above order of prohibition be infringed], then we [or I] do authorise and require you the said [local authority, naming it] from time to time to enter upon the said premises, and to do all such works, matters, and things as may be necessary for carrying this order into full execution according to the Act aforesaid.

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

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

FORM (F).

Order of Justices for Removal of Nuisance by Local Authority.

To the Town Council, etc., as the case may be.

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

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

Given, etc.

FORM (G).

Order to permit Execution of Works by Owners.

County of [or borough]
or , or metropolitan
police district, or as the case
may be], to wit. } Whereas complaint hath been made to me,
E. F., esquire, one of Her Majesty's jus-
tices of the peace in and for the county
[or borough, etc.] of , or one of the

magistrates of the Police Courts of the metropolis, or as the case may be, or one of Her Majesty's justices of the peace, as the case may be, of the county of _____, by *A. B.*, owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling-house [or building, or as the case may be], situate at [insert such a description of the premises as may be sufficient to identify them], in the parish of _____ in the said county [or borough, etc.], that *C. D.*, the occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said *C. D.* [here describe the act of prevention generally according to the circumstances; for instance thus, doth refuse to quit the said house, the same having by the order of justices been declared unfit for human habitation, or doth prevent the said *A. B.* from cleansing or white-washing or purifying the said dwelling-house, or erecting a privy or drain, or breaking an aperture for ventilation, or cleansing a drain, ditch, gutter, water-course, privy, urinal, cesspool, or ashpit which is a nuisance or injurious to health]. And whereas the said *C. D.* has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [describe the act or work to be done] is necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* [describe the act or works to be done] in manner required by the said Act.

Given under my hand and seal, this _____ day of _____ in the year of our Lord One thousand eight hundred and _____

E. F. (L. S.)

FORM (H).

Summons for Non-payment of Costs, Expenses, or Penalties. Sect. 20.

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

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

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

FORM (I).

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

To [name the person on whom the order is made].
County, etc., } Whereas complaint has been made before us [or me] for
to wit. } [recite the cause of complaint].

And whereas the said [naming the person against whom the complaint is made] has this day appeared before us the said justices [or before me the said magistrate of the Police Courts of the metropolis, or as the case may be] to answer this matter of the said complaint [or, in case the party charged do not appear, say:]

And whereas it has been this day satisfactorily proved to us [or me] that a true copy of the summons requiring the said [naming the person charged] to appear before us [or me] this day hath been duly served according to the said

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

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

FORM (K).

Warrant of Distress. Sect. 20.

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

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

Given under our [or my] hand and seal, this day of, in the year of our Lord One thousand eight hundred and, at, in the [county] aforesaid.

(L. s.)

A. B.
C. D.

FORM (L) (1).

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

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

Date of notice.	By whom given.	Nature of Nuisance.	Proceedings taken.	Remarks:—With any special work done under the Acts without any notice.
1 April	The Inspector.	Foul drainage from house.	Owner put down good drains on summons without justices' order.	Several houses being in a like position, the highway surveyor laid down a sewer in the old water-course, and each house was charged a proportionate sum for the same, of which the highest sum was 10s.
18 April	Two neighbours.	Offensive cesspool.	Abated by local authority.	Renewed once; but penalty recovered, and no subsequent renewal attempted.

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

21 & 22 VICT. c. 97.

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

[2nd August, 1858.]

WHEREAS under an Act of the last session of Parliament, chapter thirty-eight, the General Board of Health stands continued only until the first day of *September*, one thousand eight hundred and fifty-eight; and whereas it is expedient to vest in the Privy Council certain powers now vested in the said General Board of Health, and certain other powers for the protection of the public health: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Powers of General Board of Health under 18 & 19 Vict. c. 116, added to those of the Privy Council.

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

Certain powers in relation to public vaccination vested in Privy Council.

II. The Privy Council may from time to time issue such regulations as they think fit for securing the due qualification of persons to be hereafter contracted with by guardians and overseers of unions and parishes in *England* for the vaccination of persons resident in such unions and parishes, and for securing

(1) This form was accidentally retained in the bill after the clause which

referred to it had been struck out in Committee.

the efficient performance of vaccination by the persons already or hereafter to be contracted with as aforesaid; and any money from time to time provided by Parliament for or towards defraying the expenses of the national vaccine establishment, or otherwise providing for the supply of vaccine lymph, shall be applied under the direction of the Privy Council.

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

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

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

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

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

VIII. *Proceedings for penalties under Vaccination Acts.* Repealed by 22 & 23 Vict. c. 3; but see 24 & 25 Vict. c. 59, s. 2, which

makes provision for the institution of proceedings for neglect of vaccination.

Short title and
continuance of
Act,

IX. This Act may be cited as "The Public Health Act, 1858," and shall be in force only until the first day of *August*, one thousand eight hundred and fifty-nine. (1)

21 & 22 VICT. c. 98.

An Act to amend the Public Health Act, 1848, and to make further Provision for the Local Government of Towns and populous Districts.

[2nd August, 1858.]

WHEREAS it is expedient to amend the Public Health Act, 1848, and to make further provisions for the local government of towns and populous districts in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say):

Short title.

I. This Act may be cited for all purposes as "The Local Government Act, 1858."

Interpretation
of terms.

II. The word "borough," or "corporate borough," when used in this Act, or in any act conferring powers of a public nature on the corporate bodies of boroughs by their Council, shall include all cities, ports, cinque ports, or corporate towns mentioned in the schedules to the Act passed in the sixth year of the reign of King William IV., intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and all boroughs incorporated by charter granted or to be granted in pursuance of that or any subsequent Act.

Limits of Act.

III. This Act shall not extend to Scotland or Ireland, and it shall not be adopted by any place within the limits of the metropolis as defined for the purposes of the Act of the Session holden in the eighteenth and nineteenth years of her present Majesty, intituled "An Act for the better Local Management of the Metropolis."

Provisions of
this Act and of
11 & 12 Vict.
c. 63, to be con-
strued together.

IV. This Act shall be construed together with and be deemed to form part of the Public Health Act, 1848: words used in this Act shall be interpreted in the sense assigned to them in the said Public Health Act: bye-laws framed under this Act shall be subject to confirmation, enforced, and dealt with in all other respects as bye-laws under the said Public Health Act; and the provisions of each of the said Acts shall, so far as may be consistent with the provisions of this Act, respectively be applicable to all matters and things arising under the other Act.

Period at which
this Act to
take effect.
Not to affect
qualification or
powers of
Local Boards.

V. This Act shall take effect from the first day of September, one thousand eight hundred and fifty-eight, in places where the Public Health Act, 1848, is already in force, wholly or partially: provided always, that nothing in this Act shall affect the qualification and number of the members of Local Boards of Health in such places, or any power, right, privilege, or liability of any Board of Improvement Commissioners exercising powers of the

(1) Made perpetual by the 22 & 23 Vict. c. 3.

Public Health Act, 1848, or of any Town Council or Local Board of Health, under or by virtue of any general or local Act of Parliament other than the said Public Health Act.

VI. Local Boards under this Act shall, subject to this Act, have all the powers, rights, duties, and liabilities of Local Boards of Health constituted under the Public Health Act, 1848, and the Acts incorporated therewith.

VII. In the construction, for the purposes of this Act, of the Acts hereinafter incorporated, the expression "the special Act" shall mean the Public Health Act, 1848, as brought into operation within the district, and this Act; the "limits of the special Act" shall mean the "limits of the district;" "the passing of the special Act" shall mean the date of the coming in force of this Act, or, in the case of districts under the Public Health Act, 1848, the first day of September, one thousand eight hundred and fifty-eight; and the Local Board shall, according to the tenor of the incorporated Act, be deemed to be the promoters of the undertaking, "town commissioners," "commissioners," or "undertakers;" and all penalties incurred under the incorporated Acts shall be recovered in the same way as penalties incurred under the Public Health Act, 1848, and be applied in aid of the purposes of that Act and this Act.

VIII. Whenever the sanction, consent, direction, or approval of the General Board of Health is required by law to the exercise of the powers of Local Boards of Health or Boards of Improvement Commissioners, such powers may, from the first day of September, one thousand eight hundred and fifty-eight, be exercised without such sanction, consent, direction, or approval, or any sanction, consent, direction, or approval in lieu thereof, except in so far as is provided by this Act: (1) provided always, that all sanctions for the mortgage of rates given by the General Board of Health before the passing of this Act shall continue in full force and effect until all moneys the borrowing of which is thereby sanctioned have been borrowed.

IX. All proceedings, contracts, matters, and things respectively begun or made under any section of "The Public Health Act, 1848," repealed by this Act, may respectively be proceeded with and enforced as if no such repeal had taken place, and all powers exercised or bye-laws made under any such section shall continue in force until the new powers and bye-laws authorised by this Act are brought into operation, and no such repeal shall affect any decree or order of the High Court of Chancery, or of any other Court of justice, that has been obtained previously to the passing of this Act.

X. The powers of the one hundred and fourteenth section of "The Public Health Act, 1848," for the appointment of a receiver, may be exercised in the event of a failure to elect a Local Board, or of the lapse of a Local Board from death, resignation, disqualification, or otherwise, of the persons elected to serve on such Local Board; and in case of such failure or lapse any receiver appointed under that section may make as well as collect and receive rates as directed in that section, or such rates as are required to satisfy all liabilities of the Local Board, and may receive and recover all arrears due to the said Local Board, and

Powers, etc., of Local Board under this Act to be the same under 11 & 12 Vict. c. 63, etc. Construction of terms for purposes of this Act, etc., in Acts hereinafter incorporated.

Provision in relation to exercise of powers under Public Health Act requiring sanction of General Board of Health.

Proceedings, contracts, etc. begun or made under any section of 11 & 12 Vict. c. 63, repealed by this Act, may be proceeded with.

Powers of sect. 114 of 11 & 12 Vict. c. 63, for appointment of receiver, may be exercised in event of failure to elect a Local Board.

apply the same to meet such liabilities; and any such receiver shall have the same powers with respect to other creditors of the Local Board as he has by the said section with regard to mortgagees.

Course of proceeding in event of failure to elect a Local Board.

XI. In the case of any failure to elect a Local Board, or of any lapse of a Local Board as aforesaid, it shall be lawful for the owners and ratepayers of the district, by resolution, as hereinafter provided, for the adoption of this Act, to proceed to election of a new Local Board in the manner provided by this Act, with the same qualification of members from property or rating as the lapsed Local Board, and the result of such election shall be signified to one of Her Majesty's principal Secretaries of State by the person conducting it, in the same manner as is hereinafter adopted with regard to the adoption of this Act; and all the rights and liabilities of the former Local Board shall attach to the new Local Board as if there had been no lapse before the election thereof, and from the date of such election all powers of any receiver to make rates under the preceding section shall determine.

As to Adoption of Act and Constitution of Local Boards.

Act to be adopted by resolution of Council, Improvement Commissioners, or owners and ratepayers.

XII. This Act may be adopted,

- (1.) In corporate boroughs to which the Public Health Act, 1848, has not been applied, by resolution of the Council assembled at a meeting held for the purpose: provided always, that this Act shall not be adopted in corporate boroughs until after the election of councillors on the first day of November, one thousand eight hundred and fifty-eight:
- (2.) In other places under the jurisdiction of a Board of Improvement Commissioners, where all or part of the Commissioners are elected by ratepayers, or by owners and ratepayers, by a resolution of such Improvement Commissioners assembled at a meeting held for the purpose:
- (3.) In all other places having a known or defined boundary, by a resolution of the owners and ratepayers:

But no such resolution passed by any Council or Board of Improvement Commissioners shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such Council or Board of Commissioners are usually given, nor unless two-thirds of the members present at the meeting concur in the resolution for such adoption; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from day to day.

As to summoning meetings for the purpose of preceding section.

XIII. (1.) Meetings for the purpose of the preceding section shall be summoned on the requisition in writing of any twenty ratepayers or owners—

In corporate boroughs, by the mayor;

In other places under the jurisdiction of such Improvement Commissioners as aforesaid, by the chairman of the said Commissioners;

In places having known and defined boundaries, not being corporate boroughs, or towns under the jurisdiction of such Improvement Commissioners as are hereinbefore mentioned, by the churchwardens or one of them, or if there are no

churchwardens, the overseers or one of them, or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by one of Her Majesty's principal Secretaries of State.

(2.) In such places as last aforesaid the summoning officer shall upon such requisition fix a time and place for holding such meeting, and shall forthwith give notice thereof Notice of meeting.

By advertisement in some one or more of the newspapers circulated in the place;

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

(3.) The meeting, on its assembling together, shall choose one of its number as chairman, who may, with the consent of the majority of the persons present, adjourn the same from day to day. Meeting to choose chairman.

(4.) The chairman shall propose to the meeting the resolution for the adoption of the Act, and the meeting shall decide for or against such adoption: provided that if any owner or ratepayer shall demand that such question be decided by a poll of the owners and ratepayers, such poll shall be taken by voting papers in the Form (A) given in the schedule to this Act, in the same way, and with the same conditions as to notice of voting, delivery, filling up, collection, examination, declaration of the result, custody of voting papers, penalty for neglect or refusal to comply with the provisions of the Act, scale of votes, and in all other respects whatsoever, as is provided in the Public Health Act, 1848, in respect of the election of Local Boards of Health; and if no poll is demanded, or if the demand for a poll is withdrawn by the parties making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting. Rules as to passing of resolutions of owners and ratepayers.

(5.) If any person fabricates, in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting papers, or distributes the same under a false pretence of being lawfully authorised so to do, he shall for every such offence be liable, on conviction before two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour. Penalty for forging, etc., of voting papers.

XIV. In cases where any place hereby authorised to adopt this Act includes within its limits any less place, which, if it were not so included, would of itself be authorised to adopt this Act, such less place shall not be entitled to adopt this Act unless the greater place within the limits of which it is included has refused to adopt the same, or unless it has been determined by one of Her Majesty's principal Secretaries of State, in manner hereinafter mentioned, that such less place ought, as respects the adoption of this Act, to be excluded from the limits of such greater place. Provision as to less place included within the limits of a greater.

XV. Any corporation or body of Commissioners exercising powers for sanitary regulations under the provisions of any local Act may adopt any part or parts of this Act by resolution of the Council or Commissioners, and such resolution shall in every Power for partial adoption of Act.

case be passed and forwarded to one of Her Majesty's principal Secretaries of State, as provided in this Act for the adoption thereof, and thereupon the part or parts of this Act named in such resolution shall be in force within the district comprised in such local Act as fully and effectually as if such part or parts of this Act had been enacted in such local Act: provided always, that when the parts of this Act thus adopted confer any power of borrowing money, such power shall be exercised subject to the provisions of this Act with respect to borrowing.

Adoption of Act by place not having a known or defined boundary.

Provision as to settling boundaries on petition.
Rules as to petitions for settlement of boundaries.

XVI. (1.) Any place not having a known or defined boundary may petition one of Her Majesty's principal Secretaries of State to settle its boundary for the purposes of this Act.

(2.) The petition shall state the principal boundaries of the place, shall be signed by one-tenth of the ratepayers resident within such boundaries, and shall be supported by such evidence as the said Secretary of State may require.

(3.) Upon the receipt of such petition, the Secretary of State may direct inquiry to be made as to the genuineness of the petition, and as to the propriety of the proposed boundaries; and

(4.) Fourteen days' notice of the time, place, and subject of such inquiry shall be given in the place to which it refers.

(5.) The said Secretary of State may, upon consideration of the matter, either dismiss the petition altogether, or make order as to the boundaries of the place: he may also make order as to the costs of the proceedings under the section and the parties by whom such costs are to be borne.

Any place may adopt this Act when boundary settled.

(6.) Any place the boundaries of which have been settled in pursuance of the foregoing provisions, shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary, and may adopt this Act accordingly; and for the purpose of enabling it so to do a summoning officer shall be appointed by the order settling the boundaries, whose duty it shall be forthwith to take all such steps as may be necessary for convening a meeting of the ratepayers to decide as to the adoption of this Act; and if such officer dies, becomes incapable, or neglects or refuses to perform his duties, the said Secretary of State may, on the application of any four ratepayers, appoint another officer in his room.

Appeal against adoption of Act.

Power to appeal, by petition, against resolution to adopt this Act.

XVII. (1.) In cases where a resolution adopting this Act has been passed in any place, if any number, being not less than one-twentieth of the owners and ratepayers of such place, such twentieth to be one-twentieth in number of the owners and ratepayers of the place, taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place, are desirous that the whole or any part of such place should be excluded from the operation of this Act, they may present a petition to one of Her Majesty's principal Secretaries of State, appealing against such resolution, and praying that such exclusion may be made.

Such petition

(2.) Such petition shall be presented within twenty-one days

from the date of the passing of the resolution appealed against, to be presented and shall, where the exclusion of part of a place only is prayed for, state—

(1.) The part of the place proposed to be excluded, accompanied with an explanatory plan; and

(2.) The reasons for such exclusion.

It shall be subscribed by the owners and ratepayers presenting the same:

(3.) Upon the receipt of any such petition as aforesaid, the said Secretary of State may direct inquiry in the proposed district,

As to the genuineness of the petition; and

As to the matters alleged in such petition.

(4.) Fourteen days' notice of the time, place, and subject of such inquiry shall be given.

(5.) The said Secretary of State shall make order with respect to the matter in question on such appeal, and such order shall be binding on the place in respect of which it is made, and there shall be stated in such order the time at which this Act is to come into force.

Power to Secretary of State to direct inquiry to be made.
Notice of inquiry.
Order to be made by Secretary of State.

XVIII. It shall be lawful for any owner or ratepayer who disputes the validity of the vote for the adoption of this Act to appeal within fourteen days from the declaration of the vote to one of Her Majesty's principal Secretaries of State, setting forth the grounds on which he disputes the validity of such vote, and it shall be lawful for any of Her Majesty's principal Secretaries of State, on such appeal, to direct inquiry by any officer employed by him in the execution of this Act into the circumstances of the case, and to issue such order thereon as he may deem requisite to determine the questions arising on such appeal, and as to the validity or invalidity of such vote.

Appeal to Secretary of State in case of alleged invalidity of vote for adoption of this Act.

General provisions in relation to adoption.

XIX. Whenever a resolution adopting this Act has been passed in any place, notice thereof shall be given to one of Her Majesty's principal Secretaries of State by the following persons; that is to say:

Notice as to adoption of Act to be given to Secretary of State.

In corporate boroughs, by the mayor:

In other places under the jurisdiction of such Improvement Commissioners as aforesaid, by the Chairman of the Board of Commissioners:

In other places by the summoning officer.

The notice so sent shall be in writing under the hand of the officer hereby required to give the same; and it shall be the duty of such last mentioned officer to publish a copy of such notice in manner following; that is to say:

By advertisement for three successive weeks in some one or more of the newspapers circulated in the place:

By causing a copy of such notice to be affixed to the principal doors of every church and chapel in such place to which notices are usually fixed:

And when such notice has been so given, and the time for such appeal has expired, or such appeal has been dismissed, a notice shall be published in the *London Gazette*, by one of Her Majesty's principal Secretaries of State, that this Act has been adopted within such place.

Provision as to the time when this Act shall take effect.

XX. Whenever any resolution adopting this Act has been passed in any place this Act shall, at the expiration of two months from the date of the passing of such resolution, or in the event of an appeal, or of a division of the districts into wards as hereinafter provided, then at such time as may be mentioned in the order made on such appeal, or in the order setting out wards, have the force of law within such place; and the expiration of such period of two months, or such date as may be mentioned in the said order as the time for this Act to come into force, shall be called the date of the constitution of the district: provided that the provisions of this Act relating to purposes already included in any local Act in force within the district with relation to any of the purposes of the Public Health Act, 1848, or this Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit, notwithstanding the adoption of the Act, as hereinbefore provided, shall not come into operation until an order has been made and confirmed, as hereinafter prescribed, for the future execution, repeal, or alteration of the said local Act.

As to objections made to adoption of this Act.

XXI. No objection shall be made at any trial or in any legal proceeding to the validity of the adoption of this Act, or to any order made in pursuance of this Act, or to any proceedings upon which such order was founded, unless the objector has given fourteen days' previous notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six calendar months from the date of the constitution of the district.

Proof of adoption.

XXII. Publication of a notice by a Secretary of State once in the *London Gazette*, and by the mayor, chairman of the Board of Improvement Commissioners, or summoning officer respectively, for three successive weeks, in any newspaper published and circulated in the town or district, that this Act has been adopted in any place, shall be conclusive evidence of such adoption.

Provision as to payment of costs, etc., incurred in relation to adoption.

XXIII. In cases where this Act has been adopted by any place, all costs, charges, and expenses incurred by any of Her Majesty's principal Secretaries of State, in relation to any such adoption, or to any proceedings connected therewith, or which such Secretary is required to take under this Act, and not hereby otherwise provided for, shall to such amount as the Treasury, by order, think proper to direct, become a charge upon the general district rates levied in such district under the authority of this Act, and be repaid to the Treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

Constitution of Local Boards.

Local Boards, how constituted.

XXIV. The duty of carrying into execution this Act shall be vested in a Local Board; and such Local Board shall be,

(1.) In corporate boroughs, the mayor, aldermen, and burgesses acting by the Council:

(2.) In other places, under the jurisdiction of such a Board of Improvement Commissioners as hereinbefore mentioned, the Board of Commissioners :

(3.) In other places, such number of elective members as may be determined by a resolution of the owners and rate-payers, passed in manner in which resolutions for the adoption of this Act are hereinbefore directed to be passed, at any meeting held for the purpose of adopting this Act, or at any meeting to be summoned by the summoning officer for the purpose of this section ; but no person shall be qualified to be a member of such Local Board unless he is at the time of his election, and so long as he shall continue in office by virtue of such election, resident within the district for which or for part of which he is elected, or within seven miles thereof, and if seised or possessed of real or personal estate, or both, to the value of not less than five hundred pounds in districts containing less than twenty thousand inhabitants, or to the value of not less than one thousand pounds in districts containing twenty thousand or more inhabitants, or rated to the relief of the poor of such district, or of some parish within the same, upon an annual value of not less than fifteen pounds in districts containing less than twenty thousand inhabitants, or on an annual value of not less than thirty pounds in districts containing twenty thousand or more inhabitants : provided that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property which, if equally divided between them, would qualify each to be so elected, each of the persons so jointly seised, possessed or rated may be elected, but the property shall not at the same time qualify the owner and the occupier thereof :

(4.) Local Boards of Health in districts where the Public Health Act, 1848, is applied, may, with the sanction of one of Her Majesty's principal Secretaries of State, divide their district into separate wards, and declare what proportion of the members of the Local Board is to be elected by each ward : in districts where this Act is adopted, the owners and ratepayers may by resolution direct a petition to one of Her Majesty's principal Secretaries of State to divide the district into wards for the purpose of election of the Local Board, and to declare what proportions of the members of the Local Board shall be elected by each ward, and the said Secretary of State may by his order make such division and declaration after such inquiry as he shall deem necessary, and fourteen days' notice shall be given of the time, place, and object of such inquiry ; and if any member be elected in more than one ward, he shall within three days' notice thereof choose, or, in default of his choosing, the Local Board at their next meeting shall decide for which one of the wards the member shall serve, and he shall thereupon be held to be

elected in that ward only, and a vacancy shall be held to exist on account of the other ward or wards: no person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward; but subject to these limitations, any ratepayer or owner may, by notice in writing delivered to the clerk of the Local Board, or in case of the first election, to the person appointed to conduct that election, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he do not give such notice he shall not be entitled to vote for any ward in which he does not reside:

As to election
of Local Boards.

(5.) The election of Local Boards shall be conducted in the manner directed by the Public Health Act, 1848, for the election of Local Boards of Health; and the summoning officer shall conduct the first election; and the members of the Local Board shall make such Declaration, continue in office for the same time, and be liable to such disqualifications and penalties as the members of Local Boards of Health under the said Public Health Act as altered by this Act:

(6.) If any person nominated, or any person on his behalf, give at least one clear day's notice in writing to the returning officer, before the delivery or collection of the voting papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer shall make his arrangements so as to enable the person appointed by him to be so accompanied: provided that no such agent shall interfere in any respect in the delivery or collection of the voting papers:

As to casual
vacancies.

(7.) Any casual vacancy occurring by death, resignation, disqualification or otherwise in the Local Board may be filled up within one month by the Local Board out of qualified persons, but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred:

As to first
meeting of
Local Board.

(8.) In the case of districts not consisting of boroughs or towns under the jurisdiction of such Improvement Commissioners as aforesaid, the first meeting shall be held on such day, not more than ten days after the election of the Local Board, and at such place as the returning officer may, by notice sent by post or delivered to each member of such Board, appoint.

Disqualification
of members of
Local Boards.

XXV. Notwithstanding anything contained in the Public Health Act, 1848,

(1.) No member of a Local Board shall vacate his office by reason of his being interested in any sale or lease of any lands, or any loan of money to the Local Board:

(2.) Nor by absenting himself from meetings of the Board, if he be not absent from the district for more than six months at one and the same time, unless in case of illness, nor by reason of his being interested in any con-

tract with the Local Board as a shareholder in any company established under the provisions of the Joint Stock Companies' Act or any of them, with or without a limited liability, provided no member of a Local Board, being a shareholder, shall vote on any question in which the company is interested.

- (3.) It shall be lawful for one of Her Majesty's principal Secretaries of State to dispense in any case with the prohibition contained in the nineteenth section of the Public Health Act, 1848, by which no member of a Local Board, being a shareholder in any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature, is entitled to vote upon any question in which such company or concern is interested.

XXVI. So much of the thirty-third section of the Public Health Act, 1848, as requires that a day shall be specified in any charter of incorporation by which the district of a Local Board becomes a corporate borough, from and after which the powers, authorities, duties, property, and liabilities of the Local Board shall be vested in the mayor, aldermen, and burgesses of the borough by their Council shall be repealed, and all transfers of powers, authorities, duties, property, and liabilities which have been or shall hereafter be made by any Local Board of Health to the mayor, aldermen, and burgesses of any corporate borough by their Council, the district of such Board and such corporate borough being identical, shall be valid and effectual to all intents and purposes, though no day for such transfer shall have been named in the charter incorporating such borough.

XXVII. Adjoining districts may unite together upon such terms and subject to such conditions as the respective Local Boards of such districts may, with the sanction of one of Her Majesty's principal Secretaries of State, determine.

XXVIII. Every Local Board may, with the consent of the Local Board of any adjoining district, or with the consent of any adjoining place maintaining its own poor, do and execute in such adjoining district or place all or any of such works and things as the Local Board may do and execute within their own district, and upon such terms as to payment or otherwise as may be agreed upon between such Local Board and the Local Board of the adjoining district, or the local authority under the Nuisance Removal Act, 1855, in and for such adjoining place; and any sums agreed to be paid by the Local Board of the adjoining district, in pursuance of this section, shall be payable out of the rates leviable under the Public Health Act, 1848, and this Act; and any sums agreed to be paid by such local authority shall be payable out of the same rates as the expenses of executing the said Nuisance Removal Act; and the consent of any such place to any work or thing proposed to be done under this section shall be signified in the same manner in which the consent of a place to the adoption of this Act is hereinbefore required to be signified; and where the expenses of any such work or thing would, if the same had been executed in a district under the powers of this Act, have been recoverable from owners or occupiers, such expenses shall be recoverable by the Local Board or local authority of the district or place respectively from such owners or occupiers.

Powers of Local Board to vest in Town Council when a district becomes a corporate borough.

Power to adjoining districts to unite, with sanction of Secretary of State.

Power to Local Board to execute works in adjoining places.

AS TO POWERS OF LOCAL BOARDS.

Powers of Local Board as to Sewerage.

Power to make deduction from rate in respect of premises sufficiently drained.

Powers for disposing of sewage.

XXIX. If it appear to a Local Board that any premises were sufficiently drained before the construction of any new sewer they may lay down, it shall be lawful to deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the Local Board may under all the circumstances of the case deem to be just.

XXX. Local Boards may

- (1.) Exercise the powers given by the forty-sixth section of the Public Health Act, 1848, also without their district, if necessary for the purpose of outfall and distribution of sewage, upon making due compensation, to be settled in the manner provided in the one hundred and forty-fourth section of the Public Health Act, 1848:
- (2.) Contract with any company or person for the sale of sewage, or for the distribution of it over any land:
- (3.) Contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage:

Provided always, that these things shall be done so as not to create a nuisance.

Provision for obtaining order for cleansing foul and offensive water-courses or open ditches lying near to or forming the boundaries of districts.

XXXI. In case any watercourse or open ditch lying near to or forming the boundary between the district of any Local Board and any adjoining parish or place, shall be foul and offensive, so as injuriously to affect the district of such Local Board, any justice of the peace for the county, city, or borough in which such adjoining parish or place may be situate may, on the application of such Local Board, summon the local authority for the purposes of the Nuisance Removal Act, 1855, of such adjoining parish or place, to appear before the justices of the same county, city, or borough, to show cause why an order should not be made by the said justices for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such justices to be necessary; and such justices after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such justices shall seem reasonable: and any sums ordered to be paid by any justice in pursuance of this section shall be a charge upon and be payable out of the poor rates of such adjoining parish or place, as if the same were legally incurred in the relief of the poor of such parish or place, and in default of payment may be levied upon the goods and chattels of such overseers by distress and sale thereof.

Powers as to Scavenging and Cleansing.

Power to Local Boards to cleanse, or

XXXII. The fifty-fifth and fifty-sixth sections of the Public Health Act, 1848, shall be repealed, excepting so much of the fifty-sixth section as relates to the providing conveniences for the

temporary deposit of dust, ashes, and rubbish, and also fit buildings and places for the deposit of sewerage and other matters collected by the Local Board; and in lieu thereof be it enacted—

(1.) That Local Boards may themselves undertake or contract with any person for

The proper cleansing and watering of streets;

The removal of house refuse from premises;

The cleansing of privies, ashpits, and cesspools;

either for the whole or any part of their district; and all matters thus collected by the Local Board or contractor may be sold or otherwise disposed of, and any profits thus made by the Local Board shall be carried to the district fund account.

(2.) If any person, not being the occupier of a house within the district, removes, or obstructs the Local Board or contractor in removing, any matters hereby authorised to be removed by the Local Board, he shall for each offence incur a penalty not exceeding five pounds; and if any person, being the occupier of a house within the district, removes or obstructs the Local Board or contractor in removing any such matters (except in cases where such matters are produced on his own premises, and are removed for sale, or for his own use for manure, and are in the meantime kept so as not to be a nuisance), he shall for each offence incur a penalty not exceeding forty shillings.

(3.) In parts where the Local Board do not themselves undertake or contract with any person for

The cleansing of footways and pavements adjoining any premises;

The removal of refuse from any premises;

The cleansing of privies, ashpits, and cesspools;

they may make bye-laws imposing the duties of such cleansing or removal on the occupier of any such premises.

(4.) The Local Board may make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish within their district, or of the keeping of animals so as to be injurious to the public health.

(5.) Whenever the Local Board have removed any noxious or offensive accumulation under the fifty-ninth section of the Public Health Act, 1848, the expenses of removal, so far as the same are not covered by the sale of the said accumulation, shall be recoverable in a summary manner from the occupier, or, where there is no occupier, from the owner of the premises on which such accumulation existed, or from the person causing such accumulation, or may, by order of the Board, be declared to be private improvement expenses.

XXXIII. Whenever the surveyor, in the course of any examination made by him in pursuance of the fifty-fourth section of the Public Health Act, 1848, finds any such drain, water-closet, privy, cesspool, or ashpit, as therein mentioned, to be in bad order and condition, or to require alteration, it shall not be necessary for him to cause the ground to be closed before the necessary works are set about for amending such drain, water-closet, privy, cesspool, or ashpit; provided that such necessary works are undertaken forthwith.

XXXIV. The fifty-third and seventy-second sections of the Public Health Act, 1848, shall be repealed; and in lieu thereof be it enacted as follows:

contract for
cleansing.

Power to Local
Board to make
bye-laws as to
nuisances.

Provision for
recovery of
expenses of
removal of
offensive accu-
mulations
under 11 &
12 Vict. c. 63.

Amendment of
sect. 54 of
11 & 12 Vict.
c. 63, for pur-
poses herein
named.

11 & 12 Vict.
c. 63, as to
new streets and
houses, re-
pealed, and the
provisions here-
in named to be
instead.

Every Local Board may make bye-laws with respect to the following matters; that is to say:

- (1.) With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof;
- (2.) With respect to the structure of walls of new buildings for securing stability and the prevention of fires;
- (3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings;
- (4.) With respect to the drainage of buildings, to water-closets, privies, ashpits, and cesspools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation:

And they may further provide for the observance of the same by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the Local Board, and as to the power of the Local Board to remove, alter, or pull down any work begun or done in contravention of such bye-laws: provided always, that no such bye-law shall affect any building erected before the date of the constitution of the district:

But for the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame-building of which only the framework shall be left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

Powers for Regulation of Buildings.

When houses
taken down,
Local Board
may prescribe
line in which
same shall be
built.

XXXV. When any house or building has been taken down, in order to be rebuilt or altered, the Local Board may prescribe the line in which any house or building to be hereafter built shall be erected, and the same shall be erected in accordance therewith; and the Local Board shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back, the amount of such compensation, in case of dispute, to be settled in the same manner as compensation for land to be taken under the provisions of "The Lands Clauses Consolidation Act, 1845," is directed to be settled; and all the provisions of the said last mentioned Act relating to the purchase of lands shall apply to the payment made for such loss or damage as if it were a purchase under such Act.

Local Board
may purchase
premises for
purpose of
making new
streets.

XXXVI. The Local Board may, with the sanction of one of Her Majesty's principal Secretaries of State, purchase any premises for the purpose of making new streets, and shall have with regard to premises so purchased all the powers given by the seventy-third section of the Public Health Act, 1848.

Highway Repairs.

XXXVII. And whereas doubts have arisen as to the rate out of which the repair of highways is to be provided for in districts under the Public Health Act, 1848, be it enacted, that in such districts, or in districts where this Act is adopted, and where no other mode of providing for the repair of highways is directed by any local Act—

Costs of highway repair to be defrayed out of general district rate in certain cases.

(1.) Where the whole of the district is rated to public works or paving, water supply, and sewerage, or to works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate.

(2.) Where parts of a district are not rated for works of paving, water supply, and sewerage, or for such of these purposes as have been provided for by rate in the district, the cost of the repair of highways in the same parts shall be defrayed out of a highway rate to be separately assessed and levied in the same parts by the Local Board as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate.

Power to levy highway rates in certain cases.

(3.) Where no public works of paving, water supply, and sewerage are established in a district, the repair of highways in the district shall be provided for by a highway rate, to be levied over the whole district by the Local Board as surveyors of highways.

(4.) Where part of any township or place, at the time of the application of this Act to any district, shall be liable to contribute and pay to the highway rates leviable or assessable within such district, although it shall not be included in the limits of such districts, such part of the said township or place shall, for all purposes connected with the repairs of highways, and the payment of highway rates, but for no other purposes, be considered to be and be treated as if forming part of such district, and comprised within the limits thereof: provided always, that no such district rate shall be leviable within such part.

(5.) Provided that it shall not be necessary for any Local Board, in the case of any highway rate made by them, to do the following acts or any of them; that is to say:

Certain acts not required to be done in case of highway rate being made by Local Board.

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such Local Board;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates:

And all such accounts shall be audited in all respects in the same way as the other accounts of Local Board, and all ministerial acts required by any Act of Parliament to be done by the surveyor of highways may be done by the surveyor of the Local Board, or by such other person as they may appoint.

(6.) The surplus of any moneys directed by the one hundred and seventeenth section of the Public Health Act, 1848, to be paid by surveyors of highways to the treasurer of the Local Board, and to be carried to the district fund account, shall, for every district or part of a district where the roads are repaired out of the highway rate, be carried by the same treasurer to a separate account to be kept by him, and called the highway rate account. The Act of the thirteenth Victoria, chapter thirty-five,

Application of surplus under sect. 117 of 11 & 12 Vict. c. 63.

"for requiring annual Returns of the Expenditure on Highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament," shall apply to the clerk to every such Local Board as aforesaid in like manner as to the clerk to any such trustee or commissioner as in such Act mentioned.

Powers as to Streets and Roads.

Power to Local Boards to provide for sewer- ing, etc., of parts of streets not being highways.

XXXVIII. The powers given to Local Boards of Health by the sixty-ninth and seventieth sections of the Public Health Act, 1848, to compel the sewer- ing, levelling, paving, flagging, and channeling of streets that are not highways repairable at the public expense, and after the completion of the works to declare such streets highways repairable at the public expense, shall extend to providing the means of lighting, metalling, or making good such streets, and may be exercised in respect of the carriage-way, foot- way, or any part of such streets; and the said powers shall also be deemed to have extended and shall extend and be exercised in respect of any street or road of which a part was at the time of the application of the Public Health Act, 1848, or is or may be, a public footpath, or repairable at the public expense, as fully as if the whole of such street or road had been or was a highway not repairable at the public expense.

No incumbent or minister of any church, chapel, etc., liable to ex- penses under sect. 69 of 11 & 12 Vict. c. 63, or this section.

No incumbent or minister of any church, chapel, or place ap- propriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall be liable to any expenses under the sixty-ninth section of the Public Health Act, 1848, or this section, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial- ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard, or burial-ground, or to subject the same to distress, execution, or other legal process; and the Local Board may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

Power to Local Boards to agree as to making of new public roads.

XXXIX. It shall be lawful for any Local Board to agree with any persons for the making of roads for the public use through the lands and at the expense of such persons, and to agree that such roads shall become and the same shall accordingly become, on completion, public highways maintainable and repairable at the public expense; and it shall be lawful for such Board, with the consent of two-thirds of their number, to agree with such persons to pay, and accordingly to pay, any portion of the ex- penses of making such roads out of the funds at the disposal of such Board for public improvements.

Power to Local Boards, by consent, to con- struct public bridges, etc., or adopt as public and improve existing bridges, etc., over or under canals,

XL. It shall be lawful for any Local Board to agree with the proprietors of any canals, railways, or tramroads, and with any landowners or other persons willing to bear the first expenses thereof, for the construction or alteration of, and accordingly to cause or permit to be constructed or altered, any bridges, via- ducts, or arches over or under any such canals, railways, or tram- roads, at the expense of such persons, and at the like expense, by agreement, to purchase so much of any slopes, embankments, or other parts of such canals, railways, or tramroads, or of any adjoining lands, as may be required for the foundation and sup-

ports of such bridges, viaducts, or arches, and the approaches thereto, and to agree that such bridges, viaducts, and arches respectively, with their approaches and accessories, shall become, and the same shall accordingly become, on completion, parts of public streets or roads, maintainable and repairable at the public expense; and it shall be lawful for such Board, with the consent of two-thirds of their number, to agree to pay, and accordingly to pay, any portion of the expenses of such construction, alteration, and purchase out of the funds at the disposal of such Board for public improvements; and it shall be lawful for such Board, with the consent of such proprietors and other persons interested, and on such terms as may be mutually agreed upon, to adopt any existing bridges, viaducts, or arches over or under any such canals, railways, or tramroads, and the approaches thereto, as public bridges, viaducts, or arches, and parts of public streets or roads maintainable and repairable at the public expense.

XLI. It shall be lawful for any Local Board, by agreement with the trustees of any turnpike road, or with any corporation or person liable to repair any street or road, or any part thereof, or with surveyors of any bridge repaired by any county, riding, or division, to take upon themselves the maintenance, repair, cleansing, or watering of any such street or road, or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said roads within their district, and to remove any turnpike-gates, toll-gates, or bars which may be situate within two miles from the centre of any town or place within their district, and to erect other turnpike-gates, toll-gates, or bars in lieu thereof, on such terms as the Local Board and the trustees or corporation or person or surveyor aforesaid may agree upon between themselves: provided that, in case any mortgage debt is charged upon the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll-gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees; and that when the terms arranged shall include any annual or other payments from the Local Board to the trustees, then such payments may be secured on the local rates in the same manner as other charges on the rates are authorised by this Act: provided also, that all executors, administrators, guardians, trustees, and all committees of the estates of idiots and lunatics, who as such are for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof, and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

XLII. And whereas by the seventieth section of the Public Health Act, 1848, it is provided that no street shall become a highway under the provisions of such section, if, within one month after notice in writing shall have been first put up as therein mentioned, the proprietor of such street, or the person representing or entitled to represent such proprietor, shall, by notice in writing to the Local Board, object thereto; and doubts have arisen as to the effect of such provision; be it enacted, that no such objection shall be of force unless made either by the sole

railways, or tramroads.

Powers to Local Boards to enter into agreements with turnpike trustees as to repair, etc., of roads.

Objections under sect. 70 of 11 & 12 Vict. c. 63, to be made by the sole proprietor, or, if more than one, by a majority.

proprietor, or (if more than one) by the majority in number of such proprietors, and in ascertaining such majority joint proprietors shall be reckoned and considered one proprietor.

Certain roads
herein named
not to be inter-
fered with,
except upon
conditions, etc.,
herein named.

XLIII. Notwithstanding anything contained in the Public Health Act, 1848, or this Act, it shall not be lawful for any Local Board to open or in any way disturb any of the public roads or footpaths under the charge of the commissioners of the Metropolis turnpike roads north of the Thames, or of the New Cross turnpike roads, or of the trustees acting in execution of the Surrey and Sussex Roads Act, 1850, except upon the conditions and subject to the regulations hereinafter contained; that is to say:

- (1.) The Local Board shall leave at the office of the commissioners or trustees of such road, seven days previous, notice containing full particulars of any works intended to be executed by them, and affecting any of such roads:
- (2.) If the general surveyor of the said commissioners or trustees directs the works to be on any particular part of such roads, the Local Board shall be bound to obey such directions:
- (3.) Except by the permission of the said commissioners or trustees, the traffic of any of the said roads shall not at one time be stopped or in any way hindered along more than half of its width, nor, if the half left open is of less than the clear width of fourteen feet, along more than one hundred yards in length; and no alteration shall be made in the inclination of any of the said roads of more than one foot in sixty feet:
- (4.) All works shall be done under the superintendence of the general surveyor; and all such precautions as he may direct for the protection and convenience of the public shall be taken by and at the expense of the party doing the works, and in default the said surveyor shall cause to be done in that behalf what he may think proper; and the party doing the works shall in all cases of damage occurring by reason of such works, and whether such precautions are or are not taken, be answerable to the person suffering such damage, the said commissioners or trustees being hereby absolved from all liability in respect of the consequences of such works:
- (5.) The party doing the works shall, as regards every road opened or disturbed, restore the same to its original state as to surface and materials, and, in order to meet the expenses consequent upon the subsidence of materials newly filled in, shall repay to the said commissioners or trustees, on demand, such sum as they have expended in restoration of the road, not exceeding one shilling for every superficial square yard, so far as the works affect the same, shall make good all drainage, paving of water-channels, curbs of footpaths, and other matters and things connected with the maintenance of the said roads; and on default the said surveyor may cause to be done in that behalf what he may think fit; and the said surveyor may recover the expense so incurred by him in a summary manner.

Incorporated Powers.

XLIV. The provisions of "The Towns Police Clauses Act, 1847,"

(1.) With respect to obstructions and nuisances in the streets,	Certain provisions of 10 & 11 Vict. c. 89, incorporated with this Act.
(2.) With respect to fires,	
(3.) With respect to places of public resort,	
(4.) With respect to hackney carriages,	
(5.) With respect to bathing,	

shall be incorporated with this Act.

XLV. The provisions of "The Towns Improvement Clauses Act, 1847," with respect to the following matters; that is to say:

(1.) With respect to naming the streets and numbering the houses,	Certain provisions of 10 & 11 Vict. c. 34, incorporated with this Act.
(2.) With respect to improving the line of the streets and removing obstructions,	
(3.) With respect to ruinous or dangerous buildings,	
(4.) With respect to precautions during the construction and repair of the sewers, streets, and houses,	
(5.) With respect to the supply of water, except the proviso thereto,	
(6.) With respect to the prevention of smoke,	
(7.) With respect to slaughter-houses,	
(8.) With respect to clocks,	

shall be incorporated with this Act, subject to this qualification, that the above-mentioned provisions with respect to the prevention of smoke shall not extend to compel the consumption of all smoke in the case of all or any of the processes following; that is to say, to the coking of coal, the calcining of ironstone or limestone, the making or burning of bricks, earthenware, quarries, tiles, or pipes, the raising of any mines or minerals, the smelting of iron ores, the refining, puddling, shingling, and rolling of iron or other metals, or to the melting and casting of iron into castings, or to the manufacture of glass, in any district where the provisions of the said Act for the prevention of smoke are not now in force, in which the Local Board shall resolve that any one or more of such processes should be exempted from penalties for not consuming all smoke for any time specified in such resolution, not exceeding ten years, which may be annually renewed for a similar or any shorter period, if the Board shall think fit; and any justice or justices before whom any person shall be summoned may remit the penalty in any case within such district in which he or they shall be of opinion that such person has adopted the best known means for preventing any nuisance from smoke, and has carefully attended to the same, so as to consume, as far as possible, the smoke arising from any process so exempted during such time as any such resolution shall extend to, unless an order shall be issued by one of Her Majesty's principal Secretaries of State directing that such exemption shall no longer be continued in such district to such processes or any of them, after a time specified in such order.

XLVI. In any district where the Public Health Act, 1848, is in force, or where this Act is adopted, and in which the Act passed in the third and fourth years of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and

Watching and Lighting Act (3 & 4 Will. IV. c. 90) to be superseded by this Act,

watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said last mentioned Act shall be superseded by this Act, and all lamps, lamp-posts, gas-pipes, fire-engines, hose, and other property vested in the inspectors for the time being under the said Act, shall, in all existing districts under the Public Health Act, 1848, and elsewhere upon the adoption of this Act, vest in the Local Board.

Where vestries adopt provisions of 10 & 11 Vict. c. 74, Local Board to be the commissioners under that Act.

XLVII. In any district where the vestry adopts the Act passed in the tenth year of the reign of her present Majesty, chapter seventy-four, and intituled "An Act to encourage the establishment of public baths and washhouses," the Local Board may, at the option of the said vestry, be the commissioners for the execution of the said Act, and shall thereupon have all the powers, duties, rights, and obligations of commissioners under the said Act; (1) and all expenses incurred by the Local Board in carrying into execution the powers given to them by the said Act shall be defrayed out of the general district rates, and all receipts by them by reason of the exercise of such powers shall be carried to the district fund account.

Sections of 11 & 12 Vict. c. 63, as to slaughter-houses repealed. Local Board to be Burial Board of district, though the burial-ground be provided for parts of the district only.

XLVIII. The sixty-first and so much of the sixty-second sections of the Public Health Act, 1848, as empowers the Local Board to make bye-laws with respect to all slaughter-houses, shall be repealed.

XLIX. In any district where a vestry of any one or more parish or place comprised therein having a known or defined boundary adopts the Act passed in the twentieth and twenty-first year of the reign of her present Majesty, chapter eighty-one, and intituled "An Act to amend the Burial Acts," the Local Board may, at the option of such vestry, be the Burial Board for the execution of the said Act within such parish or parishes, place or places, so adopting the Act as aforesaid, and shall thereupon have all the powers, duties, rights, and obligations of a Burial Board under the said Act; (2) and all expenses incurred by the Local Board in carrying into execution the powers given to them by the said Act shall be defrayed out of rates to be levied on such parish or parishes, place or places, so adopting the Act as aforesaid, in the same manner as general district rates are to be levied under the provisions of this Act; and all receipts by them, by reason of the exercise of such powers, shall be carried to the credit of such parish or parishes, place or places so adopting the Act as aforesaid: provided nevertheless, that in case the parish or parishes, place or places comprised in such district so adopting the Act as aforesaid shall have been declared a ward or wards for the election of members of the Local Board, and members shall have been elected by and for such ward or wards, the last-mentioned members shall form the Burial Board for such parish or parishes, place or places so formed into a ward or wards as aforesaid, instead of the members of the said Local Board, and shall have all the like powers, duties, rights, and obligations of the Burial Board under said Act of the twentieth and twenty-first years of the reign of her present Majesty, chapter eighty-one.

Power of Local Board to establish markets,

L. The Local Board shall in non-corporate districts, with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect

(1) See 29 & 30 Vict. c. 90, s. 43.

(2) Ibid. s. 44.

to resolutions for the adoption of this Act, and in corporate districts shall, with the consent of two-thirds of the Local Board, have the power to do the following things or any of them within their district:

- (1.) To provide a market-place, and construct a market-house and other conveniences for the purpose of holding markets;

To provide houses and places for weighing carts;

To make convenient approaches to such market;

To provide all such matters and things as may be necessary for the convenient use of such market;

To purchase or take on lease land, and public or private rights in markets, and tolls, for any of the foregoing purposes;

To take stallages, rents, and tolls in respect of the use by any person of such market-house;

but no market or slaughter-house shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person, chartered joint stock or incorporated company, without his or their consent.

- (2.) For the purpose of enabling any Local Board to establish markets in manner aforesaid, or to regulate markets already established in any corporate borough before the constitution of a Local Board therein, there shall be incorporated with this Act the provisions of "The Markets and Fairs Clauses Act, 1847," in so far as the same relate to markets; Provisions of 10 & 11 Vict. c. 14, as to markets, etc., incorporated.

With respect to the holding of the market or fair, and the protection thereof; and

With respect to the weighing goods and carts; and

With respect to the stallages, rents, and tolls; and

With respect to bye-laws;

subject to this proviso, that all tolls leviable by the Local Board in pursuance of this section, shall be approved by one of Her Majesty's principal Secretaries of State.

Water Supply.

LI. The powers given to Local Boards by the seventy-sixth section of the Public Health Act, 1848, shall extend to any house within their district to which a supply of water can be provided at an expense not exceeding the water-rate authorised by the said Act or any local Act in force in the district; (1) and notices under that section shall be served on owners of houses so supplied instead of occupiers, and expenses incurred under that section shall be recoverable from such owners. Powers of sect. 76 of 11 & 12 Vict. c. 64, as to water-supply extended by this Act.

LII. Where the Local Board supply water to their district they shall have the same power for carrying water-mains within the district as they have for carrying sewers by the law in force for the time being. Power of carrying water-mains.

LIII. It shall be lawful for any Local Board of Health absolutely to purchase, and for the directors for the time being of any waterworks company or market company, by and with the Power to directors of waterworks or

(1) See 29 & 30 Vict. c. 90, s. 50.

market company to sell works, etc., to Local Boards.

authority of three-fifths of the shareholders for the time being in such company who may be present, either personally or by proxy, at some general meeting of the company specially convened for the purpose, to sell, convey, and transfer unto any Local Board of Health, upon such terms as shall be mutually agreed upon between the company and the Local Board, all the rights, powers, and privileges, and all or any of the lands and premises, works, matters, and things, which at the time of such purchase shall be the property of the company, but subject to all mortgages, contracts, or liabilities to which the same shall be then subject.

Expenses and Rates.

Sect. 86 of 11 & 12 Vict. c. 63, as to the power of levying special district rate, repealed.

Debts incurred and contracts entered into before passing of this Act enforced.

LIV. (1.) The eighty-sixth section of the Public Health Act, 1848, shall be repealed; and whenever special district rate is mentioned in the Public Health Act, 1848, that Act shall be read as if no such rate were mentioned therein: provided always, that all debts incurred and contracts and engagements entered into by or to any Local Board, previously to the passing of this Act, shall be enforced, and all powers vested in any Local Board of raising money by rates, tolls, or other means for the purpose of satisfying all such of the said debts, contracts, and engagements as were incurred or entered into by such Local Board, shall be exercised in the same manner as if this Act had not been passed.

(2.) No publication shall be required of any private improvement rate.

(3.) The costs of the levy of arrears of any rate may be included in the warrant for such levy.

(4.) When any rate is appealed against, or the validity of any rate is disputed, the time during which the appeal remains undecided, or any legal proceedings concerning or relating to such rate shall be pending, shall be excluded in calculating the period of six months within which the rate may be made retrospectively.

(5.) Notice of demand of rates may be served in the same way as notice is hereinafter directed to be served by a Local Board before putting in force the powers of Local Boards for the taking of land otherwise than by agreement.

Mode of assessment of general district rate, and provision for compounding for rates in the case of small tenements.

LV. The eighty-eighth and ninety-fifth sections of the Public Health Act, 1848, shall be repealed, and in lieu thereof be it enacted, that the general district rates shall be made and levied upon the occupier of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property, ascertained by the rate (if any) for the relief of the poor made next before the making of the assessments under this Act, subject, however, to the following exceptions, regulations, and conditions; namely:

The owner, instead of the occupier, may, at the option of the Local Board, be rated in cases—

Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or,

Where any premises liable to an assessment are let to weekly or monthly tenants; or,

Where any premises so liable as aforesaid are let in sepa-

rate apartments, or where the rents become payable or are collected at any shorter period than quarterly; subject to this proviso, that in cases where the owner is rated instead of the occupier he shall be assessed upon such reduced estimate as the Local Boards deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of such annual value:

And where such reduced estimate is in respect of tenements, whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rates were levied on the occupiers:

The owner of any tithes, or of any tithe commutation rent-charge, or the occupier of land used as arable, meadow, or pasture ground only, or as woodlands, market-gardens, or nursery-grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof: (1)

Certain kinds of property assessable on one-fourth of their net value.

Provided nevertheless, that if within any district or part of a district any kind of property be exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general district rates under this Act, unless a provisional order obtained and confirmed by Parliament in manner hereinafter provided shall otherwise direct.

Provision as to exemptions from rating under local Acts.

LVI. For the purpose of assessing the general district rate, any person appointed by the Local Board may inspect, take copies of, or make extracts from, any rate for the relief of the poor within the district, or any books relating to the same; and if any officer having the custody of such last mentioned rate or book refuses to permit any such inspection, or the taking of any such copies or extract, he shall for each offence incur a penalty not exceeding five pounds; if there is no such assessment as aforesaid for the relief of the poor by reference to which such net annual value can be estimated, or if such assessment is, in the judgment of the Local Board, an unfit criterion for making a general district rate, a valuation shall be made by a person appointed by the Local Board for that purpose, in manner, as near as circumstances will permit, prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," or any other Act for the time being in force for regulating parochial assessments; and the net annual value of the property shall be ascertained by reference to the said valuation and assessment.

Poor-rate books to be accessible for rating under Public Health Acts.

Power of valuation as prescribed by 6 & 7 Will. IV. c. 96, in case there should be no assessment.

(1) The 14 & 15 Vict. c. 90, which is not repealed, enacts "That tithes, tithe rent-charges, moduses, compositions real, and other payments in lieu of tithe, shall be assessed under the

Public Health Act, 1848, as and in the same proportion of their annual value as land used as arable, meadow, or pasture-ground only."

Sections 107, 113, and 119, of 10 & 11 Vict. c. 63, repealed, and power given for raising money on credit of rates.

LVII. The one hundred and seventh, the one hundred and thirteenth, and the one hundred and nineteenth sections of the Public Health Act, 1848, shall be repealed; and in lieu thereof be it enacted, that the Local Board, or any Board of Improvement Commissioners exercising the borrowing powers of the Public Health Act, 1848, may for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of this Act or of any Act incorporated herewith, or of any Act incorporating the powers of the Public Health Act, 1848, borrow and take up at interest, on the credit of the charges and rates authorised to be made or collected under the said Acts respectively, any sums of money necessary for defraying any such costs, charges, and expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said Local Board may mortgage to the persons by or on behalf of whom such sums are advanced the said charges and rates, or any of them; but the exercise of the above power shall be subject to the following regulations:

- (1.) Such money shall not be borrowed except for permanent works, nor without the sanction of one of Her Majesty's principal Secretaries of State.
- (2.) The money so borrowed shall not, except as hereinafter provided, at any time exceed in the whole the assessable value for one year of the premises assessable within the district in respect of which such money may be borrowed.
- (3.) The money may be borrowed for such time, not exceeding thirty years, as the Local Board, with the sanction of one of Her Majesty's principal Secretaries of State, determine in each case; and, subject as aforesaid, the Local Board may either pay off the money so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer Bills or other Government Securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the Local Board may determine:

And in cases where the Local Board borrow any money for the purpose of defraying private expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of the Local Board, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

Rent-charge may be granted for advances made to meet first cost of private improvements.

LVIII. When any person shall advance money for any expenses which by the said Public Health Act, 1848, are, or by the said Local Board shall be, declared to be private improvement expenses, the said Local Board, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the Form (B) in the schedule hereunto annexed to such person of a yearly rent-charge to be issuable out of the premises in respect whereof such advance shall have been made, or out of such part thereof, to be specified in such grant, as the said Local Board shall think proper

and sufficient, such rent-charge to be personal estate, and to begin to accrue from the day of completion of the works on which such money shall have been expended as aforesaid, and to be payable by equal half-yearly payments for and during a term not exceeding thirty years, in such manner that the whole of the said sum so to be advanced as aforesaid, with the costs of preparing the said grant so to be issued as aforesaid, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum upon the sum from time to time remaining unpaid, shall be repaid at the end of the said term: provided always, that the grantee of such rent-charge shall for the recovery of the same have all the powers, authorities, rights, and remedies of the said Local Board with respect to private improvement rates, and the provisions of the ninety-first and ninety-second sections of the Public Health Act, 1848, shall also be applicable to such rent-charge.

LIX. All rent-charges made in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the one hundred and eleventh and one hundred and twelfth sections of the Public Health Act, 1848. Rent-charges to be registered.

Audit of Accounts.

LX. The one hundred and twenty-second section of the Public Health Act, 1848, shall be repealed, and in lieu thereof be it enacted as follows: Where the mayor, aldermen, and burgesses of a borough are the Local Board, the accounts of the receipts and expenditure of the Local Board shall be audited and examined by the auditors of the borough, and shall be published in like manner and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts; and each of such officers shall in respect of each audit be paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as the Local Board from time to time appoints; and any order of the Local Board for the payment of any money may be removed by certiorari, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the Council of a borough for payments out of the borough fund. Provisions as to audit of accounts.

With respect to districts not boroughs, as follows:—

- (1.) The accounts of the receipts and expenditure of the Local Board shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district or the greater part thereof is situate, unless such auditor is a member of the Local Board whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Board of Health:

And any auditor acting in pursuance of this section shall dis- Power of

allowance, disallowance, and surcharge.

Disallowances may be removed by certiorari into Court of Queen's Bench.

Appeal against disallowances.

allow every item of account contrary to law, and surcharge the same upon the person making or authorising the making of the illegal payment, and shall certify the same to be due from such person, and upon application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made; and any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said Court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said Court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to one of Her Majesty's principal Secretaries of State, who shall have the same powers in the case of the appeal as are possessed by the Poor Law Board in the case of appeals against allowances, disallowances, and surcharges by the said Poor Law auditors.

As to recovery of disallowances.

(2.) Every sum certified to be due from any person by the auditor under this Act shall be paid by such person to the treasurer of the Local Board within fourteen days after the same shall have been so certified, unless there be an appeal against the decision; and if such sum shall not be so paid, and there be no such appeal, the auditor shall recover the same from the person against whom the same shall have been certified to be due, by the like process and with the like powers as in the case of sums certified upon the audit of the poor rate accounts, and shall be paid by the Local Board all such costs and expenses, including a reasonable compensation for his loss of time incurred by him in such proceedings, as shall not be recovered by him from such person.

Power to auditor to require production of books.

(3.) For the purpose of any audit of account under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, and all other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury; and such auditor shall in respect of each audit be

paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as the Local Board from time to time appoints, together with his expenses of travelling to and from the place of audit:

- (4.) Before each audit of accounts under this Act, the Local Board shall, after receiving from the auditor the requisite appointment, give twenty days' notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers circulated in the district, and a copy of the accounts to be audited, together with all rate books, account books, deeds, contracts, accounts, bills, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of the Local Board, and be open, during office hours thereat, to the inspection of all persons interested, for seven days before the audit,⁽¹⁾ and all such persons shall be at liberty to take copies of or extracts from the same without fee or reward; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of the notice of audit on any proceeding whatsoever.
- (5.) Within fourteen days after the completion of the audit, the auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk of the Local Board, who shall cause the same to be deposited in the office of the Local Board, and shall publish an abstract of such accounts in some one or more of the newspapers circulated in the district.

Legal Proceedings.

LXI. Any summons, demand, or notice, or other such document under the Public Health Act, 1848, or any supplemental Act or this Act, may be in writing or print, or partly in writing and partly in print, and if the same require authentication by the Local Board, the signature thereof by the clerk to the Local Board shall be sufficient authentication.

Notice by Local Boards to be signed by clerk.

LXII. Where the Local Board have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable either by application of or agreement with the owner, or by the Public Health Act, 1848, or any Act incorporated therewith, or this Act, the same may be recovered from the person who is owner of such premises when the works are completed for which such expenses have been incurred in the manner provided in the Public Health Act, 1848; and such expenses shall be a charge on the premises in respect of which they were incurred, and shall bear interest at the rate of five pounds per centum per annum, till payment thereof. In all summary proceedings by a Local Board for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Expenses due from owners to be a charge on premises.

(1) See 24 & 25 Vict. c. 61, s. 15, *post*, p. 691.

Apportionment of expenses payable by owners to be conclusive after three months from notice given to them of the amount.

LXIII. Notwithstanding anything in the Public Health Act contained, in all cases where by such Act the Local Board shall have incurred expenses, for the repayment whereof the owners of the premises for or in respect of which the same are incurred is made liable by the Public Health Act, 1848, or any Act incorporated therewith, or by this Act, and such expenses have been settled and apportioned by the surveyors as payable by such owner, such apportionment shall be binding and conclusive upon such owner, unless within the expiration of three months from the time of notice being given by the Local Board or their surveyor of the amount of the proportion so settled by the said surveyor to be due from such owner, he shall by written notice dispute the same.

Arbitration to be confined to cases involving more than £20.

LXIV. All questions referable to arbitration under the Public Health Act, 1848, or this Act, or any Act incorporated therewith, may, when the amount in dispute is less than twenty pounds, be determined before two justices in a summary manner, but the justices may, if they think fit, require that the work in respect of which the claim of the Local Board is made, and the particulars of the claim, be reported on to them by any competent surveyor, not being the surveyor of the Local Board; and the justices may determine the amount of costs incurred on that behalf, and by whom such costs or any part of them shall be paid.

Memorials in respect of private improvement charges.

LXV. Memorials under the one hundred and twentieth section of the Public Health Act, 1848, from and after the first day of September, one thousand eight hundred and fifty-eight, shall be addressed to one of Her Majesty's principal Secretaries of State, who shall have the same powers in respect thereof as are vested in the General Board of Health by the said section.

Penalty on injury to works, etc., of Local Board.

LXVI. If any person wilfully injures any works or materials belonging to any Local Board, he shall in cases where no other penalty is provided by the Public Health Act, 1848, or any Act incorporated therewith, incur for every such offence a penalty not exceeding five pounds, to be recovered in a summary manner.

Penalties to be payable to district fund account.

LXVII. All penalties incurred in any corporate borough, and made payable to the Local Board of Health by the Public Health Act, 1848, or any Act incorporated therewith, or this Act, or any Act of which the powers are to be executed by a Local Board, shall be payable to the district fund account, any Act to the contrary notwithstanding.

Saving Clauses.

Sect. 145 of 11 & 12 Vict. c. 63, repealed, and provisions herein named in lieu thereof.

LXVIII. The one hundred and forty-fifth section of the Public Health Act shall be repealed, and in lieu thereof be it enacted, that nothing in this Act shall be construed to authorise any Local Board of Health:

- (1.) To use, injure, or interfere with any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any Commissioners of Sewers appointed by the Crown, or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land, or in any manner to disturb

or interfere with any lands, hereditaments, estates, or property vested in Her Majesty's principal Secretary of State for the War Department for the time being, without consent in writing first obtained from such commissioners or Secretary of State, or persons acquiring rights under such local or private Acts respectively; and nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under such local or private Acts.

- (2.) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof in cases where any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are by virtue of any Act of Parliament entitled to navigate on, or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues. Saving clause for proprietors of canals, etc.
- (3.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals (being authorised by virtue of any Act of Parliament to navigate on or use such river, canal, dock, harbour, reservoir, or basin, or to demand any tolls or dues in respect of the navigation on or use of such river, canal, dock, harbour, reservoir, or basin), would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference.
- (4.) To interfere with any bridges crossing any river, canal, dock, harbour, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are authorised by virtue of any Act of Parliament to navigate, or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation or use of such river, canal, dock, harbour, or basin.
- (5.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues.

Without the consent in every case of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of a corporation under the common seal, and in the case of a company, undertakers, commissioners, conservators, trustees, or individuals,

under the hand of their clerk or other duly authorised officer or agent: provided always, that nothing in this Act contained shall be construed to alter or affect the maintenance of any rights of Local Boards existing at the time of the passing of this Act.

Works not within preceding section, and which interfere with improvement of rivers, canals, etc., to be referred to arbitration.

LXIX. In cases where any matters or things proposed to be done by any Local Board, and which are not within the prohibition aforesaid, interfere with the improvement of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path, which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal, dock, harbour, or basin, or with any land necessary for the enjoyment or improvement thereof, the Local Board shall give to such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as last aforesaid a notice specifying the particulars of the matters and things so intended to be done; and if the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration; (that is to say,)

- (1.) Whether the matters or things so proposed to be done by the Local Board will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land as are hereinbefore mentioned in this section, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin as aforesaid.
- (2.) Whether any injury that may be caused by such matters or things, or any of them, is or not of a nature to admit of being fully compensated by money.

Effect of arbitration.

LXX. The result of any such arbitration shall be final, and the Local Board shall do as follows; (that is to say,)

If the arbitrators are of opinion that no injury will be caused, the Local Board may forthwith proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and upon payment of the amount so assessed, but not before, the Local Board may proceed to do the proposed matters and things:

If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the Local Board shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, etc.

LXXI. No transfer of powers and privileges under this Act shall deprive any corporation, company, undertakers, commissioners, conservators, trustees, individuals authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

Power for

LXXII. Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorised by virtue

of any Act of Parliament to navigate on or use any river, canal, corporation to dock, harbour, or basin, or to demand any tolls or dues in respect alter sewers. of the navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the surveyor to the Local Board, take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed by any Local Board, and passing under or interfering with such rivers, canals, docks, harbours, or basins, or the towing-paths, of such rivers, canals, docks, harbours, or basins, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

LXXIII. Nothing in this Act or any Act incorporated there- Preserving water rights of companies or individuals. with shall be construed to authorise any Local Board to injuriously affect any reservoir, river, or stream, or the feeders of any reservoir, river, or stream, or the supply, quality, or fall of water contained in any reservoir, river, stream, or feeders of any reservoir, river, or stream, in cases where any company or individuals would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, river, stream, feeders, supply, quality, or fall of water, unless such Board shall have first obtained the consent in writing of such company or individuals so entitled as aforesaid.

LXXIV. Any difference of opinion that may arise between a Arbitration Local Board and any such corporation, company, commissioners, questions under conservators, trustees, or individuals as aforesaid, whether any preceding sections. sewers, drains, culverts, or pipes substituted under the powers of this Act for sewers, drains, culverts, or pipes constructed or laid down by any Local Board are equally effectual with those for which they are substituted, or whether the supply, quality, or fall of water in any such reservoir, river, or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in the manner hereinbefore provided; and in the latter case the arbitrators shall decide the same questions as to the alleged injury; and the Local Board shall proceed in the same way as is hereinbefore provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours, and basins.

Purchase of Land.

LXXV. So much of the eighty-fourth section of the Public Regulation as Health Act, 1848, as relates to the incorporation of the Lands to the purchase of land. Clauses Consolidation Act, 1845, shall be repealed, and the following regulations shall be observed with respect to the purchase of land by Local Boards for the purposes of this Act; (that is to say,)

- (1.) The Lands Clauses Consolidation Act, 1845, shall be incorporated with this Act, except the provisions relating to access to the special Act:
- (2.) The Local Board, before putting in force any of the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, shall

Publish once at the least in each of three consecutive Publication of weeks in the month of November, in some newspaper notices.

circulated in the district or some part of the district within which such Local Board has jurisdiction is situate, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further, in the month of December,

Service of
notices.

Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice shall be served

By delivery of the same personally on the party required to be served, or, if such party is absent abroad, to his agent; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such party.

Power to Local
Board to peti-
tion Secretary
of State upon
matters herein
stated.

(3.) Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the Local Board may, if they shall think fit, present a petition under their seal to one of Her Majesty's principal Secretaries of State: the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice: it shall pray that the Local Board may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the Secretary of State requires.

Secretary of
State may
direct inquiry;

(4.) Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the Secretary of State shall take such petition into consideration, and may either dismiss the same, or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district, after such notice as may be directed by the Secretary of State, no provisional order shall be made affecting any land, without the consent of the owners, lessees, and occupiers thereof.

And may make
provisional
order.

(5.) After the completion of the inquiry as last aforesaid, the Secretary of State may, by provisional order, empower the Local Board to put in force with reference to the land referred to in such order the powers of the said

Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit, and it shall be the duty of the Local Board to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are hereinbefore required to be served. (1)

- (6.) No provisional order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the Secretary of State as soon as conveniently may be to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament. No provisional order valid until confirmed by Parliament.
- (7.) All costs, charges, and expenses incurred by the said Secretary of State in relation to any such provisional order as last aforesaid shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, become a charge upon the general district rates levied in the district to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid. Costs, how to be defrayed.

Local Board to Report.

LXXVI. Every Local Board shall make an annual report, in such form and at such time as the Secretary of State may from time to time direct, of all works executed by them during the preceding year, and of all sums received and disbursements made, under and for the purposes of this Act, and publish the same in some newspaper circulating in the district, and shall send a copy to the Secretary of State. Local Board to report.

Provisional Orders and Powers of Secretary of State.

LXXVII. The one hundred and forty-first section of the Public Health Act, 1848, shall be repealed, and in lieu thereof be it enacted as follows: Whenever it appears desirable to the Local Board of any district, or to the majority of the owners and ratepayers in any parish, township, hamlet, or place maintaining its own roads or its own poor, adjoining any district, or to the majority of owners and ratepayers in any part of a district, such majorities to be ascertained in the way herein provided for voting with respect to the adoption of this Act, Petition for incorporation with, or separation from, district, or for repeal, etc., of local Acts.

That any portion of such parish, township, hamlet, or place should be incorporated with the district, or that such part of the district should be separated therefrom,
Or, whenever it appears to the Local Board of any district desirable,

(1) See 29 & 30 Vict. c. 90, s. 47.

That provision should be made for the future execution of any local Acts in force within such district, having relation to the purposes of this Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit: or that any such Acts, or any exemptions from rating derived therefrom, or any provisional order or Order in Council applying the Public Health Act, 1848, or Act confirming such provisional orders, should be wholly or partially repealed or altered,

(1.) They may present a petition to one of Her Majesty's principal Secretaries of State, praying for such incorporation, separation, provision, repeal, and alteration as aforesaid, or for any of such things, and such petition shall be supported by such evidence as the said Secretary requires.

Power of
Secretary of
State on receipt
of petition.

(2.) Upon the receipt of any such petition inquiry may be directed in the district in respect of the several matters mentioned in the petition, after giving fourteen days' notice of the time, place, and subject of the inquiry.

Power of
Secretary of
State to issue
order, and
obtain consent
of district.

(3.) It shall be lawful for any of Her Majesty's principal Secretaries of State to issue a provisional order in relation to the several things mentioned in the petition and either in accordance with the prayer thereof, or with such modifications as may be requisite; and when the order provides for the incorporation of a portion of any such parish, township, hamlet, or place with the district, or the separation of any part from the district, an inspector shall proceed to the district for the purpose of obtaining the consent to such order of the place of which it is proposed that a portion should be incorporated, or of the part to be separated, and also, if such order provide for any such incorporation, the consent of the petitioning district.

Consents, how
testified.

(4.) The consent of the petitioning district to such order shall be testified by a resolution of the Local Board of such district, and the consent of any place or part by a resolution passed by a majority of the ratepayers resident in any such place or part assembled at a meeting convened for the purpose; and the inspector shall, for the purpose of obtaining such consents, have power to convene meetings of the Local Board of any district, or meetings of the ratepayers of any place or part, with fourteen days' notice of the time, place, and subject of such meetings, and to do all such matters and things as may be expedient for that purpose.

Provision as to
meetings of
part or place.

(5.) In the case of a meeting of the ratepayers of any place or part, the ratepayers present shall elect a chairman; and a declaration by the chairman that the opinion of the meeting is in favour or against any resolution, as the case may be, shall, in the absence of proof to the contrary, be sufficient evidence that the resolution is passed: the inspector shall have power to attend any such meeting.

Secretary of
State to obtain
confirmation of
order.

(6.) Whenever such consents as aforesaid have been given in the cases in which they are hereinbefore required, the said Secretary of State shall, as soon as conveniently may be, take all necessary steps for the confirmation of such order by Act of Parliament; but previously to such confirmation it shall not be of any validity whatever, and every Act of Parliament confirming such order shall be deemed a public general Act. In case any petition shall be presented to either House of Parliament against

any provisional order framed in pursuance of this Act, in the progress through Parliament of the Bill confirming the same, the Bill, so far as it relates to the order so petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

LXXVIII. Where a Local Board, or any Board of Improvement Commissioners exercising the borrowing powers of the Public Health Act, 1848, or this Act, or of any local Act, has contributed to, purchased, or executed works of sewerage and water supply, or proposes to contribute to, purchase, or execute such works, and where the cost of such works exceeds, or is estimated to exceed, one year's assessable value of the premises assessable within the district in respect of which such money may be borrowed, it shall be lawful for such Board to present a petition to one of Her Majesty's principal Secretaries of State praying for powers to borrow or reborrow for such works, on mortgage of the rates leviable by them under the Public Health Act, 1848, and this Act and any local Act, an amount not exceeding two years' assessable value of the premises assessable within the district in respect of which such money may be borrowed or reborrowed, such amount to be repaid within such period not exceeding fifty years as such Board, with the sanction of one of Her Majesty's principal Secretaries of State, shall in each case determine; and it shall be lawful for any of Her Majesty's principal Secretaries of State to direct inquiry on such petition, and to issue a provisional order thereupon, and to take steps for the confirmation of any such provisional order by Act of Parliament in the manner sanctioned in the preceding section.

Extension of borrowing powers in certain cases.

LXXIX. It shall be lawful for the Secretary of State to report annually to Parliament on the execution of this Act to make or direct such inquiries as are directed by this Act, and to appoint from time to time such officers, clerks, and servants as he may require for the purposes of this Act, and at his pleasure to remove any such officers, clerks, or servants; and the Commissioners of Her Majesty's Treasury shall fix the salaries and allowances of such officers, clerks, and servants.

Secretary of State to provide for execution of Act.

LXXX. Any officer directed by one of Her Majesty's principal Secretaries of State to inquire into any matter into which such Secretary is empowered to direct inquiry under this Act, shall, for the purposes of such inquiry, have all the powers vested in superintending inspectors by the one hundred and twenty-first section of the Public Health Act, 1848.

Powers for inquiry directed by Secretary of State.

LXXXI. All orders made by one of Her Majesty's principal Secretaries of State in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer; and any such Secretary may make orders as to the costs of any appeal to him under this Act, and the parties by whom such costs are to be borne; and every such order may be made a rule of one of the Superior Courts of Law, on the application of any party named therein.

Orders of Secretary of State to be binding.

Oxford and Cambridge.

LXXXII. Notwithstanding anything contained in this Act, the Oxford and Cambridge Commissioners described in the thirty-first section of the Public Health Act, 1848, shall be the bodies authorised to adopt this Act for the districts respectively within

Exception of Oxford and Cambridge.

their jurisdiction; and in the event of the adoption of this Act by the said Cambridge Commissioners, the said Commissioners shall be the Local Board for the district of Cambridge; and in the event of such adoption by the said Oxford Commissioners, the Local Board of the Oxford district shall consist of the Vice-Chancellor of the University of Oxford and the mayor of Oxford for the time being, and of forty-five other Commissioners, fifteen to be elected by the University of Oxford, sixteen by the Town Council of Oxford, and fourteen by the ratepayers of the parishes situate within the jurisdiction of the Oxford Commissioners; and the election of such Commissioners by the Town Council and by the ratepayers of the parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which members constituting the body of Oxford Commissioners are now respectively chosen by such Town Council and parishes; and the fifteen Commissioners to be elected by the University shall be elected as follows: namely, four Commissioners shall be elected by the University in convocation, and eleven Commissioners shall be elected by the heads and senior bursars of the several colleges, and by the heads of the several halls: and the elections shall be conducted by the said University, and by the colleges and halls respectively, at the same time and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the University and for the colleges and halls are now chosen by them respectively, save that in the election of Commissioners the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the Vice-Chancellor for that purpose, and shall be entitled to vote; and differences between either of the Universities of Oxford and Cambridge and the Local Boards of Oxford and Cambridge respectively within the meaning of the one hundred and fifth section of the Public Health Act, 1848, shall be settled by arbitration in the manner provided by that Act.

SCHEDULE.

FORM (A).

Voting Paper.

AT a meeting held on the _____ day of _____ at the _____ of _____, in the county of _____, it was agreed that the following Resolution should be proposed to the owners and ratepayers:—

“That the Local Government Act, 1858, be adopted in the _____ of _____.”

	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?	J. S.			

John Smith, of 19 Fore Street.

N.B.—The ratepayer will put his initials under the heading “in favour of” or “against” according as he votes for or against the resolution. He is also required to subscribe his name and address at full length. If a voter cannot write, he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark. If a proxy vote, he must add after his signature the words “as proxy for,” with the name of corporation or company for which he is proxy. This paper will be collected on the _____ of _____, between the hours of _____ and _____.

TAKE NOTICE—“If any person wilfully commits any of the acts following, that is to say, fabricates in whole, or in part, alters, defaces, destroys, abstracts, or purloins any voting paper, or personates any person entitled to vote in pursuance of the Public Health Act, 1848, or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting-papers, or distributes the same under a false pretence of being lawfully authorised so to do, he shall for every such offence be liable, on conviction before two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour.”

(Local Government Act, 1858.)

(Signed by the summoning Officer.)

FORM (B).

By virtue of the Public Health Act, 1848, the Local Board of Health for the district of _____, do hereby declare and absolutely order that the inheritance of the [dwelling-house, shop, lands, and premises, *as the case may be*], situate in _____ street, in the parish of _____ within the said district, and now in the occupation of _____, shall be absolutely charged with the sum of _____ pounds, paid by _____ of _____ for the improvement by drainage and water supply [*as the case may be*] of the same dwelling-house, shop, lands, and premises [*as the case may be*], together with interest for the same from the date hereof at _____ pounds per centum per annum, until full payment thereof; and also all costs incurred by the said _____ his executors, administrators, or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said _____, his executors, administrators, and assigns, in manner following: (that is to say,) the interest on such principal sum of _____ pounds, or on so much thereof as shall from time to time remain due, and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the _____ day of _____ and the _____ day of _____ in every year, the first payment thereof to be made on the _____ day of _____ next, and such principal sum of _____ pounds shall be paid and payable by _____ equal annual instalments on the _____ day of _____ in each of the next succeeding _____ years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

22 & 23 VICT. c. 3.

An Act to amend and make perpetual "The Public Health Act, 1858."

[1st April, 1859.]

WHEREAS an Act was passed in the session holden in the twenty-first and twenty-second years of Her Majesty (chapter ninety-seven), "For vesting in the Privy Council certain powers for the protection of the Public Health;" which Act was to be in force only until the first day of August, one thousand eight hundred and fifty-nine; and it is expedient that section eight of the said Act should be repealed, and that, except such section, the said Act should be made perpetual: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Section eight of the said Act shall be repealed, and, except the said section, the said Act shall be, and the same is hereby made perpetual. (1)

23 & 24 VICT. c. 77.

An Act to amend the Acts for the removal of Nuisances and the Prevention of Diseases.

[6th August, 1860.]

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Nuisances Removal Act.

Sections 3, 6, 7, and 9 of 18 & 19 Vict. c. 121, repealed. I. Section three, section six, section seven, and section nine of the said "Nuisances Removal Act for England, 1855," shall be repealed: provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual as if this Act had not been passed.

(1) See 21 & 22 Vict. c. 97, s. 8, *ante*, page 647.

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

In any place within which the Public Health Act is or shall be in force, the Local Board of Health:

In any other place wherein a Council exists or shall exist, the mayor, aldermen, and burgesses by the Council, except in the city of London and the liberties thereof, where the local authorities shall be the Commissioners of Sewers for the time being, and except in the city of Oxford and borough of Cambridge, where the local authority shall be the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough:

In any place in which there is no Local Board of Health or Council, and where there are or shall be trustees or commissioners under an Improvement Act, such trustees or commissioners:

In any place within which there is no such Local Board of Health, Council, body of trustees, or commissioners, if there be a Board of Guardians of the poor for such place, or for any parish or union within which such place is situate, such Board of Guardians, and if there be no such Board of Guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

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

IV. All charges and expenses incurred by the local authority in executing the said Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows; to wit, How expenses of local authority to be defrayed.

Out of general district rate where the local authority is a Local Board of Health:

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

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

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

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

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

Where the Board of Guardians for a union is under this Act the local authority for a single place maintaining its own

poor, and where the Board of Guardians for any such single place, or the overseers of any such place, (1) are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof:

Where the Board of Guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, (2) together with the whole of any other such place or part of any other such place, such Board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such Board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof:

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

Board of Guardians may appoint committees for particular parishes.

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

Saving for the vestries and district Boards of the metropolis.

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

Wells, etc., belonging to any place vested in

VII. All wells, fountains, and pumps provided under section fifty of "The Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or

(1) See 29 & 30 Vict. c. 90, s. 17.

(2) See *Ibid.* s. 33.

vested in any person or corporation other than officers of such local authority, place, shall be vested in the local authority under this Act for etc. such place, who shall from time to time cause to be kept in good repair and condition and free from pollution all wells, fountains, and pumps vested in them under this Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

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

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

• *Diseases Prevention.*

X. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty, the Metropolis Local Management Act, shall be repealed. Sections 2 and 3 of 18 & 19 Vict. c. 116, repealed.

XI. The Board of Guardians for every union, or parish not within a union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no Board of Guardians, the overseers of the poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the Board of Guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the Board of Guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place: provided that every such Board of Guardians shall, for the execution of the said Act for the Prevention of Diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the Board shall be paid in the same manner as hereinbefore provided where such a Board is the local authority for the execution of the said Nuisances Removal Act: provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed: provided, moreover, that in respect of any place where, under this Act, the local authority for executing the Nuisances Removal Act is any other body than the Board of Guardians or the overseers of the poor, the Privy Council, if it Guardians and overseers of the poor to be the local authorities for executing Diseases Prevention Act.

see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorise such other body to be, instead of the Board of Guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act: provided also, that as regards the metropolis the vestries and district Boards under the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

Local authorities may provide carriages for conveyance of infected persons.

XII. It shall be lawful for the local authority for executing the said "Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, (1) and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expense thereof shall be deemed to be an expense incurred in executing the said Act.

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

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

(1) See 29 & 30 Vict. c. 90, s. 24.

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

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

XVI. (Repealed by 29 & 30 Vict. c. 41.)

24 & 25 VICT. c. 61.

An Act to amend the Local Government Act.

[1st August, 1861.]

WHEREAS it is expedient to amend "The Local Government Act, 1858:" Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Ratepayers or owners making a requisition for the summoning of meetings for the purpose of deciding as to the adoption of "The Local Government Act, 1858," shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the Act not being adopted, of the costs incurred in relation to such meetings or polls taken in pursuance of any demand made at such meetings, the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or in the event of disagreement between them, by any justice of the peace acting in and for the place in which it is proposed that the said Act shall be adopted.

Provision as to costs of proceedings with a view to adopting the Local Government Act, when that Act is not adopted.

II. The power of adopting any part of "The Local Government Act, 1858," given by the fifteenth section of that Act to any corporation or body of commissioners exercising powers for sanitary regulation under the provisions of any local Act, shall extend to every local authority invested with powers of town government and rating by any local Act, by whatever name such local authority is called, and the words "Local Board" or "Board of Commissioners" as used in the said Local Government Act shall apply to such local authority: provided always, that whenever the members of such local authority are elected for life they shall adopt, in lieu of the provisions for elections contained in the local Act, the provisions for and in relation to elections prescribed by "The Public Health Act, 1848," and "The Local Government Act, 1858," and within one month of such adoption one-third of the members of such local authority shall retire, the order of retirement to be fixed by the local authority, and the election of members, in lieu of such retiring members, shall be governed in all respects by the said "Public Health Act, 1848,"

Every local authority invested with powers of town government may adopt any part of Local Government Act: Provision for election of such local authorities when elected for life at the time of adopting Local Government Act.

and "Local Government Act, 1858," and be conducted by the chairman of the local authority: provided also, that such adoption shall not affect the qualification fixed for members of such local authority by the local Act under which it is constituted, or the qualification and tenure of office of *ex officio* members of such local authority.

Accounts of Improvement Commissioners acquiring borrowing powers under Local Government Act to be subject to the provisions of that Act relating to audit.

Local Board may exercise powers of sect. 45 of 11 & 12 Vict. c. 63, also without their district, if necessary, for purposes of outfall or distribution of sewage, on making compensation.

Previous notices of the intended works before commencement.

III. When any Board of Improvement Commissioners acquires powers of rating or borrowing money under the fifteenth section of the "Local Government Act, 1858," the provisions in relation as to audit of that Act, or of any Act amending that Act, shall be in force in the case of such Commissioners, as if such provisions were contained in the local Act under which they are constituted; and when the provisions as to audit of such local Act are repugnant to or inconsistent with those of the local Government Act, or any Act amending that Act, then the audit shall be conducted under the provisions of the last mentioned Act.

IV. Local Boards may exercise the powers given by the forty-fifth section of "The Public Health Act, 1848," also without their district, for the purpose of outfall or distribution of sewage, upon making due compensation, to be settled in the manner provided in the one hundred and forty-fourth section of "The Public Health Act, 1848:" provided always, that nothing herein contained shall give or be construed to give power to any Local Board to construct or use any outfall drain or sewer for the purpose of conveying sewage or filthy water into any natural watercourse or stream, until such sewage or filthy or refuse water be freed from all excrementitious or other foul or noxious matter, such as would affect or deteriorate the purity and quality of the water in such stream or watercourse.

V. Provided also, that no sewer or other work shall be constructed or extended, under the enactment lastly hereinbefore contained, unless three months at the least before the commencement of such work notice of the intended work, describing the nature thereof, and stating the intended termini thereof, and the names of the parishes, townships, and places, and the turnpike roads and streets or places laid out or intended for streets, and other lands, if any, through, across, or under which the work is to be made, and naming a place where a plan of the intended work is open for inspection at all reasonable hours, shall be given by advertisement in one or more of the newspapers usually circulated in the place where the work is to be made, and a written or printed copy of such notice shall be served in manner directed by "The Public Health Act, 1848," on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, townships, or places, and the trustees, surveyors of highways, or others having the care of such roads or streets.

If objection be made by any party interested, the work not to be proceeded with without sanction of Secretary of State.

VI. In case any of such owners, lessees, or occupiers, or such overseers, trustees, surveyors, or others as aforesaid, or any other owner, lessee, or occupier who would be affected by the proposed work, object to such work, and serve notice in writing of such objection on the Local Board at any time within the said three months, the proposed work shall not be made or commenced without the sanction of one of Her Majesty's principal Secretaries of State, after such inquiry and report as hereinafter mentioned (unless such objection be withdrawn).

VII. It shall be lawful for the Secretary of State, upon application of any Local Board, to appoint an inspector to make inquiry on the spot into the propriety of any such work as aforesaid, and into the objections thereto, and to hold one or more meeting or meetings for the purpose of hearing all persons desirous of being heard before him on the subject of such inquiry, and to report to such Secretary of State upon the matters with respect to which such inquiry was directed.

An inspector to be appointed to make inquiry on the spot, and report to the Secretary of State.

VIII. Where already or hereafter any premises not being within the limits of the district of the Local Board have a drain communicating, directly or indirectly, with a sewer within the district, and maintained by the Local Board, and any sewage from the premises flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the Local Board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or, failing agreement between them, as on the application of the Local Board is determined by two justices; and the yearly sum so agreed on or determined shall be private improvement expenses, and shall be charged on the premises, and be paid and recoverable accordingly, as if the premises were within the district: provided that the yearly sum so charged shall cease to be payable if and when the connection between from the premises and the sewer is discontinued, so that a proportionate part thereof up to the time of the discontinuance shall alone be payable; but if after the discontinuance the connection be re-established, the yearly sum shall again become payable, and so from time to time.

Yearly sum to be paid for premises without districts drained into sewer within district.

IX. The sub-division numbered (4) in the thirty-seventh section of the said Local Government Act, 1858, shall be and the same is hereby repealed: and in lieu thereof be it enacted as follows:

Provision for repair of highways in parts of parishes or townships not included in districts under Local Government Act as herein stated.

- (1.) Where part of a township, or place not comprised within any district in which the said Local Government Act, 1858, is in force, and which part is hereinafter referred to as "the excluded part," was, before the said Act came into force in such district, liable to contribute to the highway rates for such township or place, such excluded part shall for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as if forming part of such district.
- (2.) It shall be lawful for a meeting of ratepayers of the excluded part (to be convened and conducted in the manner prescribed by the thirteenth section of the said Local Government Act, 1858, with respect to districts, not being corporate boroughs or towns, under the jurisdiction of Improvement Commissioners) to decide that such excluded part shall be formed into a separate highway district, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a township maintaining its own highways.
- (3.) The requisition for holding such meeting as last mentioned shall, in any excluded part where the said Local Government Act, 1858, has been in force before the passing of this Act, be presented within six calendar months after the passing of this Act, and in all other cases within six calendar months after the adoption of the said Local

Government Act, 1858; but nothing in this section before contained shall apply to districts constituted under the Public Health Act, 1848, including a part only of any parish, township, or place which before the constitution of such district maintained its own highways.

Enabling Local Boards to act instead of inhabitants in vestry of townships in their districts in all matters arising under the provisions of 5 & 6 Will. IV. c. 50.

X. All the powers, authorities, and discretion which in and by the Act of the fifth and sixth years of the reign of King William the Fourth, chapter fifty, are vested in and given to the inhabitants in vestry assembled of any parish, township, or place, shall, within the districts where the Local Government Act is in force, be vested in and exercisable by the Local Boards, or commissioners exercising the powers of such Local Boards, under the provisions of this Act and of the Public Health Act, 1848, and of the Local Government Act, 1858; and all acts or consents already done or given or purporting to be so done or given by such Local Boards, under and by virtue of the said Act of the fifth and sixth years of William the Fourth, chapter fifty, acting or assuming to act in lieu of the inhabitants in vestry assembled in any parish, township, or place within the district of the Local Board, shall operate and be as valid and effectual as if the same had been done and given or executed by such inhabitants in vestry.

Service of notices and repayment of costs under sects. 69, 70, 71, 73, and 74 of 10 & 11 Vict. c. 34.

XI. In districts where the Local Government Act, 1858, is in force, notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the Towns Improvement Clauses Act, 1847, may, at the option of the Local Board, be served upon owners instead of occupiers, or upon owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served upon owners, be recovered from owners instead of occupiers, and when such cost is recovered from occupiers they shall be entitled to make the same reduction from the rents payable for the premises where the work is done in respect of such cost as they are entitled to make in respect of private improvement rates by the Public Health Act, 1848.

Special district rates leviable over same area as general district rates may be levied as part, and under the name, of such rates.

XII. Where in any district, special district rates are levied over the same area as general district rates, the Local Board may make and levy such special district rates as part, and under the name, of general district rates: provided always, that the levying of such rates by the means aforesaid shall in no way prejudicially affect any mortgages now or hereafter to be made upon such special district rates.

Debts due on special district rates may, with the sanction of the Secretary of State, and of mortgagees, and of owners and ratepayers, be repaid, and money raised for such repayment on credit

XIII. Where any Local Board of Health have incurred expenses in or about any works of a permanent nature, and have made and levied a special district rate upon or in respect of the premises situate in part of their district, and have borrowed and taken up at interest on the credit of the said special district rate any sums of money necessary for defraying such expenses, it shall be lawful for such Local Board, with the sanction of one of Her Majesty's principal Secretaries of State, and with the consent of all persons having advanced money on the security of the said special district rate, and with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect to resolutions for the adoption of the said Local Government Act, to pay off and discharge the sums so borrowed and taken up at interest on the credit of the said special district

rate, or such part thereof as shall then remain due, and to re-borrow and take up at interest on the credit of the general district rates of the said Local Board any sums of money which shall have been so paid off and discharged, and for the purpose of securing the repayment of any sums so borrowed, together with interest thereon, the Local Board may mortgage the said general district rates to the persons by or on behalf of whom such sums are advanced, subject to the regulations prescribed by the fifty-seventh section of the Local Government Act, 1858.

XIV. In all cases in which prior to the passing of the Local Government Act all or any of the powers or provisions of the Public Health Act, 1848, relative to the borrowing of money or the mortgaging of rates, are repeated in any Local Act of Parliament, or in which it is declared in and by such Local Act that the same shall be read and construed as if all or any of such powers and provisions had been repeated therein, so as to confer thereunder upon any such Local Board of Health or Board of Improvement Commissioners powers corresponding with all or any of the borrowing or mortgaging powers contained in the Public Health Act, 1848, and where the sanction, consent, direction, or approval of the General Board of Health is rendered requisite in or by any such Local Act to the due exercise of any of the powers vested thereby in any Local Board of Health or Board of Improvement Commissioners, such powers or any of them shall and may be henceforth exercised with and under the sanction, consent, direction, and approval of one of Her Majesty's principal Secretaries of State, in lieu of the sanction, consent, direction, and approval of the General Board of Health aforesaid, and not otherwise. (1)

XV. Seven clear days at least before the day fixed for the audit of accounts of any Local Board, the Local Board shall cause their rate books and other accounts to be made up and balanced, and the books and accounts so made up and balanced shall forthwith be deposited at the office of the said Local Board for the inspection of owners and ratepayers, and the notice of audit shall include a notice of such deposit of accounts; and any officer of a Local Board duly appointed in that behalf neglecting to make up such books and accounts, or altering such books or accounts, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable on conviction thereof to forfeit forty shillings; and it shall be lawful for any ratepayer or owner of property in the district to be present at the audit of the accounts of the Local Board, and to make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances.

XVI. Before giving the notice mentioned in the sixty-ninth section of the Public Health Act, 1848, the Local Board shall cause plans and sections of the works intended to be executed under that section and the thirty-eighth section of the Local Government Act, 1858, to be made, under the direction of their surveyor, on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing

of general district rate.

The sanction of the Secretary of State substituted for the sanction of the General Board of Health, which has ceased to exist.

Making up accounts for audit.

Before giving notice for paving, etc., of streets not being highways, plans and sections to be deposited with Local Board.

(1) See 21 & 22 Vict. c. 98, s. 8, *ante*, p. 647.

the depth of such sewer below the surface of the ground; and such plans and sections shall be deposited in the office of the Local Board, and shall be open at all reasonable hours for the inspection of all persons interested therein during the period for which such notice is required to be given, and a reference to such plans and sections in such notice shall be held sufficient without requiring any copy of such plans and sections to be annexed to such notice.

Form of notice.

XVII. The form of notice in the Schedule (A) to this Act annexed, or to the like effect, may be used for any of the purposes of the sixty-ninth section of the Public Health Act, 1848, and of the thirty-eighth section of the Local Government Act, 1858, and of this Act, for which such form is applicable, and such form shall accordingly, to all intents, be deemed sufficient for such purposes.

Interpretation of special Act in construing 8 & 9 Vict. c. 18, as to provisional orders.

XVIII. In the construction of the Lands Clauses Consolidation Act, 1845, for the purposes of any provisional order under the Local Government Act, 1858, conferring powers for the taking of land otherwise than by agreement, the term special Act shall mean the Act confirming such order, and the date of the passing of the special Act shall mean the date of the passing of the Act confirming such order.

Extension of powers given by sect. 78 of 21 & 22 Vict. c. 104 (*sic*), to cases in which Local Boards incur expenses for permanent works, etc.

XIX. The powers granted by the seventy-eighth section of the Local Government Act, 1858, may be exercised in any case where any Local Board or Board of Improvement Commissioners exercising the borrowing powers of the Public Health Act, 1848, or the Local Government Act, 1858, or of any local Act, has contributed to, purchased, or executed any permanent works, or proposes to contribute to, purchase, or execute such works, at a cost exceeding, or estimated to exceed, one year's assessable value of the premises assessable within the district in respect of which the money for such works may be borrowed.

Local Boards may make agreements for terms of water supply in certain cases.

XX. In districts where no water companies are established by Act of Parliament, all Local Boards may make agreements for the supply of water to persons on such terms as may be agreed upon between the Local Board and the persons receiving such supply, and shall have the same powers for recovering water rents accruing under such agreements as they have for the recovery of water rates by the law in force for the time being.

Local Boards of Health may repair fences surrounding burial grounds.

XXI. All Local Boards of Health constituted Burial Boards may from time to time repair and uphold the fences surrounding any burial ground which shall have been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial-grounds, and placing them in a proper sanitary condition; and where such Burial Boards are a Local Board of Health, they may from time to time pass bye-laws for the preservation and regulation of all burial-grounds within their limits, and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any Local Board constituted a Burial Board.

Powers of Local Boards with respect to land purchased under

XXII. Local Boards shall have the same powers with regard to any lands purchased by them under or for the purposes of the Local Government Act, 1858, or any Act incorporated therewith, which they now have with regard to lands purchased for the pur-

pose of making or enlarging streets under the powers of the said 21 & 22 Vict.
Act. c. 104.

XXIII. The expenses which have been incurred by any Local Board of Health as and for private improvement expenses under the Public Health Act, 1848, as also the expenses stated in the sixty-second section of the Local Government Act, 1858, to be a charge on the premises, with interest after the rate of five per centum per annum, may, by order of the Local Board of Health, be declared payable by annual instalments, with interest after the rate aforesaid, during a period not exceeding thirty years, until the whole amount be paid; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier of such premises in the same manner as general district rates, and may be deducted from the rent of such premises in the same proportions as are allowed in the case of private improvement rates under the ninety-first section of the Public Health Act, 1848.

XXIV. Proceedings for the recovery of demands below twenty pounds, which Local Boards are now empowered by law to recover in a summary manner, may, at the option of the Local Board, be taken in the County Court as if such demands were debts within the cognizance of such Courts.

XXV. The Local Board may make bye-laws for licensing and regulating horses, ponies, mules, or asses, standing for hire in the district, and for prescribing and regulating the stands, and fixing the rates of hire, and ordering the conduct of the drivers or attendants thereof, and also for licensing, regulating, and fixing the rates of hire of pleasure boats or vessels, and the persons in charge of the same.

XXVI. Where a Board of Improvement Commissioners, or other local authority, in exercise of any of the powers of the Local Government Act, 1858, maintains and repairs the highways within the area of its jurisdiction, the sixty-ninth section of the Act of the fifth and sixth William the Fourth, chapter fifty, shall be held to apply to all encroachments on such highways.

XXVII. The provision for the repayment of costs, charges, and expenses incurred by the Secretary of State in relation to any provisional order under the seventy-fifth section of the Local Government Act, 1858, shall extend to all provisional orders under the said Act.

XXVIII. It shall not be lawful at any time or times hereafter, within the district of any Local Board, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of such house or building on either side of the same as aforesaid, without the previous consent of such Local Board.

XXIX. And whereas doubts exist whether Local Boards of Health, constituted under or by virtue of Local Acts, are affected by the provisions of the Local Government Act, 1858, or by the provisions of the Nuisances Removal Act for England, 1855, and the Diseases Prevention Act, 1855, and it is desirable to remove such doubts: Be it therefore enacted, that all the provisions of the Local Government Act, 1858, as amended by this Act, and of the Nuisances Removal Act for England, 1855, and the Diseases Prevention Act, 1855, as amended by the Act to amend the Acts for the Removal of Nuisances and Prevention of Diseases, which

Provision for recovery of charges for private improvements.

Demands below £20 may be recovered in County Courts.

Local Board may make bye-laws for licensing, etc., horses, boats, etc., for hire.

Sect. 69 of 5 & 6 Will. IV. c. 50, to apply to encroachments on highways managed by local authority. Repayment of costs by provisional orders.

No house to be brought forward without consent of Local Board.

Application of general Acts to Local Boards of Health.

Acts are hereinafter designated the general Acts, shall extend and apply to all Local Boards of Health constituted under or by virtue of local Acts, with and subject to the two following qualifications: (that is to say,)

- (1.) Provisions of the General Acts opposed to or restrictive of the provisions (whether adopted or original) of any such local Act shall be of no force in the district for which the local Act was passed;
- (2.) Wherever the general Acts and a local Act contain provisions for effecting the same or a similar object, but in different modes, the Local Board of Health may proceed under the general Acts or the local Act:

And every future Act for amending or repealing any of the general Acts aforesaid shall, subject to the aforesaid qualifications, also extend and apply to every such Local Board of Health.

Incorporation
and construction
of Acts.

XXX. This Act shall be deemed to be incorporated with the Local Government Act, 1858, and shall be read as if this Act and the said Local Government Act were one Act.

Short title.

XXXI. In citing this Act it shall be sufficient to use the words and figures—Local Government Act (1858) Amendment Act, 1861.

SCHEDULE.

Local Board of Health for . . . The . . . of . . . in
the county . . . of
To . . . , the owner of certain premises fronting, adjoining, or
abutting upon a certain street called . . . , within the said [borough
or district, *as the case may be*].

Whereas the said street is not sewered, levelled, paved, flagged, and channeled to the satisfaction of the above-named Local Board of Health; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channeled: Now, therefore, the said Local Board of Health hereby give you notice (in pursuance of the statute in that case made and provided) to sewer, level, pave, flag, and channel the same within the space of [*state the time*] from the date hereof, in manner following: (that is to say,) the sewers to be laid or made [*here describe the mode to be adopted and material to be used*] of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the Local Board.

Each gully for surface draining, and its connection with the sewers, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the Local Board, situate in . . . street, in . . . aforesaid, and the dimensions, widths, and levels, shown thereon, and to be done in a good, workmanlike, and substantial manner to the satisfaction of the said Local Board of Health or their surveyor.

Dated this . . . day of . . . One thousand eight hundred and . . .

Clerk to the said Local Board of Health.

26 VICT. c. 17.

An Act for amending the Local Government Act (1858).

[11th May, 1863.]

WHEREAS by the Local Government Act, 1858, after reciting "that it is expedient to amend the Public Health Act, 1848, and to make further provisions for the local government of towns and populous districts in England," numerous provisions are made for the establishment of local government in towns and populous districts that may adopt the Act, for the regulation of the sewerage, drainage, and buildings therein, for the maintenance of the streets and roads, and for police and other town purposes: And whereas it is expedient to place some restriction upon the adoption of the Act by places containing a small population only, (1) and otherwise to amend the said Act: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited as "The Local Government Act Short title. Amendment Act, 1863."

II. The adoption of the Local Government Act, 1858, by any place where that Act was not in force on the first day of March, One thousand eight hundred and sixty-three, and where the population, according to the then last census, is less than three thousand, shall not be of any validity unless it is approved by one of Her Majesty's principal Secretaries of State, on proof being given to his satisfaction that, by reason of special circumstances, it is expedient that such place should be allowed to adopt the Act. Restriction as to the adoption of the Act by certain places.

Before signifying his approval or disapproval, the said Secretary may cause an inquiry to be made in the place as to the circumstances alleged in support of the expediency of the adoption of the Act, of the time and place of which inquiry fourteen days' public notice shall be given, and on the determination of such inquiry shall give or withhold, as he thinks just, his approval of the adoption of the Act.

The approval or disapproval of the said Secretary of State shall be published in the *Gazette*, and such publication shall be evidence of the fact of that approval or disapproval having been given.

III. Petitions appealing against the resolution of adoption, and praying for exclusion from the operation of the Local Government Act, under the seventeenth section of that Act, and appeals from owners and ratepayers who dispute the validity of the vote for adoption under the eighteenth section of the same Act, may be presented and had at any time before the expiration of six weeks from the date of any resolution adopting the Act. Amendment of sections 17 & 18 of 21 & 22 Vict. c. 98.

IV. When a resolution adopting the Local Government Act has been passed in a place in which the population, according to the ment of Local

(1) The object of the restriction imposed by this Act to the adoption of the Local Government Act, 1858, was to restrain small parishes from adopting its provisions, so as to escape from

being included in a Highway District under the 25 & 26 Vict. c. 61. See Section 7 of that Act in "Glen's Highway Laws," second edition.

Government
Act in certain
places.

then last census, is less than three thousand, (1) that resolution may at any time be rescinded by a subsequent resolution, passed in the same manner in which resolutions for the adoption of the Act are required to be passed, (2) but the rescinding resolution shall not be of any effect unless it is approved by one of Her Majesty's principal Secretaries of State, and notice is published by him in the *London Gazette* of the passing of the resolution and of his approval thereof.

An appeal may be had from any such rescinding resolution in the same manner and subject to the same conditions, as nearly as may be, in and subject to which an appeal may be had against a resolution adopting the Act; and the provisions of the Local Government Act relating to an appeal against the adoption of the Act shall, with the requisite variations, apply to an appeal under this section. (3)

The notice of the rescinding resolution shall not be published until the expiration of the time limited for an appeal, (4) or until the determination of the appeal; but upon the publication thereof, the adoption of the Local Government Act shall be deemed to be avoided as from the date of that publication, and from the same date the Local Government Act shall cease to be in force within the district, and the district shall revert to the position in which it was before the adoption of the Local Government Act; so nevertheless that any contracts that may have been entered into by or on behalf of the Local Board of any such district, may be enforced in the same manner in all respects as if the Local Government Act had continued in force in the district, and so far as may be necessary for the enforcement of such contracts, the Local Board, and all their powers of levying money, shall be deemed to be continued.

Provision for
avoidance of
constitution of
district.

V. In any district constituted under the Local Government Act, 1858, where by that Act the Local Board is required to be elected by the ratepayers, and where the population according to the then last census is less than three thousand, if no election of a Local Board in pursuance of the said Act takes place within three months from the date of the constitution of the district, or if in any such district as last aforesaid the Local Board makes default in appointing fit and proper persons to the following offices or any of them, that is to say, to the office of surveyor, inspector of nuisances, clerk, and treasurer, within two months after the election of the Local Board, then upon the happening of either of the above events the adoption of the Local Government Act in the said district shall be void, and the Local Government Act, 1858, shall cease to be in force within the district, and the district shall revert to the same position as it was in before the adoption of the Act; so nevertheless that any contracts that may have been entered into by or on behalf of the Local Board of any such district may be enforced in the same manner in all respects as if the Local Government Act had continued in force in the district, and so far

(1) This section was extended to places having a population exceeding 3,000, adopting the Public Health Act, 1858, under the 26th & 27th Vict. c. 70, s. 8, by s. 9 of the same Act.

(2) See 21 & 22 Vict. c. 98, s. 12,

ante, page 648.

(3) See 21 & 22 Vict. c. 98, s. 17.

(4) Twenty-one days from the date of the resolution, 21 & 22 Vict. c. 98, s. 17.

as may be necessary for the enforcement of such contracts the Local Board and all their powers of levying money shall be deemed to be continued. (1)

VI. Where any district under the Public Health Act, 1848, and the Local Government Act, 1858, or either of such Acts, or any other place, is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall for the purpose of any meeting of the Highway Board be deemed to be within such highway district. (2)

VII. The power of adopting any part or parts of the Local Government Act, 1858, given by that Act and the Acts amending the same, shall not be exhausted by one adoption, but may be exercised from time to time.

VIII. The Public Health Act, 1848, and the Acts amending the same, and the Acts amending the Local Government Act, 1858, including this Act, are hereby declared to be one Act, and to be included under the expression the Local Government Act, 1858, or any words referring to that Act.

Local Govern-
ment Act dis-
tricts to be
within highway
districts for
purpose of high-
way meetings.
Amendment
of sect. 15 of
21 & 22 Vict.
c. 98.
Construction
of Acts.

26 & 27 VICT. c. 117.

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

[28th July, 1863.]

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," with regard to the inspection and seizure of diseased and unwholesome meat, are defective; and it is therefore expedient that the same should be repealed, and that other and more effectual provisions in that behalf should be substituted therefor: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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

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

Section 26 of
recited Act
repealed.
Power to medi-
cal officer of
health or
inspector of
nuisances to
inspect any
animal, etc.

(1) This is a very clumsy provision, and it is difficult to see how the Local Boards are to be continued when they go out of office by effluxion of time, and the Act has ceased to be in force in the district. It will be noticed that a default to elect any one of the officers named within the time limited will

break up the district.

(2) This is an amendment of the Highway Act, 1862, sect. 6, subsect. 5, and has nothing whatever to do with the subject of this Act. It was introduced as an amendment to the present Act when the Bill was in the House of Lords.

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

Penalty for obstructing medical officer of health, etc.

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

This and recited Act to be as one Act. Short title.

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

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

28 & 29 VICT. c. 75.

An Act for facilitating the more useful application of sewage in Great Britain and Ireland. (1)

[29th June, 1865.]

WHEREAS it is expedient to remove difficulties under which Local Boards and other bodies having the care of sewers labour in disposing of the sewage of their districts so as not to be a nuisance, and to give facility to such authorities to make arrangements for the application of such sewage to land for agricultural purposes: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Short title.

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

Application of Act.

II. This Act shall not extend to any part of the metropolis as defined by the Act of the session eighteenth and nineteenth years

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

of the present reign, chapter one hundred and twenty, for better local management of the metropolis. (1)

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

"Local Board" shall mean a local board authorized in pursuance of "The Public Health Act, 1848," and "The Local Government Act, 1858," or one of such Acts.

IV. Sewer authorities shall have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained, and shall, as respects all sewers constructed by them or under their control, whether the same were made before or after the passing of this Act, have all the powers that Local Boards have, in respect of sewers vested in or constructed by them, under the forty-fifth and forty-sixth sections of "The Public Health Act, 1848," the thirtieth section of "The Local Government Act, 1858," and the fourth section of "The Local Government Act, 1858, Amendment Act, 1861," subject to the provisions of the fifth and sixth sections of the last mentioned Act, and to the saving clauses in "The Local Government Act, 1858," mentioned, from sixty-eight to seventy-four both inclusive; * * * Powers of sewer authorities.

V. The sewer authority shall have the powers of entry conferred by the one hundred and forty-third section of "The Public Health Act, 1848," for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in the said section. Power of entry.

VI. A sewer authority shall pay all expenses incurred by them in carrying this Act into effect out of the fund or rate in the schedule in that behalf mentioned, and shall have all such powers of borrowing money on the security of such fund or rate as Local Boards have of borrowing money under "The Local Government Act, 1858," and the Acts amending that Act, on the security of the funds or rates in the said Acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by Local Boards under the said Acts. Payment of expenses.

VII. A sewer authority shall, for the purposes of this Act, have the powers of taking lands conferred on Local Boards by the seventy-fifth section of "The Local Government Act, 1858," and any Act amending the same. Power to take lands.

VIII. Full compensation shall be made, out of any fund or rate applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount, the same shall be settled by arbitration, as provided in "The Public Health Act, 1848," or any Act amending the same, or if the compensation claimed do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner, in manner provided by the Acts mentioned in this section. Compensation.

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

Power of sewer authorities to combine.

IX. Two or more sewer authorities, including under that expression for the purposes of this section Local Boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly.

Sewer authority may take proceedings to prevent pollution of streams.

X. A sewer authority, with the sanction of Her Majesty's Attorney-General in England, may, * * * either in its own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as it may deem advisable, for the purpose of protecting any watercourse within its jurisdiction from pollutions arising from sewage either within or without its district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by the sewer authority in carrying into effect the purposes of this Act.

Sewers not allowed to drain into any stream, etc.

XI. Nothing contained in this Act, or in the Acts referred to therein, shall authorise any sewer authority to make a sewer so as to drain direct into any stream or watercourse.

Power to public works loan commissioners to lend money to sewer authorities.

XII. The public works loan commissioners, as defined by "The Public Works Loan Act, 1853," may advance to any sewer authority, upon the security of any rate applicable to the purposes of this Act, without any further security, such sums of money as may be recommended by one of Her Majesty's principal Secretaries of State, to be applied by such authority in carrying into effect the purposes of this Act.

Powers of Act cumulative.

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

Sewer authority may enter into contract for supply of sewage.

XIV. The sewer authority of any place may from time to time, for the purpose of utilizing its sewage, agree with any person or body of persons, corporate or unincorporate, as to the supply of such sewage, and works to be made for the purpose of that supply, and the parties to execute the same and to bear the costs thereof, and the sums of money, if any, to be paid for that supply: provided that no contract shall be made for the supply of sewage for a period exceeding twenty-five years.

Application of 27 & 28 Vict. c. 114, to works, etc., for supply of sewage.

XV. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed on "Improvement of Land" authorised by the "Land Improvement Act, 1864," and the provisions of that Act shall apply accordingly.

* * * * *

SCHEDULE.

ENGLAND AND WALES.

Description of local authority.	Description of places.	Rate or fund out of which expenses to be paid.
The mayor, aldermen, and burgesses, acting by the Council.	In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a Local Board.	The borough fund or borough rate.
The commissioners, trustees, or other persons intrusted by any local Act of Parliament with powers of improving, cleansing, lighting, or paving the town.	The boroughs of Oxford and Cambridge, and any town or place not included within the description, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, lighting, or paving any town.	Any rate leviable by the commissioners, trustees, or other persons.
The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	In parishes (1) not within the jurisdiction of any sewer authority hereinbefore mentioned, and in which a rate is levied for the maintenance of the poor.	The poor rate.

* * * * *

29 & 30 VICT. c. 41.

An Act to amend the Nuisances Removal and Diseases Prevention Act (1860).

[28th June, 1866.]

WHEREAS it is expedient that the provisions of the Act twenty-third and twenty-fourth Victoria, chapter seventy-seven, as to the power of justices of the peace to act in cases other than appeals arising under "The Nuisances Removal Act for England, 1855," should be repealed, and that the said Act of the twenty-third and twenty-fourth Victoria, chapter seventy-seven, should be amended as hereinafter mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. The sixteenth section of the Act of the twenty-third and twenty-fourth Victoria, chapter seventy-seven, shall be and is hereby repealed.

Sect. 16 of
23 & 24 Vict. 1
c. 77, repealed.

(1) See 30 & 31 Vict. c. 113, s. 16.

No justice to be incapable of acting because member of body authorised to execute Act or liable to contribute.

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

Short title.

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

29 & 30 VICT. c. 90.

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

[7th August, 1866.]

WHEREAS it is expedient to amend the law relating to Public Health: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short title of Act.

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

PART I.

Amendment of the Sewage Utilization Act, 1865.

Definition of "Sewer Authority:" "Lord Lieutenant in Council."

II. "Sewer authority" in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

The words "Lord Lieutenant in Council" shall mean in this Act the Lord Lieutenant or any Chief Governor or Chief Governors in Ireland acting by and with the consent of Her Majesty's Privy Council in Ireland.

This part to be construed with 28 & 29 Vict. c. 75.

III. This part of this Act shall be construed as one with the Sewage Utilization Act, 1865, and the expression "The Sewage Utilization Act, 1865," as used in this or any other Act of Parliament or other document, shall mean the said Sewage Utilization Act, 1865, as amended by this Act.

Power to sewer authority to form committee of its own members and others.

IV. Any sewer authority may from time to time, at any meeting specially convened for the purpose, form one or more committee or committees consisting wholly of its own members, or partly of its own members and partly of such other persons contributing to the rate or fund out of which the expenses incurred by such authority are paid, and qualified in such other manner as the sewer authority may determine, and may delegate, with or without conditions or restrictions, to any committee so formed, all or any powers of such sewer authority, and may from time to time revoke, add to, or alter any powers so given to a committee.

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes, the chairman shall have a second or casting vote.

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

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

A committee of the sewer authority shall be deemed to be the agents of that authority, and the appointment of such committee shall not relieve the sewer authority from any obligation imposed on it by Act of Parliament or otherwise.

V. Where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry, (1) it may, by resolution at any meeting convened for the purpose after twenty-one clear days' notice affixed to the places where parochial notices are usually affixed in its district, form any part of such district into a special drainage district for the purposes of the Sewage Utilization Act, and thereupon such special drainage district shall, for the purposes of the Sewage Utilization Act, 1865, and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the Acts amending the same; and any officer or officers who may from time to time be appointed by the sewer authority of such special drainage district for the purpose shall have within that district all the powers of levying a rate for the purpose of defraying the expense of carrying the said Sewage Utilization Act into effect that they would have if such district were such parish as aforesaid, and such rate were a rate for the relief of the poor, and they were duly appointed overseers of such parish.

VI. Where the sewer authority of any place has formed a special drainage district in pursuance of this Act, if any number of the inhabitants of such place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands (see 30 & 31 Vict. c. 113, s. 9), bring their case under the consideration of one of Her Majesty's principal Secretaries of State, and the said Secretary of State may after due investigation annul the formation of the special drainage district or modify its boundaries as he thinks just.

(1) See *ante*, p. 701.

Evidence of formation of special drainage district.

VII. A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the said parish, and by advertising notice thereof, in some newspaper published or circulating in the county in which such district is situate; and the production of a newspaper containing such advertisement, or a certificate under the hand of the clerk or other officer performing the duties of clerk for the time being of the sewer authority which passed the resolution forming the district, shall be evidence of the formation of such district, and after the expiration of three months from the date of the resolution forming the district, such district, shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatever.

Power to drain into sewers of sewer authority.

VIII. Any owner (see 31 & 32 Vict. c. 115 s. 11) or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the sewer authority to superintend the making of such communications; but any person causing any drain to empty into any sewer of a sewer authority without complying with the provisions of this section shall incur a penalty not exceeding twenty pounds, and it shall be lawful for the sewer authority to close any communication between a drain and sewer made in contravention of this section, and to recover in a summary manner from the person so offending any expenses incurred by them under this section.

Use of sewers by persons beyond district.

IX. Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority, upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by "The Public Health Act, 1848," in respect of matters by that Act authorised or directed to be settled by arbitration. (1)

As to the drainage of houses.

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

(1) See 11 & 12 Vict. c. 63, ss. 128-128, *ante*, pp. 612-613.

time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner.

XI. A sewer authority within its district shall have the same powers in relation to the supply of water that a Local Board has within its district, and the provisions of the sections hereinafter mentioned shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "Local Board of Health" or "Local Board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the Local Board; that is to say, the sections numbered from seventy-five to eighty, both inclusive, of the Public Health Act, 1848, (1) sections fifty-one, fifty-two, and fifty-three of the Local Government Act, 1858, (2) and section twenty of the Local Government Act (1858) Amendment Act, 1861. (3)

Supply of water to district of sewer authority.

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

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

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

XII. Any expenses incurred by a sewer authority in or about the supply of water to its district, and in carrying into effect the provisions hereinbefore in that behalf mentioned, shall be deemed to be expenses incurred by that authority in carrying into effect the Sewage Utilization Act, 1865, and be payable accordingly. (4)

Expenses of sewer authority in supplying water.

XIII. All property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by the seventh section of the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven, (5) shall vest in the sewer authority, where the sewer authority supplies water to its district.

Wells, etc., belonging to any place vested in sewer authority, etc., 23 & 24 Vict. c. 77, s. 7.

PART II.

Amendment of the Nuisances Removal Acts.

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

Definition of "Nuisances Removal Acts."

(1) See *ante*, pp. 589-590.

(2) See *ante*, p. 665.

(3) See *ante*, p. 692.

(4) See *ante*, p. 698.

(5) See *ante*, p. 684.

into effect any of the provisions of this part of this Act shall be deemed to be expenses incurred by it in carrying into effect the Nuisances Removal Acts.

Definition of
"nuisance
authority."
Power of police
with respect
to nuisances.

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

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

Sect. 3 of
23 & 24 Vict.
c. 77, repealed.
18 & 19 Vict.
c. 120.

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

Requisition of
ten inhabitants
equivalent to
certificate of
medical officer.

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

Addition to
definition of
nuisance.

XIX. The word "nuisances" under the Nuisances Removal Acts shall include,

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

2. Any factory, workshop, or workplace not already under the operation of any general Act for the regulation of factories or bakehouses, not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein.

3. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used in such fireplace or furnace, and is used within the district of a nuisance

(1) See 18 & 19 Vict. c. 121, s. 8, *ante*, p. 628.

authority for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever :

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

Provided, first, that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act :

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

XX. It shall be the duty of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, (1) with a view to ascertain what nuisances exist calling for abatement under the powers of the Nuisances Removal Acts, and to enforce the provisions of the said Acts in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke ; and any justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under the eleventh section of the Nuisances Removal Act, 1855.

Duties of nuisance authorities as to inspection of nuisances, etc.

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

As to proceedings of nuisance authority under sect. 12 of 18 & 19 Vict. c. 121.

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

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

(1) See 23 & 24 Vict. c. 77, s. 14, *ante*, p. 687.

Power to cause premises to be cleansed or otherwise disinfected.

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

Power to provide means of disinfection.

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

Nuisance authorities may provide carriages for conveyance of infected persons.

XXIV. It shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick, or to his own home. (1)

Penalty on person suffering from infectious disorder entering public conveyance without notifying to driver that he is so suffering.

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

Removal of persons sick of infectious disorders, and without proper lodging, in any district.

XXVI. Where a hospital or place for the reception of the sick is provided within the district of a nuisance authority, any justice may, with the consent of the superintending body of such hospital or place, by order of a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the nuisance authority, of any person suffering from any dangerous, contagious, or infectious disorder, being without proper lodging or accommodation, or lodged in a room occupied by more than one family, or being on board any ship or vessel. (2)

(1) See 23 & 24 Vict. c. 77, s. 12, ante, p. 686.

(2) See 18 & 19 Vict. c. 121, s. 12, ante, p. 630.

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

Places for the reception of dead bodies may be provided at the public expense.

XXVIII. Any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as lastly hereinbefore provided for) for the reception of dead bodies for and during the time required to conduct any post mortem examination ordered by the coroner of the district or other constituted authority, and may make such regulations as they may deem fit for the maintenance, support, and management of such place; and where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such post mortem examination and the re-removal of such body, such costs of removal and re-removal to be paid in the same manner and out of the same fund as the cost and fees for post mortem examinations when ordered by the coroner.

Places for reception of dead bodies during time required for post mortem examination may be provided.

XXIX. Any nuisance authority may, with the sanction of the Privy Council, signified in manner provided by "The Public Health Act, 1858," (1) lay down rules for the removal to any hospital to which such authority is entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

Power to remove to hospital sick persons brought by ships.

XXX. For the purposes of this Act any ship, vessel, or boat that is in a place not within the district of a nuisance authority, shall be deemed to be within the district of such nuisance authority as may be prescribed by the Privy Council, and until a nuisance authority has been prescribed, then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line, but nothing in this Act contained shall enable any nuisance authority to interfere with any ship, vessel, or boat that is not in British waters. (2)

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

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

Power of entry to nuisance authority or their officer

(1) See 21 & 22 Vict. c. 97, s. 7, ante, p. 645.

(2) See 18 & 19 Vict. c. 121, s. 12, ante, p. 630.

under sect. 11
of 18 & 19 Vict.
c. 121.

Provision as to
ships within the
jurisdiction of
nuisance
authority.

Provision for
raising money
in divided
parishes.

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

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

XXXII. Any ship or vessel lying in any river, harbour, or other water shall be subject to the jurisdiction of the nuisance authority of the district within which such river, harbour, or other water is, and be within the provisions of the Nuisances Removal Acts, in the same manner as if it were a house within such jurisdiction, (1) and the master or other officer in charge of such ship shall be deemed for the purposes of the Nuisances Removal Acts to be the occupier of such ship or vessel; but this section shall not apply to any ship or vessel belonging to Her Majesty or to any foreign government.

XXXIII. Where the guardians are the nuisance authority for part of any parish only, (2) and shall require to expend money on account of such part in execution of the provisions of the said Acts, the overseers of the parish shall, upon receipt of an order from the said guardians, raise the requisite amount from the persons liable to be assessed to the poor rate therein by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate when made, and shall account to the auditor of the district for receipt and disbursement of the same, in like manner, and with the same consequences, as in the case of the poor rate made by them.

XXXIV. That it shall be lawful for the nuisance authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said Nuisances Removal Acts or this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorised by the Nuisances Removal Acts, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the nuisance authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of

(1) See 18 & 19 Vict. c. 121, s. 8,
ante, p. 628.

(2) See 23 & 24 Vict. c. 77, s. 4,
ante, p. 683.

such house, building, or other property, or to affect any contract whatsoever between landlord or tenant.

PART III.

Miscellaneous.

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

- (1.) For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
- (2.) For the registration of houses thus let or occupied in lodgings:
- (3.) For the inspection of such houses, and the keeping the same in a cleanly and wholesome state:
- (4.) For enforcing therein the provision of privy accommodation and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases:
- (5.) For the cleansing and lime-whiting at stated times of such premises:

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

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

XXXVI. Where two convictions against the provisions of any Act relating to the overcrowding of a house, or the occupation of a cellar as a separate dwelling place, (1) shall have taken place within the period of three months, whether the persons so convicted were or were not the same, it shall be lawful for any two justices to direct the closing of such premises for such time as they may deem necessary, and in the case of cellars occupied as aforesaid, to empower the nuisance authority to permanently close the same, in such manner as they may deem fit, at their own cost.

Cases in which two convictions have occurred within three months.

* (1) See 11 & 12 Vict. c. 63, s. 67, *ante*, p. 594, and s. 42, *post*, p. 713.

Power to provide hospitals.

XXXVII. The sewer authority, (1) or in the metropolis the nuisance authority, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick.

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

It may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of its district, on payment by the sewer authority of such annual or other sum as may be agreed upon.

The carrying into effect this section shall in the case of a sewer authority be deemed to be one of the purposes of the said Sewage Utilization Act, (2) and all the provisions of the said Act shall apply accordingly.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act.

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

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

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

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

Guardians, etc., of the poor to be the local authorities for executing Diseases Prevention Act.

XL. Where in any place two or more Boards of Guardians or local authorities have jurisdiction, the Privy Council may, by any order made under the Diseases Prevention Act, 1855, (3) authorise or require such Boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof.

(1) See 30 & 31 Vict. c. 113, s. 16, *ante*, p. 699.
and 31 & 32 Vict. c. 115, s. 10.

(2) See 28 & 29 Vict. c. 75, s. 4, *ante*, p. 624.

(3) See 18 & 19 Vict. c. 116, s. 6,

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

Evidence of family in case of overcrowded houses.

XLII. The sixty-seventh section of the Public Health Act, 1848, (1) relating to cellar dwellings, shall apply to every place in *England and Ireland* where such dwellings are not regulated by any other Act of Parliament, and in applying that section to places where it is not in force at the time of the passing of this Act, the expression "this Act" shall be construed to mean the "Sanitary Act, 1866," and not the said Public Health Act, 1848. In construing the said sixty-seventh section as applied by this Act, nuisance authority shall be substituted for the Local Board.

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

XLIII. Local Boards acting in execution of the Local Government Act, 1858, may adopt the Act to encourage the establishment of Public Baths and Washhouses, and any Act amending the same, (2) for districts in which those Acts are not already in force, and when they have adopted the said Acts they shall have all the powers, duties, and rights of commissioners under the said Acts; and all expenses incurred by any Local Board in carrying into execution the Acts referred to in this section shall be defrayed out of the general district rates, and all receipts by them under the said Acts shall be carried to the district fund account.

Local Board in certain cases may adopt Baths and Washhouses Acts.

XLIV. When the district of a Burial Board is conterminous with the district of a Local Board of Health, the Burial Board may, by resolution of the vestry, and by agreement of the Burial Board and Local Board, transfer to the Local Board all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer the Local Board shall have all such estate, property, rights, powers, duties, and liabilities as if the Local Board had been appointed a Burial Board by Order in Council under the fourth section of the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter eighty-one.

Power to Burial Boards in certain cases to transfer their powers to Local Board.

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

Penalty for wilful damage of works.

XLVI. The following bodies, that is to say, Local Boards, sewer authorities, and nuisance authorities, if not already incorporated, shall respectively be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on such bodies respectively in their several characters of Local Boards, sewer authorities, or nuisance authorities.

Incorporation of sanitary authorities.

XLVII. The authority conferred on one of Her Majesty's principal Secretaries of State by section seventy-five of the Local Government Act, 1858, (3) to empower by provisional order a Local Board to put in force, with reference to the land referred to in such order, the powers of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement, shall extend and apply and shall be deemed to have always extended and applied to every case in

Extent of authority to make provisional orders respecting lands under sect. 75 of 21 & 22 Vict. s. 98.

(1) See *ante*, p. 594.

(2) See *ante*, p. 232.

(3) See *ante*, p. 675.

which, by the Public Health Act, 1848, and the Local Government Act, 1858, or either of them, or any Act extending or amending those Acts, or either of them, a Local Board are authorised to purchase, provide, use, or take lands or premises for any of the purposes of the said Acts, or either of them, or of any such Act as aforesaid; and sections seventy-three and eighty-four of the Public Health Act, 1848, shall be construed as if the words "by agreement" therein respectively used had been expressly repealed by section seventy-five of the Local Government Act, 1858.

Appearance of
local authorities
in legal pro-
ceedings.

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

Mode of pro-
ceeding where
sewer authority
has made de-
fault in provid-
ing sufficient
sewers, etc.

XLIX. Where complaint is made to one of Her Majesty's principal Secretaries of State that a sewer authority or Local Board of Health has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a nuisance authority has made default in enforcing the provisions of the Nuisances Removal Acts, or that a Local Board has made default in enforcing the provisions of the Local Government Act, the said Secretary of State, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint; and if such duty is not performed by the time limited in the order, the said Secretary of State shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court. (1)

Recovery of
certain expenses
of water supply.

L. All expenses incurred by a sewer authority or Local Board in giving a supply of water to premises under the provisions of the seventy-sixth section of the Public Health Act, 1848, or the fifty-first section of the Local Government Act, 1858, and recoverable from the owners of the premises supplied, may be recovered in a summary manner.

Power to re-
duce penalties
imposed by 6
Geo. IV. c. 78.

LI. All penalties imposed by the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several Laws relating to Quarantine, and to make other Provisions in lieu thereof," (2) may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or Court think just.

(1) See 31 & 32 Vict. c. 115, s. 8, *post*.

(2) See Appendix (E), *post*.

LII. Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, (1) although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom; and the Lords and others of Her Majesty's most honourable Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's principal Secretaries of State being one), may, by order or orders to be by them from time to time made, make such rules, orders, and regulations as to them shall seem fit, and every such order shall be certified under the hand of the clerk in ordinary of Her Majesty's Privy Council, and shall be published in the *London Gazette*, and such publication shall be conclusive evidence of such order to all intents and purposes; and such orders shall be binding and be carried into effect as soon as the same shall have been so published, or at such other time as shall be fixed by such orders, with a view to the treatment of persons affected with cholera and epidemic, endemic and contagious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and to declare and determine by what nuisance authority or authorities such orders, rules, and regulations shall be enforced and executed; and any expenses incurred by such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisances Removal Acts.

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

LIV. Penalties under this Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," or any Act amending the same.

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

(1) See Appendix (E), *post*.

30 & 31 VICT. c. 113.

An Act for facilitating the Distribution of Sewage Matter over Land, and otherwise amending the Law relating to Sewer Authorities.

[20th August, 1867.]

WHEREAS the governing bodies of cities, towns, and other places are required by divers Acts of Parliament effectually to drain their districts: And whereas it is expedient to give further facilities for the distribution for agricultural purposes of sewage matter over the land, and otherwise to amend the law relating to sewer authorities:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title. I. This Act may be cited for all purposes as the Sewage Utilization Act, 1867.

Definition of sewer authority. II. The expression "sewer authority" shall in this Act have the same meaning as in the Sewage Utilization Act, 1865, and in addition shall include a Local Board, and shall in this Act and the said Sewage Utilization Act, 1865, include any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers, and any public department of the Government; and any person appointed by the Secretary of State in pursuance of the forty-ninth section of the Sanitary Act, 1866, to perform the duty of a sewer authority or Local Board that has been guilty of a default as therein mentioned, shall, in the performance of such duty and for the purposes thereof, be invested with all the powers of the sewer authority or Local Board in default, except the power of levying rates.

Powers for Distribution of Sewage.

Sewer authority may exercise without their district powers in relation to distribution of sewage. III. A sewer authority may, without their district, provide any works and do any act for the purpose of receiving, storing, disinfecting, or distributing sewage which they may provide or do within their district, subject to the conditions to which they would be subject in providing such works or doing such acts within their district, and to the conditions imposed on Local Boards in carrying into effect the fourth section of the Local Government Act (1858) Amendment Act, 1861.

Sewer authority may purchase land for distribution of sewage in pursuance of sect. 75 of Local Government Act, 21 & 22 Vict. c. 98. IV. A sewer authority for the purpose of receiving, storing, disinfecting, and distributing sewage, and of the construction of any works for receiving, storing, disinfecting, or distributing sewage, and of the construction of any sewer or drain, or for any of the above purposes, may purchase or take on lease any lands either within or without their district, and shall for carrying into effect any such purchase have all the powers of taking land conferred by the seventy-fifth section of the Local Government Act, 1858, as amended by this Act.

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

Power for sewer authority to deal with land appropriated to sewage purposes.

Special Drainage District.

VI. There shall be repealed so much of the second section of the Sewage Utilization Act, 1865, as provides that "this Act shall not, with the exception of clause fifteen, extend to any parish as defined in the schedule to this Act, in a part of which parish the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts, is in force at the time of the passing of this Act."

Repeal of part of sect. 2 of 28 & 29 Vict. c. 75, excluding from Act parish partly under Local Government Act.

VII. Where part of a parish as defined in the schedule to the Sewage Utilization Act, 1865, as amended by this Act, is at the time of the passing of this Act subject to the jurisdiction of a Local Board in pursuance of the Local Government Act, 1858, the portion of such parish which is not subject to the jurisdiction of any Local Board shall for the purposes of the Sewage Utilization Act, 1865, and of this Act, be deemed to be by this Act constituted a special drainage district, unless the Secretary of State, upon petition presented to him in manner provided by the sixth section of the Sanitary Act, 1866, within three months after the passing of this Act, otherwise directs.

Where part of parish is at time of passing of this Act under 21 & 22 Vict. c. 98, the other part constituted a special drainage district.

It shall not be necessary in the case of a part of a parish which is by this section constituted a special drainage district, to give the notices required by section seven of the Sanitary Act, 1866.

VIII. Any inhabited place not having a known or defined boundary may petition one of Her Majesty's principal Secretaries of State in manner provided in the sixteenth section of the Local Government Act, 1858, to settle its boundaries for the purposes of the Sewage Utilization Act, 1865, and of this Act, and the Secretary of State may, by order made in manner provided by the said section, settle the same accordingly, and from and after the date of such order the place shall be deemed to have been constituted a special drainage district for the purposes of the said Sewage Utilization Act, 1865, and of this Act.

Power of undefined inhabited place to apply to be constituted a special drainage district.

A copy of the order of the Secretary of State shall be published in manner provided by the seventh section of the Sanitary Act, 1866, and that section shall be construed in reference to a special drainage district formed under this section as if the order of the said Secretary of State were substituted for "resolution of a sewer authority."

IX. No petition of appeal shall be presented to the Secretary of State in pursuance of the sixth section of the Sanitary Act, 1866, except within three months after the date of the resolution forming the district, and the said section shall be read as if after the words "petition in writing under their hands" there were inserted the

Time for appeal against special drainage district.

words "presented within three months after the date of the resolution forming the district."

Union of Districts.

Constitution of joint sewerage district.

X. Where it appears to the sewer authority of any district that it would be for the advantage of such district, and of any district or districts adjoining or lying within the same drainage area, or otherwise conveniently situate, that all such districts should be formed into a united district for the purposes of the Sewage Utilization Act, 1865, and of this Act, or for any of such purposes, such sewer authority may, with the consent of the sewer authority of every district affected, apply to one of Her Majesty's principal Secretaries of State for an order forming such districts into one district, hereinafter referred to as a united district, and the Secretary of State, if satisfied of the expediency of such union of districts, may make an order accordingly.

Advertisement of intention to form united district.

XI. The intention of a sewer authority to apply to one of Her Majesty's principal Secretaries of State for an order forming a united district shall be advertised in some newspaper circulating within the area of such proposed united district once at least in each of the three weeks before such application is made.

Constitution of Joint Sewerage Board.

XII. A united district shall be subject to the jurisdiction of a Joint Sewerage Board consisting of members elected by each of the sewer authorities of the component districts in such manner as may be determined by the said Secretary of State, and such Board shall be a body corporate, with perpetual succession and a common seal, having a capacity to acquire and hold lands for all the purposes of the Sewage Utilization Act, 1865, and of this Act, or for any of such purposes.

The first meeting of a Joint Sewerage Board shall be held in such manner and at such time as may be determined by the said Secretary of State, and "the rules as to proceedings of Drainage Boards" contained in the second part of the schedule annexed to the Land Drainage Act, 1861, shall apply to a Joint Sewerage Board constituted under this Act.

Powers of Joint Sewerage Board.

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

Expenses of Joint Sewerage Board how defrayed.

XIV. Any expenses incurred by a Joint Sewerage Board in pursuance of this Act shall be defrayed out of a common fund to be contributed by the component districts in proportion to the rateable value of each district, or in such other proportion as the said Secretary of State may, with the consent of the sewer authority of each component district, by order determine.

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

Contribution to Works under Contracts.

XV. Where a sewer authority, or any corporate or other body, under any power enabling them in that behalf, or by any agreement confirmed by Parliament, has agreed or hereafter agrees with any person or persons or body of persons, corporate or unincorporate, as to the supply of all or any of the sewage of any place, and the works to be made for the purpose of that supply, they may contribute to the expense of carrying into execution by such person or persons or body of persons all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such sewer authority or corporate or other body, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested; and all expenditure in consequence of the exercise of the power hereby conferred shall be deemed to have been incurred by such sewer authority or corporate or other body in the construction or due maintenance of the necessary sewers for carrying away the said sewage, and shall be provided for accordingly.

Sewer authority, etc. may contribute to works under contract relating to supply of sewage.

Amendment of Acts.

XVI. "Parish" in the schedule to the Sewage Utilization Act, 1865, shall include any township or other place in which a separate rate is levied for the relief of the poor, and "sewer authority" in the thirty-seventh section of the Sanitary Act, 1866, shall include a Local Board.

Amendment of definitions.

XVII. Where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry, such authority shall, for the purpose of defraying any expenses incurred in carrying into effect the Sewage Utilization Act, 1865, or this Act, issue their precept to the overseers of the parish of which they are the authority, requiring such overseers to pay over the amount specified in such precept to the sewer authority, or to their officer named in the precept, or into some bank mentioned in such precept.

In parishes a separate rate to be levied for sewage purposes.

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

A separate rate under this Act shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against the same, and all other

incidents thereof except the purposes to which it is applicable, be deemed to be a rate levied for the relief of the poor.

The expression "overseers" shall include any officer authorised to levy a rate in a special drainage district, and any person or body of persons authorised or required to levy rates for the relief of the poor.

Penalty on
non-payment
of rates by
overseers.

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

Saving Clause.

Powers of Act
to be in addi-
tion and not in
derogation of
other powers.

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

31 & 32 VICT. c. 115.

An Act to amend the Sanitary Act, 1866.

[31st July, 1868.]

29 & 30 Vict.
c. 90.

WHEREAS it is expedient to make further provision for the removal of refuse matter from dwelling houses, and to amend the Sanitary Act, 1866:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited for all purposes as the Sanitary Act, 1868.

Application
of Act.

II. This Act shall not extend to *Scotland* or *Ireland*.

Definition of

III. "Sewer authority" in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

"Sewer
authority."

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

Power to sewer
authority in
relation to
privies.

(1.) The fifty-first section (see *ante*, p. 590), requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient water-closet or privy and ashpit;

(2.) And the fifty-fourth section (see *ante*, p. 591), as amended by any subsequent Act of Parliament, providing that the Local Board of Health shall see that drains, water-closets, privies, and ashpits within their district do not become a nuisance;

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

Where the sewer authority and the nuisance authority of a district are different bodies of men, the jurisdiction of the nuisance authority shall cease within such district in relation to all matters within the purview of the said sections of the Public Health Act, 1848; and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with sufficient sewers.

V. A sewer authority shall within their district have all the powers vested in a Local Board by the thirty-second section of the Local Government Act, 1858, (1) as amended by any subsequent Act of Parliament, so far as relates to—

(1.) The removal of house refuse from premises;

(2.) The cleansing of privies, ashpits, and cesspools;

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

Where the sewer authority and the nuisance authority are different bodies of men, the jurisdiction of the nuisance authority in such district shall cease in respect to all matters over which the sewer authority acquires powers by this section.

VI. The provisions of the Public Health Act, 1848, relating to private improvement expenses, (2) as amended by any subsequent Act of Parliament, shall be deemed to be incorporated with this Act, so far as may be required for carrying into effect any provision of this Act.

VII. Any enactment of any Act of Parliament in force in any place requiring the construction of a water-closet shall, with the approval of the local authority, be satisfied by the construction of an earth-closet, or other place for the reception and deodorization of fecal matter, made and used in accordance with any regulation from time to time issued by the local authority.

The local authority may as respects any houses in which such earth-closets or other places as aforesaid are in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to the water-closets in such houses, on such terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water.

The local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earth-closets or other places as aforesaid.

Incorporation of provisions of 11 & 12 Vict. c. 63, as to private improvement expenses. Earth-closets may in certain cases be constructed instead of water-closets.

(1) See *ante*, p. 656.

(2) See *ante*, p. 604.

The local authority may themselves construct, or require to be constructed, earth-closets or other such places as aforesaid in all cases where, under any enactment in force, they might construct water-closets or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earth-closet or other place as aforesaid in any house instead of a water-closet if he prefer to comply with the provisions of the enactment in force requiring the construction of a water-closet, and a supply of water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earth-closet or other place as aforesaid than he would be put to by compliance with the provisions of any enactment as to water-closets or privy accommodation which he might have been compelled to comply with if this section had not been passed.

Local authority shall, for the purposes of this Act, mean any Local Board and any sewer authority.

Provision for
recovery of
expenses by
Secretary of
State.

VIII. Whereas by the forty-ninth section of the Sanitary Act, 1866, (1) power is given to one of Her Majesty's principal Secretaries of State in case of any sewer authority, Local Board, or nuisance authority making default in performing the sanitary duties specified in the said section, and imposed on them by Act of Parliament, to appoint a person to perform the same, and to direct by order that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default, and that any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court: And whereas it is expedient to make further provision for enforcing payment of any sum so specified as aforesaid in the order of the Secretary of State together with the costs of the proceedings occasioned by the default made in payment of such sum:

Be it enacted, that the sum so specified in the order of the Secretary of State, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default and to be a debt due from such authority, and payable out of any moneys in the hands of such authority, or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate; and in the event of any authority refusing to pay any such sum with costs as aforesaid for a period of fourteen days after demand, the Secretary of State may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may, in the opinion of the said Secretary of State, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such

(1) See 29 & 30 Vict. c. 90, s. 49, *ante*, p. 714.

authority; and the said person or persons, after repaying all sums of money so due in respect of the precept, shall pay the overplus, if any, (the amount to be ascertained by the Secretary of State,) to or to the order of the defaulting authority.

IX. Penalties under any section incorporated with this Act shall be recovered in manner directed by the Act passed in the session of penalties, holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three. As to recovery

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

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

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

X. The sewer authority, or in the metropolis the nuisance authority, shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it now has to provide hospitals or temporary places for the reception of the sick under the thirty-seventh section of the Sanitary Act, 1866, (1) but such power to make provision for the temporary supply of medicine and medical assistance shall not be exercised without the sanction of Her Majesty's Privy Council. Amendment of sect. 37 of 29 & 30 Vict. c. 90.

XI. In the construction of the first part of the Sanitary Act, 1866, "owner" shall have the same meaning as it has in the second part of the said Act; (2) and notices may be served for the purposes of the first part of the said Act in the same manner in which they are required to be served under the second part of the said Act. Construction of first part of the Sanitary Act, 1866.

(1) See *ante*, p. 712.

(2) See 29 & 30 Vict. c. 90, s. 14, *ante*, p. 705, and 18 & 19 Vict. c. 121,

s. 2, *ante*, p. 627.

APPENDIX (B).

PUBLIC HEALTH AND LOCAL GOVERNMENT
SUPPLEMENTAL ACTS.

THESE statutes being nearly all of them exclusively of local application, only the titles of them and the names of the places to which they apply are here printed.

The portions of them which are of general application, or are specially referred to in this work, will be found by referring to the Table of Statutes at the beginning of the work.

(1.) PUBLIC HEALTH SUPPLEMENTAL ACTS.

12 & 13 VICT. c. 94.

An Act for confirming certain provisional orders of the General Board of Health, and for other matters relative to the public health and the improvement of towns and populous places.

[1st August, 1849.]

Places to which the orders apply.

Taunton.	Durham.	Gloucester.
Worcester.	Leicester.	Lancaster.
Ware.	Chatham.	Croydon.
Sheerness.	New Windsor.	Uxbridge.
Kendal.	Carmarthen.	Coventry.

13 & 14 VICT. c. 32.

An Act for confirming certain provisional orders of the General Board of Health.

[15th July, 1850.]

Places to which the orders apply.

Stratford-on-Avon.	Brecon.	Dover.
Dartford.	Harrow.	Chelmsford.
Newport.	Derby.	York.

13 & 14 VICT. c. 90.

An Act to confirm certain provisional orders of the General Board of Health, and for certain other purposes in relation to the Public Health Act, 1848.

[14th August, 1850.]

Places to which the orders apply.

Wigan.	Wolverhampton.	Ashby-de-la-Zouch.
Preston.	Sandgate.	Swansea.

13 & 14 VICT. c. 108.

An Act for confirming certain further provisional orders of the General Board of Health.
[15th August, 1850.]

Places to which the orders apply.

Carlisle.	Darlington.	Tewkesbury.
Alnwick.	Llanelly.	Holbeach.
Cardiff.	Watford.	Tormoham.
Newcastle-under-	Southampton.	Launceston.
Lyme.	Berwick-upon-	Burslem.
Exmouth.	Tweed.	Reading.

14 & 15 VICT. c. 80.

An Act for confirming a certain provisional order of the General Board of Health for applying the Public Health Act, 1848, to the borough of Great Yarmouth in the county of Norfolk.
[7th August, 1851.]

14 & 15 VICT. c. 98.

An Act for confirming certain provisional orders of the General Board of Health.
[7th August, 1851.]

Places to which the orders refer.

Morpeth.	Gateshead.	Newmarket.
Bristol.	Doncaster.	Romford.
Beverley.	West Cowes.	Tenby.
Sherborne.	Margate. (1)	Kingston-upon-
Bridgend.	The Borough of	Hull.
Bryn Mawr.	Weymouth and	Hartlepool.
Norwich.	Melcombe Regis.	Hastings.

(1) By 30 & 31 Vict. c. 67. "Sect. 1, The following provisions and enactment are hereby repealed; namely, section 1 of the said provisional order for the parish of St. John the Baptist, Margate, as far as it relates to any part of that parish not included within the boundaries set forth in the Schedule (B) to that order, and so much of section 2 of the same order as authorises the extension as there provided of the rating area therein described, and section 1 of

the Public Health Supplemental Act, 1851 (No. 2), as far as the same confirms such portions of the said provisional order as are repealed by this Act; and subject to the repeal aforesaid, the said provisional order shall be absolute, and be as binding, and of like force and effect, as if the provisions of the same had been expressly enacted." "Section 2: The mayor, aldermen, and burgesses of the borough of Margate, in the county of Kent (in this Act re-

14 & 15 VICT. c. 103.

An Act to confirm certain provisional orders of the General Board of Health. [8th August, 1851.]

Places to which the orders refer.

Tynemouth.	March.	Ware.
Barnard Castle.	Halifax.	Alfreton.

15 & 16 VICT. c. 42.

An Act to confirm certain provisional orders of the General Board of Health, and to amend the Public Health Act, 1848. [30th June, 1852.]

Places to which the orders refer.

Worthing.	Rotherham and	Calne.
Work sop.	Kimberworth.	Banbury.
Gainsborough.	Burnham.	

15 & 16 VICT. c. 69.

An Act to confirm certain provisional orders of the General Board of Health. [30th June, 1852.]

Places to which the orders refer.

Wisbeach.	Ashby-de-la-Zouch.	Stratford-upon-Avon.
Walsoken.	Woolwich.	Newbury.
Salisbury.	Leamington.	

16 VICT. c. 24.

An Act to confirm and extend certain provisional orders of the General Board of Health for the towns of *Wakefield, Elland, Walsley, Dudley, Barnsley, Dorchester, and Welshpool*. [9th May, 1853.]

ferred to as the corporation of Margate), acting by the Council of the borough, shall be the Local Board in and for the district of Margate; and the powers, authorities, rights, property, duties, and liabilities of any Local Board of Health elected for the district of Margate (whether any such Board was validly and effectually elected and constituted or not) are hereby absolutely transferred

to and vested in the corporation of Margate as the Local Board for the district of Margate."

The Act further confirms all previous orders and matters entered into by the Council of the borough of Margate professing to act as a Local Board of Health, subsequently to the 2nd of February, 1858, and provides for the payment of certain costs.

16 & 17 VICT. c. 126.

An Act to confirm certain provisional orders of the General Board of Health for *Accrington*, *Bangor*, and *Uxbridge*, and to provide for conducting the first election of a Local Board of Health at *Elland*. [9th August, 1853.]

17 & 18 VICT. c. 53.

An Act to confirm certain provisional orders of the General Board of Health for the districts of *Plymouth*, *Haworth*, *Aberdare*, *Bishop Auckland*, *Willenhall*, and *Over Darwen*. [31st July, 1854.]

18 & 19 VICT. c. 125.

An Act to confirm certain provisional orders of the General Board of Health applying the Public Health Act, 1848, to the districts of *Middlesborough*, *Windhill*, *Christchurch*, *Keighley*, *Tunstall*, and *Toxteth Park*, and for alteration of the boundaries of the district of *Romford*. [14th August, 1855.]

19 & 20 VICT. c. 26.

An Act to confirm certain provisional orders of the General Board of Health applying the Public Health Act, 1848, to the districts of *Waterloo with Seaforth*, *West Ham*, (1) *Sowerby Bridge*, and *Moss-side*; and for alteration of the boundaries of the districts of *Rusholme* and *Bishop Auckland*; and for other purposes. [23rd June, 1856.]

20 VICT. c. 3.

An Act to confirm certain provisional orders of the General Board of Health applying the Public Health Act, 1848, to the districts of *Ipswich*, *Oldbury*, *Stroud*, *Llangollen*, and *Dukinfield*; and for altering in the constitution of the Local Board for the main sewerage district of *Wisbeach* and *Walsoken*. [9th March, 1857.]

20 & 21 VICT. c. 22.

An Act to apply the Public Health Act, 1848, to the parish of *Aldershott*, and to constitute a Local Board of Health therein. [10th August, 1857.]

(1) See the subsequent West Ham Local Act, 30 Vict. c. lvi.

21 VICT. c. 10.

An Act to confirm a certain provisional order of the General Board of Health, applying the Public Health Act, 1848, to the district of *Skipton*, in the west riding of the county of York; and to further declare the limits of the district of *Toxteth Park*, in the county palatine of Lancaster, for the purposes of the said Act. [11th May, 1858.]

(2.) LOCAL GOVERNMENT SUPPLEMENTAL ACTS.

22 VICT. c. 31.

An Act to confirm certain provisional orders under the Local Government Act, 1858. [19th April, 1859.]

Schedule referred to in the preceding Act.

Provisional order authorising the borrowing of 8500*l.* by the *Worthing* Local Board of Health, and the reborrowing of so much of their present debt of 15,000*l.* as is still owing by the said Board.

Provisional order for extending the borrowing powers of the *Nantwich* Local Board of Health.

Provisional order repealing and altering parts of a local Act in force within the district of the *Worthing* Local Board of Health.

Provisional order for altering the boundaries of the district of *Newton Heath*, in the county palatine of Lancaster, as constituted for the purposes of the Public Health Act, 1848.

22 & 23 VICT. c. 11.

An Act to confirm certain provisional orders under the Local Government Act, 1858. [8th August, 1859.]

Schedule referred to in the preceding Act.

1. *Leamington* Provisional Order.—(Altering the boundaries of the *Leamington* district.)

2. *Teignmouth* Provisional Order.—(Repealing and altering parts of a Local Act in force within the *Teignmouth* district.)

3. *Wigan* Provisional Order.—(Repealing and altering parts of a local Act in force within the *Wigan* district.)

4. *Wigan* Provisional Order.—(Extending the borrowing powers of the *Wigan* Local Board of Health.)

5. *Battle* Provisional Order.—(Extending the borrowing powers of the *Battle* Local Board of Health.)

6. *Knighton* Provisional Order.—(Extending the borrowing powers of the *Knighton* Board of Health.)

7. *Cardiff* Provisional Order.—(Putting in force the Lands Clauses Consolidation Act, 1845, within the district of the *Cardiff* Local Board of Health, for the purchase of lands for improvements.)

8. *Derby* Provisional Order.—(Repealing an exemption from rating under a local Act in force within the district of the *Derby* Local Board of Health.)

23 & 24 VICT. c. 44.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Southampton*,

Leicester, Epsom, Coventry, Ipswich, Fareham, Wells, Tormoham, Scarborough, Ludlow, Banbury, Boston, Penrith, Barnsley, and Shipley; and for other purposes in relation thereto.

[23rd July, 1860.]

Schedule.

1. *Southampton*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land.
2. *Leicester*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements.
3. *Epsom*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for deodorizing works.
4. *Coventry*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements.
5. *Ipswich*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land.
6. *Fareham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for improvements.
7. *Wells*.—Repealing and altering parts of a local Act in force within the district.
8. *Tormoham*.—Repealing and altering parts of the Torquay Waterworks Act, 1856, in force within the district.
9. *Scarborough*.—Repealing and altering parts of a local Act in force within the district.
10. *Ludlow*.—Repealing a local Act in force within the district.
11. *Banbury*.—For the partial repeal and alteration of a provisional order applying the Public Health Act, 1848, to the district, and of the first Public Health Supplemental Act, 1852.
12. *Boston*.—Repealing and altering parts of local Acts in force within the district.
13. *Penrith*.—For extending the borrowing powers of the Local Board of Health.
14. *Barnsley*.—For extending the borrowing powers of the Local Board of Health.
15. *Shipley*.—For extending the borrowing powers of the Local Board of Health.

23 & 24 VICT. c. 118.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Nottingham, Sunderland, Hastings, Reading, Chatham, Dartmouth, Tunbridge Wells, Sheerness, Sandgate, Wilton, Bridgnorth, and Dorchester.*

[28th August, 1860.]

Schedule of provisional orders referred to in the preceding Act.

1. *Nottingham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands otherwise than by agreement.
2. *Sunderland*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements.
3. *Hastings*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements and for other purposes.
4. *Reading*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land.
5. *Chatham*.—Repealing local Acts in force within the district.
6. *Dartmouth*.—Repealing and altering parts of a local Act in force within the district.
7. *Tunbridge Wells*.—Repealing and altering parts of a local Act in force within the district.
8. *Sheerness*.—Altering the boundaries of the district of Minster, as constituted for the purposes of the Public Health Act, 1848.
9. *Sandgate*.—Extending the borrowing powers of the Local Board of Health.

10. *Wilton*.—Extending the borrowing powers of the Local Board of Health.

11. *Bridgworth*.—Extending the borrowing powers of the Local Board of Health.

12. *Dorchester*.—Extending the borrowing powers of the Local Board of Health.

24 & 25 VICT. c. 39.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Brighton*, *East Cowes*, *Preston*, *Morpeth*, *Bromsgrove*, and *Durham*; and for other purposes in relation thereto. [22nd July, 1861.]

Schedule of provisional orders referred to in the foregoing Act.

1. *Brighton*.—Repealing and altering parts of local Acts in force within the district.

2. *East Cowes*. (1)—Repealing a local Act in force within the district.

3. *Preston*.—Repealing and altering parts of a local Act in force within the district; extending the borrowing powers of the Preston Local Board of Health; extending the time for paying off sums borrowed by such Board; and for other purposes.

4. *Morpeth*.—Altering the boundaries of the district of Morpeth, as constituted for the purposes of the Public Health Act, 1848.

5. *Bromsgrove*.—Altering the boundaries of the district of Bromsgrove as constituted for the purposes of the Local Government Act, 1858.

6. *Durham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.

24 & 25 VICT. c. 128.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Plymouth*, *Weston-super-Mare*, *Llanelly*, and *Llandilo*; and for other purposes in relation thereto. [6th August, 1861.]

(1) The local Act here referred to is the Isle of Wight Highway Act, 53 Geo. III. c. 92. With regard to the repeal of that Act by a provisional order, subsequently confirmed by Parliament, see Glen's Highway Laws, Second Edition, p. 57. It has since been enacted by the Local Government Supplemental Act, 1865 (No. 5), 28 & 29 Vict. c. 108, s. 2, that the Act passed in the fifty-third year of the reign of King George III., intituled "An Act for amending the Roads and Highways in the Isle of Wight," shall be repealed so far as it relates to the district of Ventnor, within which the Local Government Act, 1858, is now in force. And whereas doubts have arisen as to the effect of the provisional orders repealing the said Isle of Wight Highway Act within the district of East Cowes, Sandown, and Shanklin: It is hereby declared, that the said Act shall be deemed

and taken to be repealed within the said districts as if the repeal thereof had been provided by express enactment in the Acts confirming the said orders.

By the 30 & 31 Vict. c. 83, s. 2, the 53 Geo. III. c. 92, is also repealed so far as it relates to that portion of the district of the borough of Newport within which that Act is now in force: provided always, that it shall be lawful for the Commissioners acting under and in execution of such Act to levy tolls at their gate within such borough until the 31st December, 1868: provided also, that nothing herein contained shall affect or prejudice the powers of the Commissioners acting in the execution of the said Act under or by virtue thereof to remove, sell, dispose of, and convey all their said turnpike gate and toll bar known as the New Village Gate, and the toll-house there and the site thereof, and the appurtenances.

Schedule of provisional orders referred to in the preceding Act.

1. *Plymouth*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands for street improvements otherwise than by agreement.
2. *Weston-super-Mare*.—Repealing and altering parts of local Acts within the district, consolidating certain debts incurred under such Acts; and altering the powers of rating within the said district.
3. *Weston-super-Mare*.—Altering the boundaries of the district of Weston-super-Mare, as constituted for the purposes of the Local Government Act, 1851.
4. *Llanelly*.—Extending the borrowing powers of the Llanelly Local Board of Health.
5. *Llandilo*.—Extending the borrowing powers of the Llandilo Local Board.

25 & 26 VICT. c. 25.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Hanley, Stroud, Ilfracombe, Longton, Halifax, Ipswich, and Sandown*.

[30th June, 1862.]

Schedule of provisional orders referred to in the preceding Act.

1. *Hanley*.—Transferring the powers and property of the Hanley Market Trustees to the Hanley Local Board.
2. *Stroud*.—Extending the borrowing powers of the Stroud Local Board of Health.
3. *Ilfracombe*.—Extending the borrowing powers of the Ilfracombe Local Board of Health.
4. *Longton*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands otherwise than by agreement for market improvements.
5. *Halifax*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land by the Halifax Local Board of Health, for street improvements.
6. *Ipswich*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land by the Ipswich Local Board of Health, for street improvements.
7. *Sandown*. (1)—Repealing a local Act in force within the district of the Sandown Local Board.

26 & 27 VICT. c. 32.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Basford, Teignmouth, Kingston-upon-Hull, Nottingham, Bradford, Ryde, Bedford, Croydon, Batley, Berwick-upon-Tweed, Sheerness, and Bromsgrove*.

[29th June, 1863.]

Schedule of provisional orders referred to in the preceding Act.

1. *Basford*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land by the Basford Local Board for street improvements.
2. *Teignmouth*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land by the Teignmouth Local Board for the formation of a public road.
3. *Kingston-upon-Hull*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands by the Kingston-upon-Hull Local Board of Health for street improvements.

(1) See 28 & 29 Vict. c. 108, s. 2, *ante*, p. 730.

4. *Nottingham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands by the Nottingham Local Board of Health for street improvements, etc.

5. *Bradford*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands by the Bradford Local Board of Health for street improvements.

6. *Kingston-upon-Hull*.—Altering the Kingston-upon-Hull Improvement Act, 1854, incorporating in it provisions of the Towns Improvement Clauses Act, 1847, respecting streets, and for other purposes. (1)

7. *Ryde*.—Extending the borrowing powers of the Ryde Commissioners acting as the Local Board within the Ryde district in the Isle of Wight.

8. *Bedford*.—Repealing and altering parts of local Acts in force within the district of the Bedford Local Board.

9. *Croydon*.—Altering the provisional order applying the Public Health Act, 1848, to the district of Croydon in the county of Surrey.

10. *Batley*.—Altering the Order in Council applying the Public Health Act, 1848, to the district of Batley in the county of York.

11. *Berwick-upon-Tweed*.—Extending the borrowing powers of the Berwick-upon-Tweed Local Board of Health.

12. *Sheerness*.—Extending the borrowing powers of the Sheerness Local Board of Health.

13. *Bromsgrove*.—Altering parts of local Act in force within the district of the Bromsgrove Local Board.

26 & 27 VICT. c. 64.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Plymouth*, *Holywell*, *Llanelly*, *West Ham*, *Worthing*, *Aberavon*, and *Wallasey*.

[21st July, 1863.]

Schedule of provisional orders referred to in the preceding Act.

1. *Plymouth*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.

2. *Holywell*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.

3. *Llanelly*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.

4. *West Ham*. (2)—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.

5. *West Ham*.—Altering the provisional order applying the Public Health Act, 1848, to the district of West Ham.

6. *Worthing*.—Repealing and altering parts of a local Act in force within the district.

7. *Aberavon*. (3)—Repealing a local Act in force within the district.

8. *Wallasey*.—Extending the borrowing powers of the Board.

(1) See *Wilson*, app., *Hall*, resp., 12 Jur. (6 s.) 706, which was a decision upon the provisional order confirmed by this Act.

(2) See the subsequent *West Ham* Local Act, 30 Vict. lvi.

(3) The Act here referred to is described as a "Local Act;" but it is the *South Wales Highway Act*, 23 & 24 Vict. c. 68, which is a "Public General Act," and is so classed in the *Statute Book*. It is true it applies to the six counties of *South Wales* only, but it is not a "Local Act." It will be seen that the 21 & 22 Vict. c. 98, s. 77,

ante, p. 677, enables the Secretary of State to deal with local Acts only by means of provisional orders. The *Local Government Supplemental Act*, 1865 (No. 5), 28 & 29 Vict. c. 108, s. 2, reciting that, whereas doubts have arisen as to the effect of the *Provisional Order* repealing the *South Wales Highway Act* within the district of *Aberavon*, in the county of *Glamorgan*: declares "that the said Act shall be deemed and taken to be repealed within the said district as if the repeal thereof had been provided by express enactment in the Act confirming the said order."

27 & 28 VICT. c. 26.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Southampton*, *Brighton*, *Hexham*, *Oswaldtwistle*, *Bolton*, *Ashford*, *Oswestry*, *Fareham*, *West Cowes*, and *Wilton*.
[23rd June, 1864.]

Schedule of provisional orders referred to in the preceding Act.

1. *Southampton*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.
2. *Brighton*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements.
3. *Hexham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements and other purposes.
4. *Oswaldtwistle*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land.
5. *Bolton*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land.
6. *Ashford*.—Repealing a local Act in force within the district.
7. *Oswestry*.—Repealing a local Act in force within the district.
8. *Fareham*.—Extending the borrowing powers of the Local Board of Health.
9. *West Cowes*.—Extending the borrowing powers of the Local Board of Health.
10. *Wilton*.—Altering the provisional order applying the Public Health Act, 1848, to the district.

27 & 28 VICT. c. 83.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Kingston-upon-Hull*, *Stockport*, *Penzance*, *Shanklin*, *Portsmouth*, *Tunbridge Wells*, *Woolwich*, and *Tormoham*.
[29th July, 1864.]

Schedule of provisional orders referred to in the preceding Act.

1. *Kingston-upon-Hull*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement, for street improvements.
2. *Stockport*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements, etc.
3. *Penzance*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands for street improvements.
4. *Shanklin*. (1)—Repealing a local Act in force within the district.
5. *Stockport*.—Repealing and altering parts of local Acts in force within the district.
6. *Portsmouth*.—Repealing and altering parts of local Acts in force within the district.
7. *Tunbridge Wells*.—Repealing and altering local Acts in force within the district.
8. *Tunbridge Wells*.—Altering the boundaries of the district.
9. *Woolwich*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement.
10. *Tormoham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands, otherwise than by agreement.

28 VICT. c. 24.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Bridlington*,

(1) See 28 & 29 Vict. c. 108, s. 2, *ante*, p. 730.

Brighouse, Burnley, Henley, Shipley, Wallingford, Llangollen, Ormskirk, Swansea, Tormoham, and Lockwood. [9th May, 1865.]

Schedule of provisional orders referred to in the preceding Act.

1. *Bridlington*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands otherwise than by agreement, for street improvements, etc.
2. *Brighouse*.—Repealing and altering parts of a local Act in force within the district. (1)
3. *Burnley*.—Altering a local Act in force within the district.
4. *Henley*.—Partially repealing a local Act in force within the district.
5. *Shipley*.—Partially repealing and altering a local Act in force within the district of Shipley, and extending the borrowing powers of the Local Board for that district.
6. *Wallingford*.—Repealing a local Act in force within the district of the Wallingford Local Board.
7. *Llangollen*.—Extending the borrowing powers of the Local Board of Health.
8. *Ormskirk*.—Extending the borrowing powers of the Local Board of Health.
9. *Swansea*.—Extending the borrowing powers of the Local Board of Health.
10. *Tormoham*.—Extending the borrowing powers of the Local Board of Health.
11. *Lockwood*.—Altering the boundaries of the district, under the Local Government Act, 1858.

28 VICT. c. 25.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Derby, Ramsgate, Oswestry, Bury, Heap, Cockermouth, Matlock Bath, and Bromsgrove.* [9th May, 1865.]

Schedule of provisional orders referred to in the preceding Act.

1. *Derby*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for street improvements.
2. *Ramsgate*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board, otherwise than by agreement, for street improvements.
3. *Oswestry* (Salop).—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board, otherwise than by agreement, for drainage and other works.
4. *Bury* (Lancashire).—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board, otherwise than by agreement, for street improvements.
5. *Heap* (Lancashire).—Putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Local Board of the middle division of Heap (Lancashire) for the purchase and taking of lands, otherwise than by agreement, for street improvements.
6. *Cockermouth*.—Putting in force the Lands Clauses Consolidation Act,

(1) The sum of three thousand pounds expended in permanent works by the Commissioners under the Brighouse Local Improvement Act, referred to in the Brighouse provisional order contained in the schedule to this Act annexed, in addition to the sum of four thousand pounds authorised to be borrowed by the said Act, shall for all purposes be considered costs, charges,

and expenses incurred by the Local Board for the district of Brighouse in the execution of "The Local Government Act, 1858," in the said district; and the charges and rates mentioned in the fifty-seventh section of the last-mentioned Act shall include the rates or assessments granted by the said Local Improvement Act (28 Vict. c. 24, s. 2).

1845, within the Cockermouth Local Board district for the purchase of lands by the Local Board of the district, for works of drainage, etc.

7. *Cockermouth*.—Extending the borrowing powers of the Local Board.

8. *Matlock*.—Altering the boundaries of the district of Matlock in the county of Derby under the Local Government Act, 1858. (1)

9. *Bromsgrove*.—Altering the boundaries of the district for the purposes of the Local Government Act, 1858.

28 VICT. c. 41.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Sheffield*, *Bradford*, and *Gloucester*.
[19th June, 1865.]

Schedule of provisional orders referred to in the preceding Act.

1. *Sheffield*.—Repealing a local Act in force within the district of the Sheffield Local Board.

2. *Bradford* (Yorkshire).—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for street improvements.

3. *Gloucester*.—Repealing and altering parts of local Acts in force within the district of the Gloucester Local Board of Health.

28 & 29 VICT. c. 108.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Nottingham*, *Rusholme*, *Plymouth*, *Redcar*, *Cardiff*, *Kingston-upon-Hull*, *Guildford*, *Ramsgate*, *Ryde*, *Workington*, and *Oxford*, and for other purposes relative to certain districts under the said Act.

[5th July, 1865.]

• *Schedule of provisional orders referred to in the preceding Act.*

1. *Nottingham*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board, otherwise than by agreement, for street improvements.

2. *Rusholme*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for street improvements.

3. *Plymouth*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for street improvements.

4. *Redcar*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for street improvements.

5. *Cardiff*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Local Board of Health, for the purchase and taking of lands, otherwise than by agreement, for street improvements.

(1) On the first day of January in every year the Local Board for the district of Matlock Bath shall, out of the rates for that district, pay to the Local Board for the district of Matlock the annual sum of twenty pounds, towards the repair of the highways within the district of Matlock, but a proportionate part only of the said sum, calculated from the day on which this Act

comes into operation, shall be payable on the first day of January next ensuing on the passing of this Act; and the Local Board for the district of Matlock Bath are hereby authorised to treat the said yearly payment as an expenditure for highway purposes, and to include the same in highway rates and accounts accordingly. (28 Vict. c. 28, s. 2.)

6. *Kingston-upon-Hull*.—Altering the Kingston-upon-Hull Improvement Act, 1854, in force within the borough.
7. *Guildford*.—Repealing a local Act in force within the district of the Local Board.
8. *Ramsgate*.—Alteration of Ramsgate Improvement Act, 1838. (1)
9. *Ryde*.—Extending the borrowing powers of the Ryde Commissioners acting as Local Board within the district.
10. *Workington*.—Extending the borrowing powers of the Workington Local Board.
11. *Oxford*.—Repealing and altering parts of local Acts in force within the district of the Oxford Local Board.
12. *Hincksey* (Oxford District).—Altering the boundaries of the district of Oxford under the Local Government Act, 1858.
13. *Cowley* (Oxford District).—Altering the boundaries of the district of Oxford under the Local Government Act, 1858.

28 & 29 VICT. c. 110.

An Act to confirm a certain provisional order under the Local Government Act, 1858, relating to the *Hastings* district.

[5th July, 1865.]

Schedule of provisional orders referred to in the preceding Act.

Hastings.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Hastings Local Board of Health, for the purchase of lands by the said Board for street improvements.

29 VICT. c. 24.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Winchester*, *Burton-upon-Trent*, *Longton*, *Accrington*, *Preston*, *Bangor*, *Elland*, *Halstead*, *Wadsworth*, *Canterbury*, *Dartmouth*, *Dukinfield*, *Stroud*, and *Bridlington*; and for other purposes relative to certain districts under the said Act.

[18th May, 1866.]

Schedule of provisional orders referred to in the preceding Act.

1. *Winchester*.—Repealing and altering parts of local Acts in force within the city.
2. *Burton-upon-Trent*.—Alteration of the town of Burton-upon-Trent Act, 1853, in force within the Local Board's district.
3. *Longton*.—Repealing and altering parts of a local Act in force within the district of the Longton Local Board.
4. *Accrington*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for market improvements.
5. *Preston*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district of Preston, for the purchase of lands by the said Board for park and street improvements.

(1) Provided always, that nothing in this Act, or in the order hereby confirmed, with relation to Ramsgate, shall be deemed or construed to extend to or affect Ramsgate Harbour or the soil thereof, or any other property transferred to and vested in the Board of Trade by the "Harbours and Passing Tolls, &c., Act, 1861;" and all rights,

powers, and privileges of the Board of Trade are hereby expressly reserved, save only that parochial and other local rates shall still be payable on those parts of the said property within the district of Ramsgate in which they have heretofore been payable. (28 & 29 Vict. c. 108, s. 1.) (See also 29 & 30 Vict. c. 107, sch. *post.*)

6. *Bangor*.—Altering the boundaries of the district of Bangor, under the Local Government Act, 1858.

7. *Elland*.—Altering the boundaries of the district of Elland, under the Local Government Act, 1858.

8. *Halstead*.—Altering the boundaries of the district of Halstead, under the provisions of the Local Government Act, 1858. (1)

9. *Wadsworth*.—Separating from the district of Wadsworth a portion of the township of Wadsworth.

10. *Canterbury*.—For repeal and alteration of the Canterbury local Acts in force within the district of the Canterbury Local Board.

11. *Dartmouth*.—For extending the borrowing powers of the Dartmouth Local Board.

12. *Dukinfield*.—For extending the borrowing powers of the Dukinfield Local Board of Health.

13. *Stroud*.—For extending the borrowing powers of the Stroud Local Board of Health.

14. *Bridlington*.—For extending the borrowing powers of the Bridlington Local Board.

29 & 30 VICT. c. 79.

An Act to confirm a provisional order under the Local Government Act, 1858, relating to the district of *Ventnor*, and for the repeal of the *South Wales Highway Act* in *Briton Ferry* district.

[6th August, 1866.]

II. The Act passed in the twenty-third and twenty-fourth years of the reign of Her present Majesty (23 & 24 Vict. c. 68), Highway Act intituled, "*The South Wales Highway Act*," shall be repealed so far as it relates to the district of *Briton Ferry*, in the county of *Glamorgan*, within which district the Local Government Act, 1858, is now in force. South Wales
district of
Briton Ferry.

Schedule of provisional orders referred to in the preceding Act.

Ventnor.—Provisional order repealing a local Act and repealing and altering part of another local Act in force within the district of the *Ventnor* Local Board.

(1) The boundary of the district of *Halstead*, as settled by the provisional order in the schedule to this Act, shall be taken and deemed to be the boundary set out on a map of the said district, approved by the Secretary of State, and deposited at the office of the *Halstead* Local Board. (29 Vict. c. 24, s. 3.)

Notwithstanding the separation from the *Halstead* district of a part of the said district as set forth and described in the provisional order in the schedule to this Act contained, the part separated shall continue liable to the same extent as at present to the payment of the interest and annual instalments of the moneys borrowed by the Local Board of Health of the said district up to the time of the passing of this Act, and all the powers in relation to rating shall for the purpose of rating for the payment of such interest and instalments

continue as if there had been no separation of such part from the said district: provided always, that any income arising from the waterworks of the said Local Board of Health shall be applied exclusively to the payment of the interest and instalments of the sum of three thousand five hundred pounds, being the amount borrowed by the said Board for the said waterworks, and of the working expenses of such works (*Ibid.* s. 4): provided also, that any income arising or that may hereafter arise from the Corn Market House belonging to the said Board, shall be applied exclusively to the payment of the interest and instalments of the sum of one thousand three hundred pounds, being the amount borrowed by the said Board on the security of the general district rates for the erection of such Corn Market House. (29 & 30 Vict. c. 106, s. 3.)

29 & 30 VICT. c. 106.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *West Hartlepool*, *Tormoham*, *Harrogate*, *St. Leonard*, *Wednesfield*, *Aberdare*, *Bristol*, *Derby*, *Shrewsbury*, *Netherthong*, *Hove*, *New Windsor*, *Hanley*, *Burnley*, and *Accrington*; and for other purposes relative to certain districts under the said Act. [10th August, 1866.]

Adoption of
Local Govern-
ment Act by
Knottingley
rescinded.

IV. Whereas the Local Government Act, 1858, was on the sixteenth day of February, one thousand eight hundred and sixty-three, duly adopted by the township of Knottingley in the West Riding of the county of York, but no proceedings have been taken to elect a Local Board or appoint officers for the purposes of the said Act, or otherwise to carry the said Act into execution in such township: And whereas a memorial numerously signed by owners and ratepayers of such township, and presented to the Secretary of State for the Home Department as one of Her Majesty's principal Secretaries of State, praying that the resolution adopting the aforesaid Act be rescinded: And whereas the population of the township being above three thousand according to the last census, such township cannot legally rescind such adoption by resolution: It is hereby enacted, that the aforesaid resolution of adoption of the Local Government Act, 1858, by the said township of Knottingley shall be and the same is hereby rescinded.

Schedule of provisional orders referred to in the preceding Act.

1. *West Hartlepool*.—Repealing and altering parts of a local Act in force within the district.
2. *Tormoham*.—Alteration of the Torquay Waterworks Act, 1856, in force within the Local Board's district, and for other purposes under the Local Government Act, 1858.
3. *Harrogate*.—Alteration of the Harrogate Improvement Act, 1841, in force within the district of Harrogate.
4. *St. Leonard*.—Repealing and altering parts of a local Act in force within the district of the Local Board of St. Leonard.
5. *Wednesfield*.—Altering the boundaries of the district of Wednesfield under the provisions of the Local Government Act, 1858. (1)
6. *Aberdare*.—Separating from the district of Aberdare a portion thereof, styled Mountain Ash.
7. *Bristol*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district, for the purchase of lands for street improvements therein. (2)

(1) The Local Board in and for the district of Wednesfield in the county of Stafford, as altered by the provisional order in the schedule to this Act contained, shall be nine in number, of whom one-third shall go out of office annually; and at the first election that shall take place after the passing of this Act all the members of the Local Board for the Wednesfield district, as now constituted, shall retire, and in their stead nine members shall be elected for the said district as altered by the said order, by the votes of owners of and ratepayers in respect of property situate within the district as so altered. (29 & 30 Vict. c. 106, s. 5.)

(2) The mayor, aldermen, and burgesses of the city of Bristol, being by the Council of the said city the Local Board of Health in and for the district of the said city and county of Bristol, shall not exercise the powers of compulsory purchase or taking of lands under the provisions of the Bristol provisional order (in the schedule to this Act annexed and confirmed by this Act), for the purposes set forth and described in such provisional order, after the expiration of five years from the date of the passing of this Act. (29 & 30 Vict. c. 106, s. 2.)

8. *Derby*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for improvement of streets.

9. *Shrewsbury*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district, for the purchase of lands for market and street improvements therein.

10. *Netherthong*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district, for the purchase of lands for road improvements.

11. *Hove*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district, for the purchase of lands for road improvements.

12. *New Windsor*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands by the Board for road improvements.

13. *Hanley*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land by the Board for street improvements.

14. *Burnley*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the district, for the purchase of lands for street improvements.

15. *Accrington*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board of Health, otherwise than by agreement, for further market improvements.

29 & 30 VICT. c. 107.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Ramsgate*, *Leominster*, *Staleybridge*, *Lincoln*, *Maidstone*, *Banbury*, *Tunbridge Wells*, *Bedford*, and *Southampton*; and for other purposes relative to districts under the said Act. [10th August, 1866.]

Schedule of provisional orders referred to in the preceding Act.

1. *Ramsgate*.—Alteration of the Ramsgate Improvement Act, 1838, in force within the district of Ramsgate.

2. *Leominster*.—Repealing and altering parts of local Acts in force within the district of Leominster.

3. *Staleybridge*.—Repealing and altering parts of a local Act in force within the district of the Local Board of Staleybridge.

4. *Lincoln*.—Alteration of the local Act in force within the Local Board's district. (1)

(1) *Compensation to officers under Lincoln Local Act who may be removed*.—Every treasurer, clerk, surveyor, and other officer acting under the local Act recited in the provisional order for the city and borough of Lincoln in the schedule to this Act contained, part of which local Act is repealed by the said order, whose office shall, by reason of the transfer of the powers of the commissioners to the Local Board, be wholly or in part superseded and rendered unnecessary, or who shall at any time within the space of three years next after the passing of this Act, except for misconduct, be removed wholly or in part from such office, and not be employed and retained in an office of equal value, by the Local Board for the said city and borough of Lincoln, shall be entitled to have an adequate compensation for the profits,

salary, and emoluments of the office which he shall cease to hold: the said compensation to be by way of annuity or otherwise, and to be assessed by the Commissioners of Her Majesty's Treasury upon the report of the said Local Board, to be made within three months after any such person shall have been superseded in his office, founded upon a declaration made by such person, setting forth the salary, profits, and emoluments derived by him and his predecessors for every year during a period of five years next before the day when he shall have ceased to hold such office, and such other evidence as the said Local Board may require as to the amount, nature, and particulars of such profits; and in assessing the same regard shall be had to the manner of his appointment to such office, and his term therein; and the said Local Board shall from

5. *Maidstone*.—Alteration and repeal of parts of local Acts in force within the Maidstone Local Board district.

6. *Banbury*.—For partial repeal and alteration of a provisional order, applying the Public Health Act, 1848, to the district of Banbury, and of the first Public Health Supplemental Act, 1852.

7. *Tunbridge Wells*.—For partial repeal and alteration of a provisional order, confirmed by the Local Government Supplemental Act, 1864 (No. 2).

8. *Bedford*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands by the Local Board, otherwise than by agreement, for purposes of drainage and water supply.

9. *Southampton*.—For extension of the borrowing powers of the Local Board of Health.

30 VICT. c. 21.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Gainsborough*, *Farsley*, *Bideford*, *Canterbury*, *Chepping Wycombe*, *Worthing*, and *Wednesfield*; and for other purposes relative to certain districts under that Act.
[31st May, 1867.]

Schedule of provisional orders referred to in the preceding Act.

1. *Gainsborough*.—Altering the boundaries of the district of Gainsborough under the Local Government Act, 1858. (1)

2. *Farsley*.—Altering the boundaries of the district of Farsley under the Local Government Act, 1858.

3. *Bideford*.—For extending the borrowing powers of the Bideford Local Board.

4. *Canterbury*.—Making provision for ascertaining the value of property, etc., of the late Paving Commissioners of Canterbury, and for other purposes therein set forth.

5. *Chepping Wycombe*.—Repealing and altering parts of a local Act in force within the district of the Chepping Wycombe Local Board.

6. *Worthing*.—Altering provisional order applying the Public Health Act, 1848, to the town of Worthing, in the county of Sussex.

7. *Wednesfield*.—Altering a provisional order relating to the district of Wednesfield under the Local Government Act, 1858.

time to time pay to the person entitled to compensation, out of any general district rates, the money which shall upon such report, and any appeal or reclamation against the same, be finally awarded by the Commissioners of Her Majesty's Treasury as the same shall become due and be payable. (29 & 30 Vict. c. 107, s. 3.)

(1) By 30 Vict. c. 21, s. 2, provision is made for the separated parts of the Gainsborough district paying its share of the mortgage debt of the Local Board, and by ss. 3 and 4 of the same Act: "Sect. 3. The security for the mortgage debt of the Gainsborough Local Board of Health shall, from and after the passing of this Act, be the rateable

value of the property in the district as altered by the provisional order in the schedule of this Act annexed, the town portion of such district to be liable for the existing debt, and the remaining portion of the township to be liable for the debt incurred for works in such last-mentioned portion." "Sect. 4. The Act passed in the twenty-third and twenty-fourth years of the reign of Her present Majesty (23 & 24 Vict. c. 68), intituled, 'The South Wales Highway Act,' shall be repealed, so far as it relates to the Llanwonno portion of the district of Mountain Ash, in the county of Glamorgan, within which district of Mountain Ash the Local Government Act, 1858, is now in force."

30 & 31 VICT. c. 49.

An Act to confirm a certain provisional order under the Local Government Act, 1858, relating to the district of *Halifax*; and for other purposes relative to the said district under that Act.

[15th July, 1867.]

Schedule containing the provisional order referred to in the preceding Act.

Halifax.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Halifax Local Board of Health, for the purchase of land by the said Board for street improvements. (1)

30 & 31 VICT. c. 65.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Sheffield*, *Derby*, *Sherborne*, *Royton*, *Bedford* (Lancashire), *Slough*, *Sandown*, *Burton-upon-Trent*, *West Cowes*, and *Accrington*.

[25th July, 1867.]

Schedule of provisional orders referred to in the preceding Act.

1. *Sheffield.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Sheffield Local Board for the purchase of lands by the said Board for street improvements.

2. *Derby.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Derby, in the county of Derby, for the purchase of lands by the Local Board of Health for the aforesaid district, for street improvements.

3. *Sherborne.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Sherborne, in the county of Dorset, for the purchase of lands by the Local Board of Health for the supply of water to their district.

4. *Royton.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Royton, in the county of Lancaster, for the purchase of lands in the aforesaid district for street improvements.

5. *Bedford.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Bedford (Lancashire) Local Board, for the purchase of lands by the said Board for sewage outfall purposes.

6. *Slough.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Slough Local Board for the purchase of lands by the said Board for works for flushing the sewers within their district.

7. *Sandown.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Sandown, in the Isle of Wight, for the purchase of lands by the Local Board for that district; for street improvements.

8. *Burton-upon-Trent.*—Provisional order for the alteration of the town of Burton-upon-Trent Act, 1853, in force within the district of the Burton-upon-Trent Local Board.

9. *West Cowes.*—Provisional order altering a local Act in force in the district of West Cowes.

10. *Accrington.*—Provisional order extending the borrowing powers of the Local Board of Health.

(1) The 30 & 31 Vict. c. 49, also contains special provisions with regard to street improvements, which, however, are applicable only to the district of Halifax.

30 & 31 VICT. c. 67.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Oswaldtwistle*, *Devizes*, *Layton-with Warbrick* (Blackpool), and *Harrogate*; and for other purposes relative to certain districts under the said Act.

[25th July, 1867.]

Schedule of provisional orders referred to in the preceding Act.

1. *Oswaldtwistle*.—Extension of borrowing powers.
2. *Devizes*.—Alteration of parts of local Acts.
3. *Layton-with Warbrick* (Blackpool).—Alteration of local Act.
4. *Harrogate*.—Putting in force the Lands Clauses Act, 1848 (*sic* in the Act, but in the order, 1845), for the purchase and taking of lands, otherwise than by agreement.

30 & 31 VICT. c. 83.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Ramsgate*, *Tunbridge Wells*, *Bognor*, *Newport*, *Chesterfield*, *Malvern*, *Great Harwood*, and *Harrow*; and for other purposes relating to certain districts under that Act.

[12th August, 1867.]

Schedule of provisional orders referred to in the preceding Act.

1. *Ramsgate*.—Altering a local Act.
2. *Tunbridge Wells*.—Altering the Tunbridge Wells Water Act, 1865, in force within the district of the Tunbridge Wells Improvement Commissioners.
3. *Bognor*.—Altering local Acts in force in the district of the Bognor Local Board.
4. *Newport*.—Repealing a local Act in force in the district of the Newport Local Board.
5. *Chesterfield*.—Repealing a local Act in force in the district of the Local Board.
6. *Malvern*.—Repealing parts of and amending the Malvern local Acts, and vesting in the Local Board the property and powers of the Commissioners under those Acts. (1)
7. *Great Harwood*.—Extending borrowing powers of the Great Harwood Local Board.
8. *Harrow*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the Harrow Local Board of Health district, for the purchase and taking of lands by the said Board, otherwise than by agreement, for purposes of sewage irrigation. (2)

(1) By 30 & 31 Vict. c. 83, s. 1, this order is confirmed, except as to the eighth section, and as to the last paragraph of the provisional order for partially repealing and amending the Malvern local Acts; and there shall be substituted for the said eighth section the words "the sections numbered respectively 17 to 26 and 29 to 40, all inclusive, of the second hereinbefore recited local Act, are repealed;" and there shall be substituted for the last paragraph of the said order the words "of the local Act, twenty-first and twenty-second Victoria, chapter thirty-one (intituled, the Malvern Improvement Amendment Act, 1858), the sections numbered respectively 1 to 16, both inclusive, 27 and 28."

(2) The Local Board of Health in and for the district of Harrow, in the county of Middlesex, shall well and effectually cover over, and at all times keep so covered over, any sewage, tank, reservoir, or other works to be constructed on the pieces of land described in the schedule to the Harrow order in this Act contained and thereby proposed to be purchased, and shall at all times, in the removal and dispersion of sewage matter from any such tank, reservoir, or works, adopt such means, by deodorization or otherwise, for the purpose of neutralizing any nuisance, which might otherwise arise therefrom, as shall from time to time be agreed upon by the respective principal engineers for the time being of the London and North-

30 & 31 VICT. c. 123.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Exeter*, *Devonport*, *Reading*, *Warley*, and *Midgley*; and for other purposes relative to certain districts under the said Act.

[20th August, 1867.]

Schedule of provisional orders referred to in the preceding Act.

1. *Exeter*.—Altering a local Act. (1)
2. *Devonport*.—Altering parts of a local Act in force within the district. (1)
3. *Reading*.—Putting in force the Lands Clauses Consolidation Act, 1845, within the Reading Local Board of Health district, for the purchase and taking of lands by the said Board otherwise than by agreement, for purposes of street improvements. (2)
4. *Warley*.—Separating portion of district of Local Board. (3)
5. *Midgley*.—Altering boundaries of district of Local Board.

31 & 32 VICT. c. x. (4)

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Workington*, *Walton-on-the-Hill*, *West Derby*, *Eton*, *Llanelly*, *Oxenhope* and *Stanbury*, and *Keighley*; and for other purposes relative to certain districts under the said Act.

[29th May, 1868.]

Western Railway Company and of the aforesaid Harrow Local Board of Health, or in the event of their not agreeing then as shall be determined by an engineer to be appointed by the Board of Trade on the application of either the railway company aforesaid or of the said Local Board of Health; and all such works and acts shall be in all things at the expense of the said Local Board of Health, but the costs of any such reference shall be in the discretion of such engineer so to be appointed as aforesaid.

(1) The Act 30 & 31 Vict. c. 123, also provides for compensation to officers under the Exeter Local Act (s. 2), and the Devonport Local Act (s. 3), who may be removed.

(2) The 30 & 31 Vict. c. 123, s. 4, contains a special provision for a burial vault known as "Knolly's Aisle."

(3) The 30 & 31 Vict. c. 123, contains the following provision in regard to the Warley district: "Sect. 5. From and after the inclusion in a district under the Local Government Act of that part of the Warley district which is separated therefrom by the Warley provisional order by this Act confirmed, which part is hereinafter referred to as the separated part, the Local Board for

the district which includes the separated part shall pay to the Warley Local Board an annual sum of one hundred and forty pounds (£140), such sum to be raised by a general district rate in the separated part only, and such annual payment to be continued to the Warley Local Board until such time as the rateable value of property in the Warley district (as altered by the provisional order hereinbefore referred to) shall reach fourteen thousand pounds (£14,000): provided always, that unless the separated part shall come within the operation of the Local Government Act, 1858, within twelve months from the date of the passing of this Act, then the separated part shall again become part of the Warley district as before the date of this Act, and shall be included in the said district, without any incorporation therewith such as is prescribed by the seventy-seventh section of the said Local Government Act."

(4) In the year 1868, the Local Government Supplemental Acts were first printed amongst the local and personal Acts, and classified therewith.—See the letter on the subject of Sir John G. Shaw Lefevre, K.C.B., to the Right Hon. Gathorne Hardy, of 6th May, 1868.—Sessional Paper, No. 106.

Schedule of provisional orders referred to in the preceding Act.

1. *Workington*.—Extending the borrowing powers of the Workington Local Board.
2. *Walton-on-the-Hill*.—Altering the boundaries of the district of Walton-on-the-Hill, in the county of Lancaster, under the Local Government Act, 1858.
3. *West Derby*.—Extending the boundaries of the district of West Derby, in the county of Lancaster, under the Local Government Act, 1858.
4. *Eton*.—Extending the boundaries of the district of Eton, under the Local Government Act, 1858.
5. *Llanelly*.—Altering the boundaries of the district, under the Local Government Act, 1858.
6. *Oxenhope and Stanbury*.—Separating the hamlet of Stanbury from the district of Oxenhope and Stanbury. (1)
7. *Keighley*.—Altering the boundaries of the district, under the Local Government Act, 1858. (2)

31 & 32 VICT. c. lxxxiv.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Southampton*, *Bradford*, *Whitchurch* and *Dodington*, *Royton*, *Kendal*, and *Sunderland*.
[13th July, 1868.]

Schedule of provisional orders referred to in the preceding Act.

1. *Southampton*.—Extending the borrowing powers of the Local Board of Health.
2. *Bradford* (Yorkshire).—Extending the borrowing powers of the Local Board of Health.
3. *Bradford* (Yorkshire).—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase and taking of lands, otherwise than by agreement, for street improvements.
4. *Whitchurch and Dodington*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase, otherwise than by agreement, of lands for street improvements.
5. *Royton* (Lancashire).—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of lands, otherwise than by agreement, for street and road improvements.
6. *Kendal*.—Putting in force the Lands Clauses Consolidation Act, 1845, for the purchase of land, otherwise than by agreement, for purposes of drainage, etc.
7. *Sunderland*.—Altering certain local Acts for extension of borrowing powers.

31 & 32 VICT. c. lxxxv.

An Act to confirm a certain provisional order under the Local Government Act, 1858, relating to the district of *Tormoham* (Devonshire).
[13th July, 1868.]

(1) The Oxenhope and Stanbury district, under the Local Government Act, 1858, shall henceforth be styled the Oxenhope district; and the number of members of the Local Board for the said last-mentioned Oxenhope district shall be six, of whom four shall be returned for the Far Oxenhope Ward of the said Oxenhope district, and two shall be returned for the New Oxenhope

Ward. (31 & 32 Vict. c. x. s. 3.)

(2) The Local Board district of the parish and township of Keighley, in the West Riding of the county of York, shall, from and after the addition of the hamlet of Stanbury to the said Keighley Local Board district, be styled the Oakworth Local Board District. (31 & 32 Vict. c. x. s. 4.)

Schedule containing the provisional order referred to in the preceding Act.

Tormoham.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Tormoham, for the purchase of lands by the Local Board of Health of the aforesaid district for street improvements.

31 & 32 VICT. c. lxxxvi.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Malvern*, *Cowpen*, *Bristol*, *Sheffield*, *Margate*, *Bognor*, and *Otley*; and for other purposes relative to certain districts under the said Act.
[13th July, 1868.]

Schedule of provisional orders referred to in the preceding Act.

1. *Malvern.*—Provisional order in pursuance of Section 77 of the Local Government Act, 1858, for repealing parts of and amending the Malvern Improvement Act, 1851, and for other purposes.

2. *Cowpen.*—Provisional order for altering the boundaries of the district of Cowpen, in the county of Northumberland, under the provisions of the Local Government Act, 1858.

3. *Bristol.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Bristol Local Board of Health, for the purchase of lands by the said Board for street improvements. (1)

4. *Sheffield.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the Sheffield Local Board district, for the purchase and taking of lands by the said Board, otherwise than by agreement, for purposes of street improvements.

5. *Margate.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the borough of Margate, for the purchase of lands by the said Local Board of the aforesaid borough for street improvements.

6. *Bognor.*—Provisional order for extending the borrowing powers of the Bognor Local Board.

7. *Otley.*—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the Otley Local Board district (Yorkshire), for the purchase and taking of lands by the said Board, otherwise than by agreement.

31 & 32 VICT. c. clii.

An Act to confirm a certain provisional order under the Local Government Act, 1858, relating to the district of *Tunbridge Wells*.
[31st July, 1868.]

Schedule (A).—Containing the provisional order referred to in the preceding Act.

Tunbridge Wells.—Provisional order partially repealing and altering part of the Tunbridge Wells Water Act, 1865, in force within the district of the Board of Tunbridge Wells Improvement Commissioners, for the purchase of land, otherwise than by agreement, and for other purposes in such order stated and set forth.

(1) 31 & 32 Vict. c. lxxxvi. "Sect. 2. The mayor, aldermen, and burgesses of the city of Bristol being, by the Council of the said city, the Local Board of Health in and for the district of the said city and county of Bristol, shall not exercise the powers of compulsory

purchase or taking of lands under the provisions of the Bristol provisional order (in the schedule to this Act annexed), for the purposes set forth and described in such provisional order, after the expiration of five years from the date of the passing of this Act."

31 & 32 VICT. c. cliii.

An Act to confirm certain provisional orders under the Local Government Act, 1858, relating to the districts of *Harrogate*, *Layton-with-Warbrick*, *Bury*, *Lower Brixham*, *Hexham*, *Tipton*, *Gainsborough*, *Worthing*, *Aberystwith*, *Cockermouth*, *Burnham*, *Wednesbury*, *Burton-upon-Trent*, *Hornsey*, and *Keswick*; and for other purposes relative to certain districts under the said Act.

[31st July, 1868.]

Schedule of provisional orders referred to in the preceding Act.

1. *Harrogate*.—Provisional order for altering and extending the provisions of the Harrogate Improvement Act, 1841, in force within the district of Harrogate, in the county of York, under the Local Government Act, 1858, and authorising the erection of reservoirs, baths, and other arrangements for the supply of the mineral waters of Harrogate.
2. *Layton-with-Warbrick*.—Provisional order for extending the borrowing powers of the Layton-with-Warbrick Local Board of Health. (1)
3. *Bury*.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, for street improvements.
4. *Lower Brixham*.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of the Lower Brixham Local Board for the purchase of lands by the said Board for works of water supply. (2)
5. *Hexham*.—Provisional order for extending the borrowing powers of the Hexham Local Board of Health (Northumberland).
6. *Tipton*.—Provisional order for altering the Order in Council applying the Public Health Act, 1848, to the district of Tipton in the county of Stafford.
7. *Gainsborough*.—Provisional order for altering the boundaries of the paving and-lighting area within the district of Gainsborough in the county of Lincoln, under the provisions of the Local Government Act, 1858, and for re-uniting the separated parts of the district called the town district and township (beyond the limits of the town district).
8. *Worthing*.—Provisional orders repealing and altering parts of local Acts in force within the district of the Worthing Local Board of Health, and for other purposes hereinafter set forth.
9. *Worthing*.—Provisional order extending the borrowing powers of the said Worthing Local Board of Health. (3)

(1) 31 & 32 Vict. c. cliii. "Sect. 2. The Local Board of Health district of the township of Layton-with-Warbrick, in the county of Lancaster, shall from and after the date of the passing of this Act be styled the Blackpool Local Board of Health district." "Sect. 3. The Local Board of Health for the district of Blackpool (heretofore styled the Layton-with-Warbrick district) shall be at liberty to use any land of which they are now possessed, for the purposes of the Blackpool Improvement Act, 1865."

(2) Nothing in the provisional order, however, shall be deemed to give any powers for the compulsory purchase of lands beyond the boundary or the district. (Ibid. s. i.)

(3) 31 & 32 Vict. c. cliii. "Sect. 4. The sanctions given by Her Majesty's principal Secretary of State

for the Home Department, bearing date respectively the fifth day of April, one thousand eight hundred and sixty-five, and the eleventh day of July, one thousand eight hundred and sixty-six, to the Local Board of Worthing to borrow the sums of two thousand pounds and ten thousand pounds respectively, shall be and the same are hereby confirmed; and all mortgages executed by the said Local Board for securing the repayment of the said sums, or any part of them, shall be as valid and of the same force and effect as if the said sanctions had been made by provisional order confirmed by Act of Parliament." "Sect. 5. The said Local Board of Health for the district of Worthing shall be empowered to supply the owners and occupiers of houses, shops, and buildings within any part of the parish of Broadwater in the county of Sussex, and also

10. *Aberystwith*.—Provisional order for the alteration and partial repeal of the Aberystwith Improvement Act, 1835, in force within the district of the Aberystwith Local Board.

11. *Cockermouth*.—Provisional order for extending the borrowing powers of the Cockermouth Local Board.

12. *Burnham*.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Burnham, in the county of Somerset, for the purchase of lands by the Local Board of Health of the aforesaid district for street improvements, etc.

13. *Wednesbury*.—Provisional order for altering the provisional order applying the Public Health Act, 1848, to the district of Wednesbury, in the county of Stafford.

14. *Burton-upon-Trent*.—Provisional order for altering provisions of Burton-upon-Trent Local Act, and for other purposes. (1)

15. *Hornsey*.—Provisional order for the repeal of the Local Act (15 Geo. III. c. 43), in force within the district of the Hornsey Local Board.

16. *Keswick*.—Provisional order putting in force the Lands Clauses Consolidation Act, 1845, within the district of Keswick, for the purchase of lands by the Local Board of Health of the aforesaid district for street improvements.

the London, Brighton, and South Coast Railway Company at their Worthing Station, with water from the waterworks constructed by the said Local Board, for domestic use and for trading and manufacturing purposes, upon such terms and conditions in respect to the amount of rent to be paid for such supply, the mode of paying for the same, and the recovery of any sum which may be due and owing in respect of such rent, and generally for the management of such water supply, as may be from time to time agreed upon between the said Local Board and the persons desirous of being so supplied. And the said Local Board shall have the same power for carrying water mains without the said district of Worthing as they have to carry water mains within that district under the Local Government Act, 1858, s. 52.

(1) 31 & 32 Vict. c. cliii. "Sect. 6.

The Commissioners acting under the Burton-upon-Trent Local Act may, if they think fit, allow and pay to William Coxon (their late clerk, who resigned his office on the fourth day of April, one thousand eight hundred and sixty-six), a retiring pension or annuity of fifty pounds for so long and from time to time during his life as such commissioners shall think fit; and if such pension or annuity be allowed, it shall take effect from the twenty-ninth day of September, one thousand eight hundred and sixty-six."—By sect. 1 of 31 & 32 Vict. c. cliii. the clause numbered 2 in the provisional order for the district of Burton-upon-Trent (p. 31) shall be read as if the word "not" were omitted from the last line thereof. What "page 31" refers to does not appear from the Act itself. It is "page 31" in the bill, and in the folio edition of the Act it is "page 2379."

APPENDIX (C).

INCORPORATED CLAUSES OF CONSOLIDATION
ACTS.

LANDS CLAUSES CONSOLIDATION ACTS. (1)

8 VICT. c. 18.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature.
[8th May, 1845.]

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted:

That this Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Interpretations.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

* * * * *

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

(1) The decisions of the Courts 2nd volume of Glen's Law of Rail-
upon this Act will be found in the ways.

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

The word "lease" shall include an agreement for a lease:

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate: and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

Where, under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

IV. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression, "The Lands Clauses Consolidation Act, 1845."

V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory

Short title of the Act.

Form in which portions of this Act may be incorporated with other Acts.

to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Purchase of Lands by Agreement.

And with respect to the purchase of lands by agreement, be it enacted as follows:

VI. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose;—and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest;—and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively,—and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability enabled to sell and convey.

VIII. The power hereinafter given to enfranchise copyhold Parties under lands as well as every other power required to be exercised by disability to the lord of any manor, pursuant to the provisions of this or the exercise other special Act, or any Act incorporated therewith, and the power to powers. release lands from any rent-charge or incumbrance, and to agree for the appointment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking. (1)

IX. The purchase money or compensation to be paid for any Amount of lands to be purchased or taken from any party under any dis- compensation in ability or incapacity, and not having power to sell or convey such case of parties lands except under the provisions of this or the special Act, and under disability to be ascertained the compensation to be paid for any permanent damage or injury by valuation, to any such lands, shall not, except where the same shall have and paid into been determined by the verdict of a jury, or by arbitration, or by the bank. the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof;—and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner herein-after mentioned. (2)

X. It shall be lawful for any person seised in fee of or entitled Where vendor to dispose of absolutely for his own benefit any lands authorised absolutely to be purchased for the purposes of the special Act to sell and entitled, lands convey such lands or any part thereof unto the promoters of the may be sold on undertaking, in consideration of an annual rent-charge payable by chief rents, the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum. (3)

XI. The early rents reserved by any such conveyance shall be Payment of charged on the tolls or rates, if any, payable under the special rents to be Act, and shall be otherwise secured in such manner as shall be charged on agreed between the parties, and shall be paid by the promoters of tolls. the undertaking as such rents become payable:

And if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking. (4)

XII. In case the promoters of the undertaking shall be em- Power to powered by the special Act to purchase lands for extraordinary purchase lands purposes, it shall be lawful for all parties who under the provi- required for

(1) See 23 & 24 Vict. c. 106, s. 6, *post*, p. 789.

(2) See 23 & 24 Vict. c. 106, ss. 1, 2, *post*, p. 788.

(3) See *Ibid.* s. 2.

(4) See *Ibid.* s. 6.

additional
accommodation.

sions hereinbefore contained would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Authority to
sell and
repurchase
such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time.

* * * * *

Municipal
corporations
not to sell
without the
approbation of
the Treasury.

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Purchase of Lands otherwise than by Agreement.

And with respect to the purchase and taking lands otherwise than by agreement, be it enacted as follows :

* * * * *

Notice of
intention to
take lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall after diligent inquiry be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Services of
notices on
owners and
occupiers of
lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties, or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice
on a corporation
aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can, after diligent inquiry, be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands,

or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XXI. If for *twenty-one days* after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed *fifty pounds*, the same shall be settled by *two justices*.

Disputes as to compensation, where the amount claimed does not exceed £50, to be settled by two justices.

XXIII. If the compensation claimed or offered in any such case shall exceed *fifty pounds*, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury in respect to such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly :

Compensation exceeding £50 to be settled by arbitration of jury, at the option of the party claiming compensation.

But unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for *three months* have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

XXIV. It shall be lawful for any justice, upon the application of either party, with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons :

Method of proceeding for settling disputes as to compensation by justices.

And upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath :

And the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall

Appointment of arbitrator when questions are to be determined by arbitration.

nominate and appoint an arbitrator, to whom such dispute shall be referred :

And every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any *two* of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation :

And such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made :

And after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation :

And if for the space of *fourteen days* after such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

XXVI. *This section is the same as 11 & 12 Vict. c. 63, s. 124.*

Appointment
of umpire.

XXVII. When more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade
empowered to
appoint an
umpire on
neglect of the
arbitrators, in
case of railway
companies.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for *seven days* after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of death
of single arbi-
trator the
matter to begin
de novo.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either arbi-
trator refuse to
act, the other

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for *seven days* neglect to act, the other arbitrator may proceed *ex parte*, and the decision

of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within *twenty-one days* after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

XXXII. *This section is the same as 11 & 12 Vict. c. 63, s. 137.*

XXXIII. *The same as 11 & 12 Vict. c. 63, s. 128.*

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party, or any person appointed by him for that purpose.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior Courts on the application of either of the parties.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than *ten days'* notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking, if they be a corporation, or if they be not a corporation, under the hands and seals of such promoters or any *two* of them:

And if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate:

And if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living

there, and who shall not be interested in the matter in dispute, and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corer shall have power, if he think fit, to appoint a deputy or assessor.

Provisions
applicable to
sheriff to apply
to coroner.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place:

And in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall immediately on receiving notice of the delivery of the warrant deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

Jury to be
summoned.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons duly qualified to act as common jurymen in the superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be
impanelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior Courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons, the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid:

And all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to pre-
side. Witnesses
to be sum-
moned.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law.

And, if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior Courts.

Penalty on
sheriff and jury
for default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit *fifty pounds* for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior Courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing

he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding *ten pounds* :

And every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend ; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior Courts.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds. Penalty on witnesses making default.

XLVI. Not less than *ten days'* notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party. Notice of inquiry.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided. If the party make default the inquiry not to proceed.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence. Jury to be sworn.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict *separately* for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith. Sums to be paid for purchase of lands and for damage to be assessed separately.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded :

And such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said ver-

dicts and judgments, and may have copies thereof, or extracts therefrom, on paying for each inspection thereof *one shilling*, and for every one hundred words copied or extracted therefrom *sixpence*, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Costs of the inquiry how to be borne.

LI. On every such inquiry before a jury where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking:

But if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the cost of summoning, impanelling, and returning the jury, and of taking the inquiry, and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within *seven days* after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly:

And if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor, under the provisions hereinafter contained:

And the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried: provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff:

And for that purpose the promoters of the undertaking shall, by their warrant to the sheriff, require him to nominate a special jury for such trial:

And thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties

to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than *five* nor more than *eight* days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior Courts, and the sheriff shall appoint a day, not later than the *eighth* day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give *four* days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior Courts.

LV. The special jury on such inquiry shall consist of *twelve* of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen: Deficiency of special jury-men.

And if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen who shall not have been previously struck off the aforesaid list, and who may then be attending the Court or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons:

And the sheriffs shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial. Other inquiries before same special jury by consent.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year. Jurymen not to attend more than once a year.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who by reason of absence from the kingdom is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as *two justices* shall nominate for that purpose as hereinafter mentioned. Compensation to absent parties to be determined by a surveyor appointed by two justices.

LIX. Upon application by the promoters of the undertaking to *two justices*, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall by writing under their hands nominate Two justices to nominate a surveyor.

an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices or one of them, make and subscribe the declaration following, at the foot of such nomination; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. "*A. B.*"

"Made and subscribed in the presence of—"

And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, etc., to be produced to the owner of the lands, on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation how to be estimated.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

When compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands, or such interest therein as aforesaid, could not be found, or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, pro-

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they

shall pay or deposit, as the case may require, such further sum ^{moters to pay} within *fourteen days* after the making of such award, or in default ^{or deposit same} thereof the same may be enforced by attachment, or recovered, ^{within fourteen} with costs, by action or suit in any of the superior Courts. ^{days.}

LXVII. If the arbitrators shall determine that the sum so ^{Costs of the} deposited was sufficient, the costs of and incident to such arbitra- ^{arbitration.} tion, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

LXVIII. If any party shall be entitled to any compensation in ^{To be settled} respect of any lands, or of any interest therein, which shall have ^{by arbitration} been taken for or *injuriously affected* by the execution of the works, ^{of jury at the} and for which the promoters of the undertaking shall not have ^{option of the} made satisfaction, under the provisions of this or the special Act ^{party claiming} or any Act incorporated therewith; and if the compensation ^{compensation.} claimed in such case shall exceed the sum of *fifty pounds*, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit:

And if such party desire to have the same settled by arbitration, it shall be lawful for him to give *notice in writing* to the promoters of the undertaking of such ^{his} desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein:

And unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within *twenty-one days* after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided:

Or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such ^{his} desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within *twenty-one days* after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, *with costs*, by action in any of the superior Courts.

Application of Compensation.

And with respect to the *purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title*, be it enacted as follows:

LXIX. If the purchase money or compensation which shall be ^{Purchase} payable in respect of any lands or any interest therein, purchased ^{money payable} or taken by the promoters of the undertaking from any corpora- ^{to parties under} tion, tenant for life or in tail, married woman seised in her own ^{disability} right or entitled to dower, guardian, committee of lunatic or idiot, ^{amounting to}

£200 to be deposited in the bank.

trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of *two hundred pounds*, the same shall be paid into the bank, in the name and with the privity of the accountant-general of the Court of Chancery in England if the same relate to lands in England or Wales, (1) * * * to be placed to the account there of such accountant-general *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts:

And such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

In the purchase or redemption of the land-tax, or the discharge of any debt or *incumbrance* affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England, * * * made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant-general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from £20 to £200 to be deposited or paid to trustees.

LXXI. If the purchase money or compensation shall not amount to the sum of *two hundred pounds*, and shall exceed the sum of *twenty pounds*, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding *two hundred pounds*, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled:

(1) As regards lands in the County Palatine of Lancaster, see 13 & 14 Vict. c. 43, s. 12.

And in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose:

And the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner herein-before directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the Court for that purpose.

LXXII. If such money shall not exceed the sum of *twenty pounds*, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

LXXIII. All sums of money exceeding *twenty pounds* which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid:

All sums payable under contract with persons not absolutely entitled to be paid into bank.

And it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy:

Provided always, that it shall be in the discretion of the Court of Chancery, in England, * * * or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

LXXIV. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England, * * * on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or, in default, the lands to vest in the promoters of the undertaking, upon deed poll being executed.

LXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct:

And in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein:

And thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant-general of the Court of Chancery in England, * * * * * to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in : Upon deposit being made, a receipt to be given, and the lands to vest upon a deed poll being executed.

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein :

And thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited, shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England, * * * may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interest of the party making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit. Application of moneys so deposited.

LXXIX. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly. Party in possession to be deemed the owner.

LXXX. In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England, Costs in cases of money deposited.

* * * * to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking :

(That is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for,—and the costs of the investment of such moneys in government or real securities,—and of the re-investment thereof in the purchase of other lands, and also—the costs of obtaining the proper order for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and—for the payment out of Court of the principal of such moneys or of the securities whereon the same shall be invested, and—of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants :

Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England, * * * * that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the *conveyances of lands*, be it enacted as follows :

Form of
conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit :

And all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned ; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritance.

Costs of
conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such cost shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of

deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, * * * upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties :

Taxation of costs of conveyances.

And the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs ; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Entry on Lands.

With respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :

LXXXIV. The promoters of the undertaking shall not, except by the consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interest therein :

Payment of price to be made previous to entry, except to survey, etc.

Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than *three* nor more than *fourteen days' notice* to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank, by way of security as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security, and giving bond.

by *two* justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any *two* of them, with *two* sufficient sureties, to be approved by *two* justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so entered upon, together with interest thereon at the rate of *five* pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained:

And upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such *lands*, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit
being made,
cashier to give
receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the accountant-general of the Court of Chancery of England, * * * to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court:

And upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to
remain as a
security, and
to be applied
under the
direction of the
Court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of securing to the parties whose lands shall so have been entered upon for the performance of the conditions of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated:

And upon the condition of such bond being fully performed, it shall be lawful for the Court of Chancery in England, * * * upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit

of the parties for whose security the same shall so have been deposited.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the accountant-general of the Court of Chancery in England, * * * * to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by the secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof :

The company may pay the deposit money, into the bank by way of security during the time that the office of the accountant-general is closed.

And in every such case, within *ten* days after the re-opening of the said accountant-general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the accountant-general, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant-general accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, *except as aforesaid*, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purpose of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of *ten pounds*, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before *two* justices :

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

And if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of *twenty-five pounds* for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior Courts :

Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters. Proceedings in case of refusal to deliver possession of lands.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

XCI. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such cost, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Intersected Lands.

And with respect to *small portions of intersected land*, be it enacted as follows:

Owners of intersected lands may insist on sale.

XCIII. If any lands, not being situate in a *town* or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which the same can be thrown, so as to be conveniently occupied therewith:

And if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between

the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

expense of
bridges, etc.,
exceeds the
value.

Copyholds.

And with respect to *copyhold lands*, be it enacted as follows:

XCV. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel:

And on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof, he shall make such enrolment:

And every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure:

Nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

XCVI. Within *three months* after the enrolment of the conveyance of any such copyhold or customary lands, or within *one month* after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then, within *one month* after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him:

And if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation:

And in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage :

And in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices :

And the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not effect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held : and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents :

And with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common Lands. (1)

And with respect to any such *lands being common or waste lands*, be it enacted as follows :

Compensation for common lands, where held of a manor, etc., how to be paid.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party other than the commoners, as shall be entitled to such right in the soil :

And the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners :

And upon payment or deposit in the bank of the compensation

(1) See also 17 & 18 Vict. c. 97, s. 15.

so determined, all such commonable and other rights shall cease and be extinguished.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance:

Lord of the manor, etc., to convey to the promoters of the undertaking, on receiving compensation for his interest.

And in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands, the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor or other party entitled to the soil thereof in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands to be appointed as next hereinafter mentioned.

Compensation for common lands not held of a manor how to be ascertained.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands, to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights.

A meeting of the parties interested to be convened.

And every such meeting shall be called by public advertisement to be inserted once at least in *two* consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than *fourteen* nor less than *seven* days prior to any such meeting; and notice of such meeting shall also, not less than *seven* days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

CIII. It shall be lawful for the meeting so called to appoint a committee not exceeding *five* in number of the parties entitled to

Meeting to appoint a committee.

any such rights, and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein, and all such parties shall be bound by such agreement:

And it shall be lawful for such committee to receive the compensation so agreed to be paid; and the receipt of such committee, or of any *three* of them, for such compensation, shall be an effectual discharge for the same, and such compensation, when received, shall be apportioned by the committee among the several persons interested therein according to their respective interest, but the promoters of the undertaking shall not be bound to see to the appointment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

Disputes to be settled as in other cases.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by *two* justices, as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners, the lands to vest.

CVII. Upon payment or tender to such committee, or any *three* of them, or if there shall be no such committee, then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in *England*, * * * * by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in Mortgage.

And with respect to *lands subject to mortgage*, be it enacted as follows:

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act,

and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of *six* months, computed from the day of giving such notice:

And if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given *six* months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of *six* months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoter of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the expiration of *six* months' notice as aforesaid, such further interests as would at that time become due:

Deposit of mortgage money on refusal to accept.

And it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such land, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or

Sum to be paid when mortgage exceeds the value of the lands.

compensation, the same shall be determined as in other cases of disputed compensation:

And the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of
money when
refused on
tender.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon:

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession:

Nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid
where part only
of mortgaged
lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation:

And the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend:

And thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee;

and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon:

Deposit of money when refused on tender.

And it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession, they shall be entitled to immediate possession thereof:

Nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained, the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances:

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

And if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in

addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation :

And until payment or tender of such compensation as aforesaid, the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

Rent-Charges.

And with respect to *lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance* not hereinbefore provided for, be it enacted as follows :

Release of lands
from rent-
charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part
of lands from
charge.

CXVI. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, the same shall be settled by *two* justices :

But if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case
of refusal to
release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge :

And if he fails so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to con-
tinue on lands
not taken.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-men-

tioned lands for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge:

And if upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or *two* of them shall subscribe, or if they be a corporation, shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all Courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

And with respect to *lands subject to leases*, be it enacted as follows:

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands: Where part only of lands under lease taken, the rent to be apportioned.

And such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part:

And if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act:

And as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works. Tenants to be compensated.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from Compensation to be made to

tenants at
will, etc.

year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same:

And the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater
interest claimed
than from year
to year, lease to
be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power:

And if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within *twenty-one* days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of time
for compulsory
purchase.

CXXIII. And be it enacted, that the power of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act, shall not be exercised after the expiration of the prescribed period; and if no period be prescribed, not after the expiration of three years from the passing of the special Act.

Interests omitted to be purchased.

And with respect to *interests in lands* which have by mistake been omitted to be purchased, be it enacted as follows:

Promoters of
the undertaking
empowered to
purchase in-
terests in lands
the purchase
whereof may
have been
omitted by
mistake.

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which, under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within *six months* after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within *six months* after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to

any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity:

And such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

How value of such lands to be estimated.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the *full costs* and expenses of any proceeding at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

Promoters of the undertaking to pay the costs of litigation as to such lands.

Sale of Superfluous Land.

And with respect to *lands acquired by the promoters* of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall *not be required for the purposes thereof*, be it enacted as follows:

CXXVII. Within the prescribed period, or if no period be prescribed within *ten years* after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act.

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

And in default thereof all such superfluous lands remaining unsold at the expiration of such period, shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands, they shall, unless such lands be situate offered to owner

Lands to be offered to owner

of lands from which they were originally taken, or to adjoining owners,

within a *town*, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed: or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands:

And where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks.

CXXIX. If such persons be desirous of purchasing such lands, then within *six weeks* after such offer of sale, they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for *six weeks* they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease:

And a declaration in writing made before a justice by such person not interested in the matter in question, stating that such order was made and was refused, or not accepted within *six weeks* from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all Courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation, under the hands and seals of the promoters of the undertaking, or any *two* of the directors or managers thereof acting by the authority of the body:

And a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him:

And a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed as

follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors, from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act:

Land tax and poor's rate to be made good.

And on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively:

Nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post, directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the

Service of notice upon company.

Tender of
amends.

Secretary, or in case there be no Secretary, the solicitor of the said promoters.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action:

And if no such tender shall have been made, it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Recovery of Penalties.

And with respect to the *recovery of forfeitures, penalties, and costs*, be it enacted as follows:—

Penalties to be
summarily
recovered before
two justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before *two justices*:

And on complaint being made to any justice, he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons:

And every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode;—and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them:

And upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be
levied by
distress.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Penalties how
to be levied.

CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same:

And the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder *to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish*; or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed *twenty pounds*, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly:

But no such distress shall issue against the goods of such treasurer unless *seven days'* previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence:

And if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

CXLI. *This section is the same as the 11 & 12 Vict. c. 63.*

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within *six months* next after the commission of such offence.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter:

And if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

CXLIV. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C) to this Act annexed.

CXLV. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior Courts.

Parties allowed to appeal to quarter sessions on giving security.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen:

But no such appeal shall be entertained unless it be made within *four* months next after the making of such determination or adjudication, nor unless *ten days'* notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with *two* sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Court to make such order as they think reasonable.

CXLVII. At the quarter sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable:

And they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, and be it enacted, that, *notwithstanding anything herein or in the special Act*, or any Act incorporated therewith, *contained*, every penalty of forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis:"

And every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act:

And every magistrate by whom any order or conviction shall have been made, shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

CXLIX. *This section is the same as 11 & 12 Vict. c. 63, s. 147.*

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A).

Form of Conveyance.

I , of , in consideration of the sum of paid to me [or, as the case may be, into the Bank of England or Bank of Ireland], in the name and with the privity of the accountant-general of the Court of Chancery, *ex parte* "the promoters of the undertaking" [naming them] [or to A. B. of , and C. D. of , two trustees appointed to receive the same], pursuant to the [here name the special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I , of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [naming them], incorporated [or constituted] by virtue of the [here name the special Act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [or other description], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [or half-yearly, as agreed upon] proportions henceforth on the [stating the days], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (C).

Form of Conviction.

To wit.

Be it remembered, that on the day of in the year of our Lord , A. B. is convicted before us, C. D., two of Her Majesty's justices of the peace for the county of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special Act]. Given under our hands and seals, the day and year first above written.

C. D.

23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts, 1845, in regard to Sales and Compensation for Land by way of a Rent-charge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.
[20th August, 1860.]

WHEREAS it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rent-

charge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords temporal and spiritual, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part of section 10 of recited Act repealed.

I. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.

Sections 10 and 11 of recited Act, as to power to sell, etc., lands for an annual rentcharge, and to recover, extended to all sides, etc., where parties are under disability. Similar proviso with regard to lands sold under section 10 of 8 & 9 Vict. c. 19.

II. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

III. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Amount of rentcharge to be settled in manner directed in the 9th section of recited Acts.

IV. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed, stood, settled, or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

V. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

VI. The clauses contained in the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands by agreement, and to agreements for sale and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of lands and hereditaments for public purposes which shall be hereafter made by the Council of any city or borough, with the sanction of the Commissioners of Her Majesty's Treasury, under the powers for that purpose contained in the Municipal Corporation Mortgages, etc., Act (1860).

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of lands, etc., for public purposes.

VII. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department, or for the defence of the realm, it shall be lawful for Her Majesty's principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (Scotland) Act, 1845, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal Secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act, and all the powers and provisions thereof shall, if used by Her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of Her Majesty's Ordnance, and had been transferred to the said principal Secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal Secretary for the time being under the said last-mentioned statutes, or either of them.

Power to Secretary for War to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

VIII. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

This Act and 8 & 9 Vict. cc. 18 and 19 to be construed together.

10 VICT. c. 14.

An Act for consolidating in one Act certain Provisions usually contained in Acts for constructing or regulating Markets or Fairs.

[23rd April, 1847.]

WHEREAS it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction or regulation of markets and fairs, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted, that this Act shall extend only to such markets or fairs as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretations
in this Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be construed or regulated; and the expression "the undertakers" shall mean the persons authorised by the special Act to construct or regulate the market or fair.

Interpretations
in this and the
special Act.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

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

Words importing the masculine gender shall include females:

The word "person" shall include a corporation whether aggregate or sole:

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure:

The word "lease" shall include a missive of and an agreement for a lease:

The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be constructed or regulated:

The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods:

The word "driver" shall include the carter or other person having the care of any cart:

The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine:

The expression "the collector" shall mean the person appointed by the undertakers to collect the stallage, rents, or tolls authorised by the special Act, and shall include the assistants of the collector:

The word "month" shall mean calendar month:

The expression "Superior Courts," when the matter submitted to the cognizance of the Court arises in England or Ireland, shall mean Her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham; and when such matter arises in Scotland, it shall mean the Court of Sessions:

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

The word "county" shall include riding or other division of a county having a separate commission of the peace; and in Scotland, stewartry, and any ward or other division of a county or stewartry, having a separate sheriff; and it shall also include county of a city or county of a town:

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands situated not wholly in any one jurisdiction, shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together:

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

The expression "quarter session" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined, it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof, for the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.

Citing the Act.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Construction of market or fair.

VI.—XI. *Relate to the construction of the market or fair, and the works connected therewith.*

Holding of Markets, etc.

And with respect to the holding of the market or fair, and the protection thereof, be it enacted as follows: (1)

Before the market or fair shall be opened, notice to be given by undertakers.

XII. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Sales elsewhere than in markets prohibited under a penalty not exceeding 40s.

XIII. After the market-place is opened for public use, every person other than a licensed hawkers who shall *sell* or expose for sale in any place within the prescribed limits, except in his own dwelling-place or shop, any articles in respect of which tolls are by the special Act authorised to be taken in the market, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

Market days.

XIV. After the market-place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act.

Penalty for selling or exposing for sale unwholesome meat, etc.

XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding *five pounds* for every such offence:

And any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, (2) and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice:

(1) These clauses are incorporated with 21 & 22 Vict. c. 98, by sect. 50 of that Act.

(2) See 11 & 12 Vict. c. 63, s. 63.

And every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding *five pounds* for every such offence. Penalty on obstructing inspector.

XVI. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding *forty shillings*. Penalty for obstructing market or fair keeper.

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XVII.—XX. *Relate to slaughter-houses.*

Slaughter-houses.

Weighing of Goods and Carts.

And with respect to *weighing goods and carts*, be it enacted as follows: (1)

XXI. The undertakers shall provide sufficient and proper weighing-houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures, according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden. Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

XXII. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers: Articles to be weighed if requested by the buyer.

And any person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding *forty shillings*. Penalty for refusal.

XXIII. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required, shall be liable to a penalty not exceeding *forty shillings*. Penalty on persons appointed refusing to weigh.

XXIV. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts, with or without their loading, as may be required. Undertakers to keep proper machines for weighing carts laden with goods.

XXV. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing-machines, and shall permit the same to be weighed: Carts to be weighed at one of the machines erected by the undertakers.

And if such cart be weighed with its load thereupon, the driver shall, if required, take such cart, after its load has been discharged, to the weighing-machine nearest to such place of discharge, and permit it to be reweighed without such load; and if

(1) Incorporated with 21 & 22 Vict. c. 98, by s. 50 of that Act.

any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half-mile, and a like sum for every additional half-mile :

And such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Penalty on
drivers for re-
fusing to take
carts to be
weighed, etc.

XXVI. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing-machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding *twenty shillings*.

Penalties on
drivers of carts,
etc., committing
frauds in
weighing.

XXVII. Every driver of any such cart weighed at any weighing-machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding *five pounds* for each offence ; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof :

If he alter any ticket denoting the weight of any such cart, or the loading of the same :

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof :

If he, after the weighing of any such cart, with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket :

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof :

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on
buyers or sellers
for committing
frauds in
weighing.

XXVIII. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding *five pounds*.

Penalties for
frauds com-
mitted by the
machine keeper.

XXIX. The person for the time being appointed to keep any weighing-machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding *five pounds* in any of the following cases ; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed :

If he do not fairly weigh every such cart, with or without loading, as the case may be :

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account, specifying the true weight of such cart, with or without such loading, as may be required:

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof:

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively:

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

XXX. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding *five pounds*. Penalty on other parties committing frauds as to weighing.

Tolls.

And with respect to *the stallages, rents, and tolls* (1) to be taken by the undertakers, be it enacted as follows:

XXXI. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market-place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto. Tolls, etc., not to be demanded until market or fair completed.

XXXII. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid; and any such justices shall sign such certificate on proof being adduced to them that the market-place or place for a fair or slaughter-house is so completed, and fit for public use. Certificate of two justices to be evidence that market or fair is completed.

XXXIII. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house, shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorised by the undertakers to receive the same. Stallages, etc., when to be paid.

XXXIV. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorised by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured. Tolls to be paid to persons authorised before the same are weighed, etc.

XXXV. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market-place, and before the cattle are put into any pen, or tied up in such market-place; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed. Tolls in respect of cattle market, when due.

(1) No tolls shall be leviable by the Local Board until approved of by a Secretary of State. See 21 & 22 Vict. c. 98, s. 50.

Stallages, tolls,
etc., may be
varied from
time to time.

Penalty on
taking a greater
toll than au-
thorised by this
or the special
Act.

Recovery of
tolls by dis-
tress, etc.

Disputes re-
specting tolls,
how to be
settled.

Penalty for
obstructing
collector of
rents, etc.

List of tolls,
etc., to be set
up and placed
in conspicuous
places.

XXXVI. The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorised by the special Act.

XXXVII. Every person who shall demand or receive a greater toll than that authorised to be taken under the provisions of this or the special Act, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

XXXVIII. If any person liable to the payment of any stallage, rent, or toll authorised by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorised by the undertakers or their lessee to collect the same, may levy the same in England by distress of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any Court having competent jurisdiction.

XXXIX. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in England by a justice, and such justice shall, on application made to him, determine the same, and make such order therein, and award such costs to either party as to him shall seem proper; and in default of payment, on demand, of the money which shall be so awarded, and of the costs, the same shall be forthwith levied by distress, and the justice shall issue his warrant accordingly.

XL. Every person who shall assault or obstruct any person authorised to collect any stallage, rent, or toll authorised by this or the special Act, shall for every such offence be liable to a penalty not exceeding *forty shillings*.

XLI. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing-house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

Bye-Laws.

And with respect to the *bye-laws* to be made by the undertakers, be it enacted as follows:

Bye-laws may
be made for all
or any of the
purposes herein
named.

XLII. The undertakers may from time to time make such bye-laws as they think fit for all or any of the following purposes; (that is to say,)

For regulating the use of the market-place and fair, and the buildings, stalls, pens, and standings therein, and for pre-

venting nuisances or obstructions therein, or in the immediate approaches thereto :

For fixing the days, and the hours during each day, on which the market or fair shall be held :

For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein :

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act :

For regulating the use of the weighing-machines provided by the undertaker, and for preventing the use of false or defective weights, scales, or measures :

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.

And the undertakers may from time to time, as they shall think fit, repeal or alter any such bye-laws :

Bye-laws may be repealed or altered from time to time.

Provided always, that such bye-laws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, or of any Act incorporated therewith :

And such bye-laws shall be reduced to writing under the common seal of the undertakers if they be a body corporate, or the hands and seals of two of the undertakers if they be not a body corporate, and if affecting other persons than the officers and servants of the undertakers, shall be printed and published as herein provided.

XLIII. The undertakers, by the bye-laws so to be made by them, may impose such reasonable penalties as they shall think fit, not exceeding *five pounds* for each breach of such bye-laws ; provided that every such bye-law shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid.

Bye-laws may be enforced by imposition of penalties.

XLIV. No bye-laws made under the authority of this or the special Act (except such as may relate solely to the officers or servants of the undertakers) shall come into operation until the same shall be allowed in the manner prescribed by the special Act, (1) or if no manner be prescribed, until the same shall be allowed by the justices at quarter sessions, and in either case approved under the hand of one of Her Majesty's principal Secretaries of State :

No bye-laws to come into operation until allowed in the manner prescribed and approved by Secretary of State.

And it shall be incumbent on the justices at quarter sessions, on the request of the undertakers, to examine into the bye-laws which may be tendered to them for that purpose, and to allow of or disallow the same, as to them may seem meet.

XLV. Provided always, that no such bye-law shall be allowed in manner herein mentioned unless notice of the intention to apply for an allowance of the same shall have been given in one or more newspapers of the county in which the market or fair shall be situated, or, if there be no newspaper in such county, in one or more newspapers of the adjoining county, one month at least before the hearing of such application :

Notice of allowance of bye-laws to be given in one or more newspapers, etc.

(1) See 11 & 12 Vict. c. 63, s. 115.

And any party aggrieved by any such bye-law, on giving notice of the nature of his objection to the undertakers ten days before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one party to be heard upon the same matter of objection.

A copy of proposed bye-laws to be open for inspection.

XLVI. For one month at least before any such application for allowance of any bye-law, a copy of such proposed bye-laws shall be kept at the principal office of the undertakers, and shall be put up in some conspicuous place in the market-place or fair, and all persons at all reasonable times may inspect such copy without fee or reward, and the undertakers shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of sixpence for every one hundred words so to be copied.

Publication of bye-laws.

XLVII. The said bye-laws shall be published in the prescribed manner, and when no manner of publication is prescribed, they shall be printed, and the clerk of the undertakers shall give a printed copy thereof to every person applying for the same without charge, and a copy thereof shall be painted or placed on boards, and put up in some conspicuous part of the principal office of the undertakers, and also in some conspicuous place in the market-place or fair, and such boards, with the bye-laws thereon, shall be renewed from time to time as occasion shall require, and shall be open to inspection without fee or reward:

And in case the said clerk shall not permit the same to be inspected at all reasonable times, he shall for every such offence be liable to a penalty not exceeding five pounds.

Bye-laws to be binding on all parties.

XLVIII. All bye-laws made and confirmed according to the provisions of this and the special Act, when so published and put up, shall be binding upon and be observed by all parties, and shall be a sufficient warrant for all persons acting under the same.

Proof of publication of bye-laws.

XLIX. The production of a written or printed copy of the bye-laws requiring confirmation by the Court of Quarter Session, authenticated by the signature of the judge or of the chairman of the Court who shall have approved of the same, and requiring approval under the hand of one of Her Majesty's principal Secretaries of State, and a written or printed copy of the bye-laws not requiring such confirmation or approval, authenticated by the common seal of the undertakers if they be a body corporate, or under the hands of the undertakers if not incorporated, or any two of them, shall be evidence of the existence and making of such bye-laws in all cases of prosecution under the same, without proof of the signature of such judge, chairman, or sheriff, or such Secretary of State, or the common seal or signature of the undertakers:

And with respect to the proof of the publication of any such bye-laws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by this Act directed, and in case of its afterwards being displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of such bye-laws, or was not duly put up or continued as directed by this Act.

10 VICT. c. 16.

An Act for consolidating in one Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on undertakings of a public nature.

[23rd April, 1847.]

Mortgages.

And with respect to the mortgages to be executed by the Commissioners, be it enacted as follows:—

LXXV. Every mortgage or assignation in security of rates or their property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the Commissioners if they be a body corporate, or if they be not a body corporate, shall be executed by the Commissioners, or any five of them, and may be according to the form in the Schedule (B) to this Act annexed, or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignations respectively.

LXXVI. A register of mortgages or assignations in security shall be kept by the clerk to the Commissioners, and where by the special Act the Commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignations in security, and within fourteen days after the date of any mortgage or assignation in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignation in security without fee or reward.

LXXVII. Any person entitled to any such mortgage or assignation may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be duly stated; and every such transfer may be according to the form in the Schedule (C) to this Act annexed, or to the like effect.

LXXVIII. Within thirty days after the days of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the Commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, adminis-

Form of mort-
gage.Register of
mortgages to be
kept and to be
open to inspec-
tion.Transfers of
mortgages.Register of
transfers to be
kept.

trators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*; and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Interest on mortgages to be paid half-yearly.

Power to borrow money at a lower rate of interest, to pay off securities at a higher rate.

LXXIX. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

LXXX. If the Commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge such securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

Repayment of money borrowed at a time and place agreed upon.

LXXXI. The Commissioners may, if they think proper, fix a period for the repayment of all the principal moneys borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the Commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed, such principal and interest shall be payable at the office of the Commissioners.

Repayment of money borrowed when no time and place has been agreed upon.

LXXXII. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose, and in the like case the Commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor, shall be delivered to the clerk or left at the office of the Commissioners, and if given by the Commissioners, shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the Commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London Gazette* if the office of the Commissioners is in England, the *Edinburgh Gazette* if it is in Scotland, or in the *Dublin Gazette* if it is in Ireland.

Interest to cease on expiration of notice to pay off a mortgage debt.

LXXXIII. If the Commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment

made pursuant to such notice or at any time thereafter, the Commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the Commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed, one-twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Exchequer Bills or other Government securities, or in Scotland deposited in one of the banks there incorporated by Act of Parliament or Royal Charter, and to be increased by accumulation in the way of compound interest or otherwise until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the Commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

LXXXV. Whenever the Commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

LXXXVI. Where by the special Act the mortgagees or assignees in security of the Commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignation in security has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior Courts, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior Courts, may, if his debt amount to the prescribed sum alone, or if his debt do not amount to the prescribed sum, he may in conjunction with other mortgagees or assignees in security, whose debts being so in arrear, after demand as aforesaid, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

LXXXVII. Every application for a receiver in the cases afore-

As to the
appointment of
receiver.

said shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made, all such rates and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, has been so received, the power of such receiver shall cease.

Account books
to be opened for
the inspection of
mortgagees.

LXXXVIII. The books of account of the Commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the Commissioners, with liberty to take extracts therefrom without fee or reward.

10 & 11 VICT. c. 34.

An Act for consolidating in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns.

[21st June, 1847.]

* * * * *

Interpretations
in this and the
special Act.

III. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special Act:

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town.

The word "owner," used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rackrent, would be entitled to receive the rackrent from the occupier thereof:

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Naming Streets.

And with respect to *naming the streets and numbering the houses*, be it enacted as follows: (1)

LXIV. The Commissioners shall from time to time cause the Houses to be numbered and streets named. houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street, the name by which such street is to be known:

And every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the Commissioners, shall be liable to a penalty not exceeding *forty shillings* for every such offence.

LXV. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the Commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced: Numbers of houses to be renewed by occupiers.

And every such occupier who fails, within one week after notice for that purpose from the Commissioners, to mark his house with a number approved of by the Commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding *forty shillings*, and the Commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expenses thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

Improving Streets.

And with respect to *improving the line of the streets, and removing obstructions*, be it enacted as follows:

LXVI. The Commissioners may allow, upon such terms as they think fit, any building within the limits of this special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated. Houses may be set forward for improving line of street.

LXVII. The Commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall resell any parts of the lands so purchased which shall not be wanted for the enlargement of the street. Commissioners may purchase houses or ground for effecting additional improvements.

LXVIII. When any house or building, any part of which projects beyond the regular line of the street, or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the Commissioners may require the same to be set backwards to or toward the line of the street, or the line of the adjoining houses or buildings, in such manner as the Commissioners direct, for the improvement of such street: Houses projecting beyond line of street, when taken down, to be set back.

Provided always, that the Commissioners shall make full compensation to the owner of such house or building for any damage he thereby sustains.

LXIX. The Commissioners may give notice to the occupier of any house or building to remove or alter any porch, shed, projections of houses, Future projections of houses,

(1) These clauses are incorporated with 21 & 22 Vict. c. 98, by s. 45 of that Act.

etc., to be removed on notice.

ing window, step, cellar, cellar door or window, sign, sign-post, sign-iron, show-board, window-shutter, wall, gate, or face, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street :

And such occupier shall, within *fourteen days* after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the Commissioners, and in default thereof shall be liable to a penalty not exceeding *forty shillings* :

And the Commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages :

Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building.

Commissioners may cause existing projections to be removed, and compensation to be made.

LXX. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the Commissioners may cause the same to be removed or altered as they think fit :

Provided that they give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such obstruction or projection shall be *thirty days* before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors in future to be made to open inwards.

LXXI. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the Commissioners allow such doors, gates, or bars to be otherwise hung or placed :

And if (except as aforesaid) any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier of such house, building, yard, or land shall, within *eight days* after notice from the Commissioners to that effect, cause the same to be altered so as not to open outwards :

And in case he neglect so to do, the Commissioners may make such alteration, and the expenses of such alteration shall be paid to the Commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding *forty shillings*.

Doors opening outwards may be altered.

LXXII. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the Commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupier.

LXXIII. When any opening is made in any pavement or foot-path within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials, and in such manner as the Commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar :

And if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the Commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding *five pounds*. Penalty for neglect.

LXXIV. The occupier of every house or building in, adjoining, or near to any street shall, within *seven days* next after service of an *order* of the Commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house, or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath: Waterspouts to be affixed to houses or buildings.

And in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty not exceeding *forty shillings* for every day that he shall so make default.

Ruinous or Dangerous Buildings.

And with respect to *ruinous or dangerous buildings*, be it enacted as follows:

LXXV. If any building, or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the Commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require: Ruinous or dangerous buildings to be taken down or secured by owners, etc.

And if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of *three days* after such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the *owner*, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the Commissioners shall, with all convenient speed, cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite: If owner, etc., neglect to repair, Commissioners may cause the same to be done, charging owner, etc., with the expenses.

And all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

The expenses to be levied by distress on the owner.

LXXVI. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

If owner cannot be found, Commissioners may take the house or ground, making compensation provided by 7 & 8 Vict. c. 18.

LXXVII. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the Commissioners, after giving *twenty-eight days'* notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or on the land whereon such building stood, may take such building or land: provided that such expenses be not paid or tendered to them within the said *twenty-eight days*, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845, in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the Commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

LXXVIII. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the Commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the Commissioners shall restore any overplus arising from such sale to the owner of such house or building on demand:

Nevertheless, the Commissioners, although they sell such materials for the purpose aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Precautions during Repairs.

And with respect to *precautions during the construction and repair of the sewers, streets, and houses*, be it enacted as follows:—

Bars to be erected across streets while repairs or alterations are making, and lights placed at night.

LXXIX. The Commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper:

And the Commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night so as to prevent accidents;

And every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the

authority or consent of the Commissioners, shall for every such offence be liable to a penalty not exceeding *five pounds*.

LXXX. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall, before beginning the same, cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition to the satisfaction of the Commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night:

And every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid, during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same when directed by the Commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding *five pounds*, and a further penalty not exceeding *forty shillings* for every day while such default is continued.

LXXXI. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the Commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall, at his own expense, cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising, while such materials or hole remain:

Penalty for not lighting deposits of building materials or excavations.

And such person shall, at his own expense, cause such materials or other things and such hole to be sufficiently fenced and enclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or enclose such materials, or other things, or such hole, shall for every such offence be liable to a penalty not exceeding *five pounds*, and a further penalty not exceeding *forty shillings* for every day while such default is continued.

LXXXII. In no case shall any such building materials or other things or such hole be allowed to remain for any unnecessary time, under a penalty not exceeding *five pounds* to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding *forty shillings* for every day during which such offence is continued after the conviction for such offence:

Penalty for continuing deposits of building materials or excavations an unreasonable time.

And in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Dangerous
places to be
repaired or
enclosed.

LXXXIII. If any building or hole or any other place near any street be, for want of sufficient repair, protection, or enclosure, dangerous to the passengers along such street, the Commissioners shall cause the same to be repaired, protected, or enclosed, so as to prevent danger therefrom:

And the expenses of such repair, protection, or enclosure shall be repaid to the Commissioners, by the owner of the premises so repaired, protected, or enclosed, and shall be recoverable from him as damages.

Objections to
works.

LXXXIV.—LXXXVI. *Apply to objections to the works to be constructed.*

Cleansing
streets.

LXXXVII.—XCVIII. *Relate to cleansing the streets.*

Nuisances.

XCIX.—CVII. *Relate to the prevention of nuisances.*

Smoke.

And with respect to the *prevention of smoke*, be it enacted as follows:—

Fireplaces of
factories, etc.,
to consume
their own
smoke.

CVIII. (1) Every fireplace or furnace constructed after the passing of the special Act, in order to be used within the limits of such Act in the working of engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, gaswork, or in any manufactory whatsoever, (although a steam engine be not used or employed therein,) shall be so constructed as to consume the smoke arising from the combustibles used in such fireplace or furnace:

And every such fireplace or furnace existing within the said limits at the date of the passing of the special Act used for the purposes aforesaid, not so constructed as to consume the smoke arising from such fireplace or furnace, shall within the prescribed period, or if no period be prescribed, then within two years after the passing of the special Act, be so altered in its construction as to consume such smoke:

And if after such period any person use for any of the purposes aforesaid any fireplace or furnace not so constructed as aforesaid, or if at any time any person use any such fireplace or furnace constructed after the passing of the special Act, and not so constructed as aforesaid, or so negligently use any such fireplace or furnace as not to consume the smoke arising from the combustibles used therein, every person so offending shall be liable to a penalty of *forty shillings* for every day during any part of which such furnace or fireplace shall be so used and continued after one month's notice in writing shall have been given to the owner or occupier of such furnace or fireplace by the Commissioners to remedy or discontinue the use of the same.

Water.

And with respect to the *supply of water*, be it enacted as follows: (2)

Power to Com-
missioners to

CXXI. The Commissioners shall cause all existing public cisterns, pumps, wells, conduits, and other waterworks used for the

(1) Incorporated in 21 & 22 Vict. c. 98, by s. 45.

(2) These clauses are incorporated in 21 & 22 Vict. c. 98, s. 45.

gratuitous supply of water to the inhabitants within the limits of the special Act, to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water, and such public cisterns and other works shall be vested in the Commissioners, and be under their management and control:

And the Commissioners may construct any number of new cisterns, pumps, conduits, and other waterworks for the gratuitous use of any persons who choose to carry the same away, not for sale, but for their own private use, and may supply with water any public baths or washhouses. [*The proviso is not incorporated and is omitted.*]

CXXII. The Commissioners may contract for the prescribed period, or (where no period shall be prescribed) for any period not exceeding *three* years at one time, with the owners of any waterworks or any other person for such supply of water as the Commissioners shall think necessary for the purposes of this or the special Act.

CXXIII. If the Commissioners, and the owners of any waterworks authorised by Act of Parliament to supply water within the limits of the special Act, with whom the Commissioners may be desirous of contracting, do not agree as to the price to be paid for such supply, then such price (except where by the Act authorising such waterworks, some other mode of determining such price shall be provided) shall be settled by arbitration, and for that purpose the *clauses of the Lands Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration*, shall be incorporated with this and the special Act.

CXXIV. The Commissioners shall cause fireplugs, and all necessary works, machinery, and assistance for securing an efficient supply of water in cases of fire, to be provided and maintained, and for this purpose they may enter into any agreement with any water company or other party, and they shall paint or mark on the buildings and walls within the streets, words or marks near to such fireplugs, to denote the situation thereof, and do such other things for the purposes aforesaid as they may from time to time deem expedient.

Slaughter-houses.

And with respect to *slaughter-houses*, be it enacted as follows: (1)

CXXV. The Commissioners may license such slaughter-houses and knackers'-yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

CXXVI. No place shall be used or occupied as a slaughter-house or knacker's-yard within the said limits which was not in such use and occupation at the time of the passing of the special Act, and has so continued ever since, unless and until a licence for the erection thereof, or for the use and occupation thereof as slaughter-house or knacker's-yard, have been obtained from the Commissioners:

(1) See 11 & 12 Vict. c. 63, ss. 61, 62; 21 & 22 Vict. c. 98, ss. 45, 48; and 11 & 12 Vict. c. 41, ss. 17—20.

And every person who, without having first obtained such licence as aforesaid, uses as a slaughter-house or knacker's-yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding *five pounds*, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, etc., to be registered.

CXXVII. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's-yard shall, within *three months* after the passing of such Act, be registered by the owner or occupier thereof at the office of the Commissioners, and on application to the Commissioners for that purpose the Commissioners shall cause every such slaughter-house or knacker's-yard to be registered in a book to be kept by them for that purpose:

And every person who after the expiration of the said *three months*, and after *one week's* notice of this provision from the Commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's-yard, without its being so registered, shall be liable to a penalty not exceeding *five pounds* for such offence, and a penalty not exceeding *ten shillings* for every day after the first day during which such place shall be used as a slaughter-house or knacker's-yard without having been so registered.

Commissioners may make bye-laws for regulation of slaughter-houses, etc.

CXXVIII. The Commissioners shall from time to time, by bye-laws to be made and confirmed *in the manner hereinafter provided*, make regulations for the licensing, registering, and inspection of the said slaughter-houses and knackers'-yards and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such bye-laws:

Provided that no such penalty exceed for any one offence the sum of *five pounds*, and in the case of a continuing nuisance the sum of *ten shillings* for every day during which such nuisance shall be continued after the conviction for the first offence.

Justices may suspend licence of slaughter-houses, etc., in addition to penalty imposed.

CXXIX. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the bye-laws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding *two months* the licence granted to such person under this or the special Act, or in case such person be the owner or proprietor of any registered slaughter-house or knacker's-yard, may forbid for any period not exceeding *two months* the slaughtering of cattle therein:

And such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the licence granted under this or the special Act revoked, or if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein:

And whenever the licence of any such person is revoked as

aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's-yard is absolutely forbidden as aforesaid, the Commissioners may refuse to grant any licence whatever to the person whose licence has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

CXXX. Every person who during the period for which any such licence is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's-yard to which such licence relates, or otherwise uses such slaughter-house or knacker's-yard, or allows the same to be used as a slaughter-house or knacker's-yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's-yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding *five pounds* for such offence, and a further penalty of *five pounds* for every day on which any such offence is committed after the conviction for the first offence.

Penalty for slaughtering cattle during suspension of licence, etc.

CXXXI. The inspector of nuisances, the officer of health, or other officer appointed by the Commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butchers' meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there; and in case such officer shall find any cattle, or the carcase, or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons:

Officers may enter and inspect slaughter-houses, etc.

And in case upon such inspection and examination such cattle, carcase, or part of a carcase, be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man:

And such justice may adjudge the person to whom such cattle, carcase, or part of a carcase, belongs, or in whose custody the same is found, to pay a penalty not exceeding *ten pounds* for every such animal, or carcase, or part of a carcase, so found:

And the owner or occupier of any building or place kept or used for the sale of butchers' meat, or for slaughtering cattle, and every other person who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal, or carcase, or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding *five pounds* for each offence.

Clocks.

CXLIII. (1) *With respect to clocks*, be it enacted, that the Commissioners may from time to time provide such clocks as they consider necessary, and cause them to be fixed upon or against any public building, or, with the consent of the owner or occupier,

Power to Commissioners to provide public clocks.

(1) This is incorporated with 21 & 22 Vict. c. 98, by s. 46.

upon or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and from time to time alter and remove any such clocks to such other like situation as they shall consider expedient.

Sect. 210. See *ante*, p. 297.

10 & 11 VICT. c. 89.

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns.

[22nd July, 1847.]

Interpretations
in this and the
special Act.

* * * * *

III. The following words (1) and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure:

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare or public passage within the limits of the special Act:

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression, "The Towns Police Clauses Act, 1847."

Obstructions and Nuisances.

With respect to *obstructions and nuisances in the streets*, be it enacted as follows:

Power to prevent obstructions in the streets during public processions, etc.

XXI. The Commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstructions of the streets within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding *forty shillings*.

(1) The following words are defined in the same manner as in 11 & 12 Vict. c. 63, s. 2, namely, *number, gender,*

person, month, superior Courts, oath, justice, quarter sessions.

XXII. On application to the Commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the Commissioners may make *orders* for regulating the route by which persons shall drive any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public *fast* or *thanksgiving*, and any *orders* so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the Commissioners direct, and every wilful breach of any such *order* shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding *forty shillings*.

Power to regulate the route of persons driving stage-carriages, etc., during divine service.

XXIII. No proprietor of any stage-carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence, which the driver of such stage-carriage makes in consequence of any regulation or direction made or given by the Commissioners.

Proprietors of stage-carriages deviating from route by order free from penalty.

XXIV. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the Commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the Commissioners a penalty not exceeding *forty shillings*, besides the reasonable expenses of impounding and keeping such cattle.

Power to impound stray cattle and impose penalty.

XXV. If the said penalty and expenses be not paid within *three days* after such impounding, the pound-keeper, or other person appointed by the Commissioners for that purpose, may proceed to sell or cause to be sold any such cattle:

Power to sell stray cattle for penalty and expenses.

But previous to such sale *seven days'* notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement to be inserted *seven days* before such sale in some newspaper published or circulated within the limits of the special Act:

And the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the Commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

XXVI. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding *three months*.

Persons guilty of pound-breach, to be committed for three months.

XXVII. The Commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound

Power to provide a pound.

Penalty on
persons com-
mitting any of
the offences
herein named.

for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the Commissioners.

XXVIII. Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding *forty shillings* for each offence, or in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding *fourteen days*; (that is to say,)

* * * * *

Every person who exposes for show, hire, or sale (except in a market or market-place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven, which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the Commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare :

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandize, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or show-board on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandize, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building, at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution :

Every person who wilfully and indecently exposes his person :

Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent, or obscene book, paper, print, drawing, painting, or representation ; or sings any profane or obscene song or ballad, or uses any profane or obscene language :

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bon-fire, or throws or sets fire to any firework :

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door-bell, or knocking at any door, and who wilfully or unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any

cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime:

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so enclosed as to prevent mischief to passengers):

Every person who beats or shakes any carpet, rug, or mat (except door-mats, beaten or shaken before the hour of eight in the morning):

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish or other thing, except snow thrown so as not to fall on any passenger:

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story:

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset, to warn and prevent persons from falling thereinto:

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street:

Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases:

Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

Penalty on
drunken persons,
etc.,
guilty of riotous
or indecent
behaviour.

XXIX. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station-house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days.

Fires.

And with respect to *fires*, be it enacted as follows:

XXX. Every person who wilfully sets or causes to be set on

fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding five pounds: Penalty for setting chimneys wilfully on fire.

Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

XXXI. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings: Penalty for accidentally allowing chimneys to catch fire.

Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant.

XXXII. The Commissioners may purchase or provide such engines for extinguishing fire, and such water-buckets, pipes, and other appurtenances for such engines, and such fire-escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit. Fire-engines and firemen may be provided by the Commissioners.

XXXIII. The Commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits: Fire-police permitted to go beyond the limits of the Act in certain cases.

And the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the Commissioners a reasonable charge for the use of such engines, with their appurtenances, and for the attendance of such firemen:

And in case of any difference between the Commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire, (if the propriety thereof be disputed,) shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the Commissioners as damages.

Places of Public Resort.

And with respect to *places of public resort*, be it enacted as follows:

XXXIV. Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business, any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall for every such offence be liable to a penalty not exceeding twenty shillings. Penalty on victuallers harbouring constables while on duty.

Penalty on
coffee-shop
keepers har-
bouring dis-
orderly persons.

XXXV. Every person keeping any house, shop, room or other place of public resort within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on
persons keeping
places for bear-
baiting, cock-
fighting, etc.

XXXVI. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animals, shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month:

And the Commissioners may, by order in writing, authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding five shillings:

And a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned.

Hackney Carriages.

And with respect to *hackney carriages*, be it enacted as follows:

Hackney car-
riages to be
licensed.

XXXVII. The Commissioners may from time to time license to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the General Post-Office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

What to be
hackney car-
riages.

XXXVIII. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intending to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act:

And in all proceedings at law or otherwise, the term "hackney carriage" shall be sufficient to describe any such carriage:

Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act:

Fee to be paid
for licence.

XXXIX. For every such licence there shall be paid to the clerk of the Commissioners, or other person appointed by them to receive the same, such sum as the Commissioners direct, not exceeding five shillings.

Persons apply-
ing for licence,

XL. Before any such licence is granted, a requisition for the same, in such form as the Commissioners from time to time pro-

vide for that purpose, shall be made and signed by the proprietor to sign a requisition for same. or one of the proprietors of the hackney carriage in respect of which such licence is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage :

And any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

XLII. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such licence, which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the Commissioners think fit. What shall be specified in the licences.

XLIII. Every licence shall be made out by the clerk of the Commissioners, and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward. Licences to be registered.

XLIII. Every licence so to be granted shall be under the common seal of the Commissioners, if incorporated, or if not incorporated, shall be signed by *two or more of the Commissioners*, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the Commissioners. Licence to be in force for one year only.

XLIV. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within *seven days* next after such change, give notice thereof in writing signed by him to the Commissioners, specifying in such notice his new place of abode : Notice to be given by proprietors of hackney carriages of any change of abode.

And he shall at the same time produce such licence at the office of the Commissioners, who shall, by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change :

And any person named in any such licence as aforesaid as the proprietor or one of the proprietors of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum s aafore-

said may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

Penalty for
plying for hire
without a
licence.

XLV. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance, without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

Drivers not to
act without
first obtaining
a licence.

XLVI. No person shall act as *driver* of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the Commissioners, which licence shall be registered by the clerk to the Commissioners, and a fee of one shilling shall be paid for the same:

And every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.

Penalty on
drivers acting
without licence.

XLVII. If any person acts as such driver as aforesaid without having obtained such licence, or during the time that his licence is suspended, or if he lend or part with his licence except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended as hereinafter provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding twenty shillings.

Proprietor to
retain licence of
drivers when
in his employ,
and to produce
the same when
summoned.

XLVIII. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver while such driver remains in his employ:

And in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ:

Justices may
endorse convictions
upon
licences.

And if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted:

Penalty on
proprietors for
neglect.

And if any such proprietor neglect to have delivered to him, and to retain in his possession, the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Proprietor to
return licence
to drivers when
quitting his
service if they

XLIX. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him:

But if such driver have been guilty of any misconduct, the pro-

prietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint: behave well; if otherwise, proprietors to summon them.

And such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint:

And if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such licence, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation. Compensation in case of licence being improperly withheld.

L. The Commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver. Licences to be suspended or revoked for misconduct.

LI. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire, within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry persons;" be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth: Number of persons to be carried in a hackney carriage to be painted thereon.

And the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

LII. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding *forty shillings*. Penalty for neglect or for refusal to carry the prescribed number.

LIII. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the Commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-law of the Commissioners, not exceeding the prescribed distance to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding *forty shillings*. Penalty on driver for refusing to drive.

LIV. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any bye-law made thereunder, such proprietor or driver shall be liable to a penalty not exceeding *forty shillings* if he exact or demand for such job more than the fare so agreed upon. Penalty for demanding more than the sum agreed for, though less than the legal fare.

LV. No agreement whatever made with the driver or with any person having or pretending to have the care of any such hackney Agreement to pay more than

the legal fare not to be binding, and sum paid beyond the proper fare may be recovered back.

carriage, for the payment of more than the fare allowed by any bye-law made under this or the special Act, shall be binding on the person making the same :

And any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid :

And if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of *forty shillings* :

And in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Driver to carry, under an agreement for a discretionary distance, the distance to which hirer is entitled for the fare.

LVI. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding *forty shillings* if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any bye-law made in pursuance thereof.

Deposit to be made for carriages waiting.

LVII. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the bye-laws, then the sum of *one shilling and sixpence* for every half-hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer :

Penalty on the driver refusing to wait, or to account for the deposit.

And if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away or permits such hackney carriage to be driven or taken away without the consent of such hirer before the expiration of the time for which such deposit was made, or if such driver, on the final discharge of such hackney carriage, refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding *forty shillings*.

Overcharge by hackney coachmen, etc., to be included in conviction, and returned to aggrieved party.

LVIII. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorised by any bye-law made under this or the special Act, shall be liable to a penalty not exceeding *forty shillings*, and such penalty may be recovered before one justice :

And in the conviction of such proprietor or driver, an order

may be included for payment of the sum so overcharged, over and above the penalty and costs :

And such overcharge shall be returned to the party aggrieved whose evidence shall be admissible in proof of the said offence.

LIX. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings. Penalty for permitting persons to ride without consent of the hirer.

LX. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof : No person to act as driver of any carriage without the consent of the proprietor.

And no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor :

And any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding *forty shillings* for every such offence.

LXI. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding *five pounds*, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding *two months*. Penalty on drivers misbehaving.

LXII. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage, and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody : Penalty for leaving carriages unattended at places of public resort.

And such driver shall be liable to a penalty not exceeding *twenty shillings* for such offence :

And in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made :

And after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justice as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

LXIII. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding *five pounds* as appears to the justice a reasonable compensation for such hurt or damage : Damage done by driver may be recovered from the proprietor.

And every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such com-

pensation shall be recoverable from such proprietor, and by him from such driver, as damages.

Improperly standing with carriage; refusing to give way to, or obstructing any other driver, or depriving him of his fare.

LXIV. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

LXV. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any bye-law made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable:

And in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Penalty for refusing to pay the fare.

LXVI. If any person refuse to pay, on demand, to any proprietor or driver of any hackney carriage the fare allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.

Penalty for damaging carriage.

LXVII. Any person using any hackney carriage plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding *five pounds*, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same:

And such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

Commissioners may make bye-laws for regulating hackney carriages.

LXVIII. The Commissioners may from time to time (subject to the restrictions of this and the special Act) make bye-laws for all or any of the purposes following; (that is to say,)

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check-

strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares :

For securing the safe custody and redelivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

Bathing.

And with respect to *public bathing*, be it enacted as follows :

LXIX. Where any part of the sea-shore or strand of any river Bathing used as a public bathing-place is within the limits of the special machines. Act, the Commissioners may make bye-laws for the following purposes; (that is to say,)

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe :

For preventing any indecent exposure of the person by the bathers :

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same :

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

APPENDIX (D).

PUBLIC WORKS LOAN ACTS.

16 & 17 VICT. c. 40.

An Act for altering the Mode of Repayment of Advances by the Public Works Loan Commissioners under the Public Health Act, 1848, and other Acts.

[8th July, 1853].

11 & 12 Vict.
c. 63.

WHEREAS by the one hundred and thirteenth section of the Public Health Act, 1848, it was enacted, that the interest secured by any mortgage authorized to be made under that Act should, unless otherwise provided, be paid half-yearly; and in order to pay off any moneys borrowed and secured by any such mortgage, the Local Board of Health should in every year, until the same should be paid off, appropriate and set apart as a sinking fund such sum as, together with the interest from time to time to accrue thereon, would in the period of thirty years amount to a sum sufficient to repay the moneys borrowed and secured by any such mortgage, and should from time to time cause such sinking fund and the interest thereon to be invested in the purchase of Exchequer Bills or other Government Securities, and to be increased by accumulation in the way of compound interest or otherwise; and whenever the said Local Board should be enabled to pay off one or more of the mortgages charged upon the same property or rate, and should not be able to pay off the whole of the mortgages so charged, they should, in default of arrangement between the Local Board of Health and the mortgagees decide by lot the order in which the same should be paid off: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Advances by
Public Works
Loan Commis-
sioners to be re-
paid by instal-
ments within
twenty years,
instead of by a
sinking fund in
thirty years.

57 Geo. III.
c. 34.

I. Notwithstanding the said one hundred and thirteenth section of the said Act, or any other provisions therein, any moneys thereby authorised to be borrowed and secured by way of mortgage may be borrowed from the Commissioners acting in execution of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act to authorize the issue of Exchequer Bills and the advance of money out of the Consolidated Fund to a limited amount, for the carrying on of public works and fisheries in the United Kingdom, and employment of the poor in Great Britain, in manner therein mentioned," and in execution of any Act or Acts for amending or continuing the same Act or Acts or any of them; and on any such loan by the said Commissioners called "The Public Works

Loan Commissioners" the repayment of the moneys borrowed, with interest thereon, shall be secured so as that the same, with the interest thereon, shall be fully repaid by instalments within the period of twenty years from the advancing thereof, instead of by forming such accumulating fund for the payment of moneys borrowed as by the said Act is provided; and all the powers and provisions in the said Act contained for raising rates for the forming a fund for the repayment of moneys to be borrowed under the provisions of the said Act shall apply and extend to the raising and paying any moneys which may be borrowed of the said Public Works Loan Commissioners, and the interest thereon.

II. In all cases of loans under the Public Health Act, 1848, and in all other cases where any loans or advances shall hereafter be made or have already been made by the said Public Works Loan Commissioners to any persons or bodies having power to borrow the same, or to any persons or bodies to whom the said Commissioners were, are, or shall be authorized or directed to lend any moneys under the provisions of any Act or Acts whatsoever, then, notwithstanding the provisions of the Public Health Act, 1848, or of any local or other Act, to the contrary, all loans or advances made or to be made shall be taken to have been made or to be made by the Public Works Loan Commissioners under the provisions of the several Acts in force authorizing loans by the said Public Works Loan Commissioners; and the securities for such loans shall be taken to have been made, and shall have such priorities, and shall be subject to the same powers, authorities, and remedies in all respects whatsoever, as if such loans, advances, and securities had been made under the authority of the several Acts in force relating to loans to be made by the Public Works Loan Commissioners, and notwithstanding any provision in any other Act now passed or to be passed contained as regards the priorities or mode of payment of any moneys authorized or directed by any such Act to be borrowed, except so far as the same may by any such Act be altered, varied, or repealed by express reference to this Act.

Securities for advances to be taken under the powers of the Public Works Loan Acts.

III. From and after the passing of this Act, it shall be lawful for the said Public Works Loan Commissioners, and they are hereby authorized, to make advances at such rate of interest as they in their discretion may think fit, not being less than the rate of three pounds ten shillings per centum per annum, except that in case at the time of which the said Commissioners shall resolve to make any loan, it shall appear that the rate of interest to be produced by an investment in the purchase of the stock called the three per centum consolidated bank annuities would be above three pounds ten shillings per centum per annum, then no such loan shall be granted at a rate of interest less than the rate which would be produced by an investment in the purchase of the said stock; and such rate of interest for the purpose aforesaid shall be ascertained by the said Commissioners by the average price of such stock on the day before the resolving to make such loan, if the transfer books shall on that day be open, if not, then by the average price of such stock on the day next before the closing of such transfer books: provided that if the rate of interest upon any advances to be made by the said Commissioners be less than the rate which, by the Act or Acts hereinbefore recited or referred

Loans may be advanced at a lower rate of interest than five per cent.

to, the said Commissioners are now authorized or required to take, or in case any loan the interest whereof is so as aforesaid to be regulated by the price of such stock, then the consent of the Commissioners of Her Majesty's Treasury for the time being shall be obtained previously to resolving to make such loan.

Powers of
Treasury to
reduce interest
not to be
affected.

IV. Nothing in this Act contained shall extend or be deemed or construed to extend to alter, lessen, or abridge the powers given to or vested in the Commissioners of Her Majesty's Treasury to reduce the rate of interest on any loan advanced or to be advanced by the said Public Works Loan Commissioners, in the manner and under the circumstances in any of the Acts hereinbefore referred to particularly stated or mentioned.

Short title.

V. In citing this Act for any purpose whatsoever it shall be sufficient to use the expression "The Public Works Loan Act, 1853."

24 & 25 VICT. c. 80.

An Act to authorize Advances of Money out of the Consolidated Fund for carrying on Public Works and Fisheries for Employment of the Poor, and for facilitating the Construction and Improvement of Harbours; and for other purposes.

[6th August, 1861.]

WHEREAS the following Acts have been passed: viz., an Act of the fifty-seventh year of King George the Third, chapter thirty-four; an Act of the same session of Parliament, chapter one hundred and twenty-four; an Act of the first year of King George the Fourth, chapter sixty; an Act of the first and second years of King George the Fourth, chapter one hundred and eleven; an Act of the third year of King George the Fourth, chapter eighty-six; an Act of the fourth year of King George the Fourth, chapter sixty-three; an Act of the fifth year of King George the Fourth, chapter thirty-six; an Act of the same session of Parliament, chapter seventy-seven; an Act of the sixth year of King George the Fourth, chapter thirty-five; an Act of the seventh year of King George the Fourth, chapter thirty; an Act of the seventh and eighth years of King George the Fourth, chapter twelve; an Act of the same session of Parliament, chapter forty-seven; an Act of the first and second years of King William the Fourth, chapter twenty-four; an Act of the third and fourth years of King William the Fourth, chapter thirty-two; an Act of the fourth and fifth years of King William the Fourth, chapter seventy-two; an Act of the first year of Her present Majesty, Queen Victoria, chapter fifty-one; an Act of the first and second years of Her present Majesty, chapter eighty-eight; an Act of the third year of Her present Majesty, chapter ten; an Act of the fifth year of Her present Majesty, chapter nine; an Act of the ninth and tenth years of Her present Majesty, chapter eighty; an Act of the fourteenth and fifteenth years of Her present Majesty, chapter twenty-three; an Act of the sixteenth and seventeenth years of Her present Majesty, chapter forty; and an Act of the nineteenth year of Her present Majesty, chapter seventeen: And whereas sundry advances or loans have been made by the Commissioners of the said Acts for the purposes in the same Acts

specified, and great benefits have been derived therefrom: And whereas further advances or loans are required for the like objects, and advances or loans are also required for the purposes of the Harbours and Passing Tolls, etc., Act, 1861, and it is deemed expedient to make advances of money out of the Consolidated Fund for the purposes of such loans: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. For the purposes of such advances or loans as aforesaid (exclusively of advances or loans for the purposes of the Harbours and Passing Tolls, etc., Act, 1861), the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being are hereby empowered by warrant under the hands of any two or more of them, to cause to be issued out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or out of the growing produce thereof, to the account of the Commissioners for the time being for the reduction of the National Debt, a sum or sums of money not exceeding three hundred and sixty thousand pounds per annum during the five years next ensuing the fourth day of April, one thousand eight hundred and sixty-two, by quarterly instalments or issues not exceeding ninety thousand pounds per quarter, the first instalment thereof to become due and payable in the quarter ending the thirtieth day of June, one thousand eight hundred and sixty-two.

Power to charge
£360,000 per
annum upon
the Consolidated
Fund by issues
not exceeding
£90,000 per
quarter.

II. For the purpose of advances or loans under the Harbours and Passing Tolls, etc., Act, 1861, the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being are hereby empowered, by warrant under the hands of any two or more of them, to cause to be issued out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or out of the growing produce thereof, to the account of the Commissioners for the time being for the reduction of the National Debt, a sum or sums of money not exceeding three hundred and fifty thousand pounds per annum during the five years next ensuing the passing of this Act, by quarterly instalments or issues not exceeding eighty-seven thousand five hundred pounds per quarter, the first instalment thereof to become payable in the quarter ending the thirtieth day of September, one thousand eight hundred and sixty-one, such moneys to be applied exclusively under the said Harbours and Passing Tolls Act.

Power to charge
£350,000 per
annum upon
the Consolidated
Fund by issues
not exceeding
£87,500 per
quarter for
harbours, etc.

III. The Commissioners for the time being for the reduction of the National Debt shall be, and they are hereby appointed, trustees on the part of the public for holding the said moneys to be issued and paid out of the Consolidated Fund as aforesaid, and they shall continue or cause to be continued the separate account already opened at the Bank of England with them under the title of "The Commissioners for the Reduction of the National Debt, on account of the Public Works Loan Fund," and which account the Governor and Company of the Bank of England shall and they are hereby required to continue in their books accordingly, and to which account shall be carried all such moneys as shall be issued and paid out of the Consolidated Fund for the

Commissioners
for reduction of
National Debt
to be trustees of
public works
loan fund, and
to cause a separ-
ate account to
be continued at
the Bank of
England for the
purpose.

purposes aforesaid; and the said Commissioners for the reduction of the National Debt shall continue and keep or cause to be continued and kept in their office, a book or books in which all the moneys transferred to their account by virtue of this Act and the said recited Acts shall be entered and kept separate and apart from all other moneys, and such moneys shall be by them held subject to the disposal, orders, and directions of the Commissioners of the said recited Acts and of this Act, for the purposes of such loans and advances and otherwise, as by the same Acts or the Acts relating thereto or this Act are directed or authorized to be made.

Bank to continue the account already opened with the Commissioners for executing this Act.

IV. The Governor and Company of the Bank of England shall, and they are hereby required, to continue the account already opened in their books with the Commissioners for the execution of this Act and of the said recited Acts under the title of "The Commissioners for the issue of Loans for Public Works and Fisheries, etc.," to the credit of which account shall be carried all principal and interest moneys which shall from time to time become payable in respect of loans made or to be made under the said recited Acts or this Act, and which shall be paid to the cashiers of the said Bank of England upon such or the like certificates, under the hands of the said Commissioners of the said recited Acts and of this Act, as have been heretofore used for such purpose in regard to Exchequer Bills or other loans, as directed by the said recited Acts or some or one of them, in such or the like manner in all respects as if the clauses and provisos in the said recited Acts or any of them, with respect to such payments and certificates, had been repealed and re-enacted in the body of this Act, or as near thereto as the difference of the circumstances will admit.

Money paid into the Bank to the account of Commissioners for executing this Act, to be carried to and be made part of the Consolidated Fund.

V. All and every sums and sum of money which shall be paid into the Bank of England to the account of the Commissioners for executing this Act, under and by virtue of this Act, shall from time to time, at such periods as the Commissioners of Her Majesty's Treasury shall direct, be transferred by the Governor and Company of the Bank of England to the account kept by the said Bank of England with her Majesty's Exchequer, and when so transferred shall be carried to and be made part of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Commissioners for executing recited Acts to be Commissioners together with others for executing this Act.

VI. The several persons who in and by or under the said recited Acts, or any of them, are named or constituted Commissioners for the execution of the said Acts, or so many of them as shall be living at the time of the passing of this Act, together with Paul Butler, Esq., George Grenfell Glyn, Esq., Thomson Hankey, Esq., Thomas Newman Hunt, Esq., and Henry Hussey Vivian, Esq., (who have been appointed Commissioners for the execution of the said recited Acts, under the authority of the same or some or one of them,) shall be and they and all future parties so constituted are hereby constituted Commissioners for the execution of the said recited Acts and this Act; and all Acts authorized by the said recited Acts and this Act to be done and executed by the said Commissioners, may be done and executed by any three or more of them.

Commissioners to sign the fol-

VII. The said Commissioners named in and by or under the said recited Acts or any of them, or this Act, shall, before they

enter upon the execution of this Act, sign a declaration to the following effect:

"I, A. B., do declare, That according to the best of my judgment, I will faithfully and impartially execute the several duties, powers, and trusts vested in me by an Act intituled [*insert title of this Act*], according to the tenour and purport of the said Act, and the Acts therein recited, and other Acts having reference thereto."

lowing declaration before acting.

And such declaration shall be kept and entered with the other proceedings of the said Commissioners.

VIII. When and so soon as the said Commissioners for the execution of the said recited Acts and this Act shall have determined upon any amount of money to be advanced and lent or paid under the provisions of this Act, the said Commissioners, or any three or more of them, shall forthwith certify such amount to the Commissioners for the reduction of the National Debt for the time being, and at the foot of every such certificate the secretary of the said Commissioners for the execution of the said recited Acts and this Act shall state the name or names of the person or persons by whom every such certificate is to be presented to the said Commissioners for the reduction of the National Debt, and upon every such certificate being produced to the officer of the said Commissioners for the reduction of the National Debt the comptroller-general, or assistant comptroller, or chief clerk acting under the said last-mentioned Commissioners, shall, upon the back of every such certificate, endorse and sign an order for the payment of the sum mentioned in every such certificate to the person or persons named at the foot of every such certificate, or to one of such persons, and which order of such officer previously to the issuing thereof shall be entered by the clerk or other proper officer, and shall be countersigned by the actuary or other check officer acting under the said last-mentioned Commissioners, and shall be addressed to the cashiers of the Governor and Company of the Bank of England; and such cashiers, or one of them, shall, upon the production of every such order, pay the sum mentioned therein to the person or persons mentioned in every such order, and the signature of such person or persons jointly or severally shall be a sufficient discharge to the said Commissioners for the reduction of the National Debt and to the said Governor and Company respectively, provided the total amount directed to be paid by such certificate or certificates respectively shall not at any time exceed the amount for the time being standing to the credit of the said account of the said Commissioners for the reduction of the National Debt under the provisions of this Act or of the said recited Acts.

Amount of moneys to be advanced under this Act to be certified to the Commissioners for the reduction of the National Debt.

IX. The said Commissioners for the execution of the said recited Acts and this Act shall cause to be made up an annual account to the thirty-first day of March in each year of the amounts placed at their disposal under the said recited Acts and this Act, the amounts advanced, and the amounts remaining unissued, also an account of the amount of the loans advanced by the said Commissioners under the said recited Acts, and this Act, the moneys received on account thereof and paid into the Exchequer, and the balance of principal and interest outstanding, distinguishing each class of loans, and also showing the amounts

Commissioners' for executing recited Acts and this Act to lay annual accounts before Parliament.

advanced and repaid in respect of each such class during the year ending the thirty-first day of March immediately preceding the date of such account, and the said Commissioners shall in each year cause such accounts to be laid before both Houses of Parliament on or before the thirtieth day of June if Parliament be sitting, or if Parliament be not sitting, then within fourteen days after the next meeting of Parliament.

Commissioners
for reduction of
the National
Debt to furnish
annual account
of the fund for
audit.

X. The Commissioners for the reduction of the National Debt shall cause to be made up for examination and audit an annual account to the thirty-first day of December in each year of the receipts, payments, and balances in the said account so directed to be kept by them in respect of the said Public Works Loan Fund as aforesaid, and shall deliver the same to the Commissioners for auditing the public accounts at Somerset Place.

Powers, etc., of
recited Acts to
have the same
force as if re-
enacted in this
Act.

XI. None of the several clauses, powers, authorities, provisos, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in the said recited Acts or any of them shall be affected nor be deemed to have been affected by anything in this Act, or in any other Act or Acts of Parliament already passed or to be passed, except so far as the same is by this Act, or may by any such Act passed or to be passed, be altered, varied, or repealed by express reference to the said recited Acts or this Act; and all and every the same several clauses, powers, authorities, provisos, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures, so far as the same can be made applicable and are not varied by this Act, shall be taken to extend to this Act and to everything to be done in pursuance of this Act, and as if such clauses, powers, authorities, provisos, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures were herein repeated and set forth.

APPENDIX (E).

THE QUARANTINE ACT.

6 GEO. IV. c. 78.

An Act to repeal the several laws relating to the performance of Quarantine, and to make other provisions in lieu thereof.
[27th June, 1825.]

WHEREAS it is expedient to repeal the several laws relating to the performance of quarantine, and to make other provisions in lieu thereof: Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of June, one thousand eight hundred and twenty-five, all and every Act, and all parts of Acts of the Parliament of Great Britain and Ireland respectively, and of the Parliament of the United Kingdom, relating to the performance of quarantine, or relating to the charging any duty or duties upon vessels which may be liable to, or have performed quarantine, shall be and the same is hereby repealed; save and except such Acts, and such parts of Acts, as relate to the payment and recovery of any duties imposed by the said Acts, or any parts of Acts, which shall be due and unpaid on the said first day of June by any person or persons under any or either of the said Acts; and also save and except as to any fine, penalty, forfeiture, or punishment, or fines, penalties, forfeitures, or punishments, to which any such person or persons may be liable by reason of the same; and also save and except as to any action, suit, prosecution, or other proceeding brought or commenced, or which shall hereafter be brought or commenced, for or on account of any such offence or offences so done or committed as aforesaid.

II. And be it enacted, that from and after the first day of June, one thousand eight hundred and twenty-five, all vessels, as well His Majesty's ships of war as others, coming from or having touched at any place from whence His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall have adjudged and declared it probable that the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects may be brought, and all vessels and boats receiving any persons, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever, from or out of any vessel so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares, and merchandise, packets,

Acts relating to quarantine repealed.
Exceptions.

What vessels shall be liable to quarantine.

packages, baggage, wearing apparel, books, letters, or other articles, shall have come or been brought in such vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such vessels at any port or place in the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and whether such vessels were or were not bound to any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever on board of any vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving vessels or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this Act, and of any order or orders which shall be made by His Majesty, his heirs and successors, by and with the advice of his or their Privy Council, concerning quarantine and the prevention of infection, from the time of the departure of such vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles shall have been received on board respectively; and all such vessels and boats as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandise, and all other articles as aforesaid, whether coming or brought in such vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandise, and other articles as aforesaid, on board such receiving vessel or boat as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time and in such manner as shall from time to time be directed by His Majesty, his heirs or successors, by his or their order or orders in Council, notified by proclamation, or published in the *London Gazette*, and that until such vessels and boats, persons, goods, wares, and merchandise, and other articles as aforesaid, shall have respectively performed, and shall be duly discharged from quarantine, no such person, goods, wares, or merchandise, or other articles as aforesaid, or any of them, shall either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, come or be brought on shore, or go and be put on board any other vessel or boat, in order to come or be brought on shore in any such port or place, although such vessels so coming from such infected place as aforesaid may not be bound to any port or place in the United Kingdom, or the islands aforesaid, unless in such manner and in such cases, and by such licence as shall be directed or permitted by such order or orders made by His Majesty, his heirs or successors, in Council, as aforesaid; and all such vessels and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandise, and other articles as aforesaid, whether coming or brought in such vessels or boats, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands

aforesaid, and although such vessels or boats shall not be bound to any port or place in the United Kingdom, or the islands aforesaid; and all commanders, masters, or other persons, having the charge or command of any such vessels or boats, whether coming from any infected place, or being otherwise liable to quarantine as aforesaid, shall be subject to all provisions, rules, regulations, and restrictions contained in this Act, or in any order or orders which shall be made by His Majesty, his heirs and successors, in Council, as aforesaid, concerning quarantine and the prevention of infection; and to all the pains, penalties, forfeitures, and punishments contained in this Act, for any breach or disobedience thereof, or of any order or orders of His Majesty in Council made under the authority thereof.

III. And be it further enacted, that it shall and may be lawful for His Majesty, his heirs and successors, by his or their order in Council, or for the Lords or others of his or their Privy Council, or any two or more of them, by their order from time to time, as often as they may see reason to apprehend that the yellow fever or other highly infectious distemper prevails on the continent of America, or in the West Indies, to require that every vessel coming from or having touched at any port or place on the continent of America or in the West Indies, shall come to an anchor at certain places to be appointed from time to time by the Commissioners of His Majesty's customs (who are hereby authorized to make such appointment), for the purpose of having the state of health of the crew of such vessel ascertained before such vessel shall be permitted to enter the port whereto she shall be bound, or any other port of the United Kingdom; but that such vessel shall not be deemed liable to quarantine unless it shall be afterwards specially ordered under that restraint.

IV. * * * * *

V. And whereas certain sorts of goods and merchandise are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into the United Kingdom, or the islands aforesaid: Be it enacted, That all such goods and merchandise as shall be particularly specified for that purpose in any order or orders made by His Majesty, his heirs or successors, in Council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in the United Kingdom, or the islands aforesaid, from any foreign country or place, in any vessel whatever, and the vessels in which the same shall be brought, and also all vessels which shall arrive from any port or place whatever, under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of His Majesty, his heirs or successors, in Council as aforesaid, respecting the same.

VI. And be it further enacted, that it shall and may be lawful for the Lords and others of His Majesty's Privy Council, or any two or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases, with respect to any vessel arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming

Power for Privy Council to order vessels coming from America or the West Indies, when the yellow fever, etc., prevails there, to go to certain places without being liable to quarantine.

Power to lord-lieutenant, where the urgency of the case requires, to give directions, by proclamation, where vessels shall perform quarantine, etc. Goods and vessels specified in any order of Council subject to quarantine, as also all vessels arriving from any port under suspicious circumstances as to infection. The Privy Council may make such order as they shall think necessary upon emergencies.

or suspicious circumstances as to infection, although such vessels shall not have come from any place from which His Majesty, his heirs or successors, by and with the advice of his Privy Council, may have adjudged and declared it probable that the plague or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandise, and other articles as aforesaid on board the same, and in case of any infectious disease or distemper appearing or breaking out in the United Kingdom, or the islands aforesaid, to make such orders and give such direction, in order to cut off all communication between any persons infected with any such disease or distemper, and the rest of His Majesty's subjects, as shall appear to the said Lords or others of His Majesty's Privy Council, or any two or more of them, to be necessary and expedient for that purpose, and likewise to make such orders as they shall see fit, for shortening the time of quarantine to be performed by particular vessels or particular persons, goods, wares, merchandise, or any other articles, or for absolutely or conditionally releasing them or any of them from quarantine; and all such orders so made by the Lords or others of the Privy Council, or any two or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes, as well with respect to the commander, master, or other person having the charge of any vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments to which they may respectively become liable, as any order or orders made by His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, concerning quarantine, notified by proclamation or published in the *London Gazette*. (1)

(1) The following order has been issued under the above section:—

At the Council Chamber, the 7th day of May, 1866.

By the Lords of Her Majesty's most honourable Privy Council.

Present:—Lord President, Lord Privy Seal, Duke of Somerset, Sir George Grey, Sir Thomas Freemantle, Mr. Milner Gibson, Mr. Villiers, and Mr. Bruce.

Reciting 6 Geo. IV. c. 78, s. 61, it is, among other things, enacted, that whereas a certain infectious disease—that is to say, Asiatic cholera—is prevalent in certain foreign parts; and whereas it is expedient to cut off all communication between persons on board any vessel infected with that disease and the rest of Her Majesty's subjects:—

Now, therefore, in exercise of the powers conferred upon them by the above-quoted section of the said Act, the Lords of the Council do order, and it is hereby ordered—

I. That, in case of any vessel arriving in any port of the United Kingdom having such disease on board, no person shall land from such vessel for the space

of three clear days after her arrival, without the permission of the local authority.

II. The local authority shall forthwith cause all persons on board the said vessel to be examined by a physician or surgeon, and shall permit all such persons to land immediately who shall be certified by such physician or surgeon to be free from such disease.

III. All persons certified by such physician or surgeon to be affected with symptoms of such disease shall be removed, if their condition admits of it, to some hospital or place to be designated for such purpose by the local authority; and no person so removed shall quit such hospital or place until some physician or surgeon shall have certified that such person is free from the said disease.

IV. In the event of any death from cholera taking place on board of such vessel, the body shall be taken out to sea and committed to the deep, properly loaded, to prevent its rising.

V. The clothing and bedding of all persons who shall have died or had an

VII. And be it further enacted, that if the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any vessel within or without the Straits of Gibraltar, then the commander, master, or other person having the charge or command thereof, shall immediately proceed to such place as His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall from time to time direct and appoint; where being arrived, he shall make known his case to some officer of the customs there, who shall with all possible speed send intelligence thereof to the Commissioners of the customs in the port of London, to the end that such precautions may be used to prevent the spreading of the infection, as the case shall require; and the said vessel shall there remain until directions shall be given thereto by the Lords or others of His Majesty's Privy Council, or any two or more of them; nor shall any of the crew or passengers on board thereof go on shore; and such master and every other person on board such vessel shall obey such directions as he shall receive from the Lords and others of His Majesty's Privy Council, or any two or more of them as aforesaid; and the same commander, master, or any other person on board such vessel as aforesaid, who shall not act conformably to the provisions and regulations herein directed, or shall act in disobedience to such directions as shall be received on board such vessel from the Lords or others of the Privy Council, or any two or more of them as aforesaid, shall forfeit the sum of one hundred pounds.

Regulations for vessels in which infection shall appear within or without the Straits of Gibraltar.

VIII. And be it further enacted, that every commander, master, or other person having the charge of any vessel liable to the performance of quarantine, shall be and is hereby required at all times, when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his vessel is liable to the performance of quarantine, which signal shall in the daytime, if the said vessel shall have a clean bill of health, be a large yellow flag, of six breadths of bunting, at the maintop-mast-head, and if such vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball, entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night-time the signal shall in both cases be a large signal-lantern with a light therein (such as is commonly used on board His Majesty's ships of war), at the same mast-head; and such commander, master, or other person shall keep such signals respectively, as the case shall be, hoisted during such time as the said vessel shall continue within sight of such other vessel, or within two leagues of the said coasts or islands, and while so in sight, or

Masters of vessels liable to quarantine to make signals on meeting other vessels at sea, or being within two leagues of the United Kingdom, or Guernsey, etc., on penalty of £100.

attack of cholera on board such vessel during her voyage, either at any foreign port or on shore at such port, or on her passage to the United Kingdom, shall be disinfected, or (if necessary) destroyed under the direction of an officer of the customs.

VI. The local authority, for the purposes of this order, shall be the Local Board of Health where there is such

Local Board; and in any corporation where there is no such Local Board the local authority shall be the Town Council of such corporation.

VII. All persons offending against this order shall be liable to such penalties as are imposed by the said Act of Parliament upon persons offending against the provisions thereof.

ARTHUR HELPS.

within such distance, until such vessel so liable to quarantine as aforesaid shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person having charge of such ship or vessel so liable to the performance of quarantine shall forfeit and pay for every such offence the sum of one hundred pounds.

Masters of vessels to hoist certain signals when plague or infectious disease on board, on penalty of £100.

IX. And be it further enacted, That every commander, master, or other person having the charge of any vessel on board whereof the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects shall actually be, shall be and is hereby required at all times when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his vessel has the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects actually on board thereof, which signal shall be in the daytime a flag of yellow and black, borne quarterly, of eight breadths of bunting, at the maintop-mast-head; and in the night-time, the signal shall be two large signal-lanterns, such as are commonly used on board of His Majesty's ships of war, one over the other, at the same mast-head; and such commander, master, or other person shall keep such signal hoisted during such time as the said vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall continue within sight of such other vessel, or within two leagues of the coasts or islands aforesaid, while so in sight or within such distance, until such vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure thereof such commander, master, or other person having charge of such vessel shall forfeit and pay for every such offence the sum of one hundred pounds.

Penalty on persons hoisting signals when not liable, £50.

X. And be it further enacted, that if any commander, master, or other person having the charge or command of any vessel, and knowing that the same is not liable to the performance of quarantine, shall hoist such signal as aforesaid, or either of them, by day or night respectively, such commander or other person as aforesaid shall forfeit and pay the sum of fifty pounds.

Masters of vessels, on their arrival from foreign parts, to give to the pilots an account of the places at which they shall have loaded and touched, on penalty of £100.

XI. And be it further enacted, that from and after the first day of July, one thousand eight hundred and twenty-five, as to all vessels arriving from any places beyond the Cape of Good Hope, or Cape Horn in South America, and after the first day of August one thousand eight hundred and twenty-five, as to all vessels arriving from any parts of Africa or America not beyond those capes, and from the West Indies and Mediterranean, and from and after the first day of June, one thousand eight hundred and twenty-five, as to all vessels arriving from any other places, every commander, master, or other person having the charge of any vessel coming from foreign parts, shall give to the pilot who shall go on board such vessel a written paper, containing a true account of the names of the place and country at which such vessel shall have loaded, and also of all the places at which any such vessel shall have touched on the homeward voyage, on pain

Pilots to give notice of any proclamation

of forfeiting the sum of one hundred pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in Council, made after the departure of any vessel from the United Kingdom and the said islands, and then in force, vessels coming from any place mentioned in any such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person aforesaid, of such vessel; on pain of forfeiting the sum of one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal, according to the provisions of this Act, and under the penalties in this Act contained for any neglect or refusal in respect of hoisting such signals.

XII. And be it further enacted, that every commander, master, or other person having the charge of any vessel coming from foreign parts, which shall not be liable to quarantine in respect of the place from whence such vessel comes, shall give to the pilot who shall go on board of such vessel a written paper, containing a true account of the different articles composing the cargo of such vessel, on pain of forfeiting the sum of fifty pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in Council then in force, vessels having on board any of the articles mentioned in such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person having the charge of such vessel, on pain of forfeiting one hundred pounds for neglect therein, and such commander or other person shall thereupon hoist a signal, according to the provisions and under the respective penalties in this Act contained, for any neglect or refusal in respect of hoisting such signals; and in case any pilot shall bring or cause to be brought or conducted any vessel liable to the performance of quarantine, into any place which is not or shall not be specially appointed for the reception of vessels so liable, after receiving such paper as aforesaid, whereby it shall have been made appear that such vessel was liable to the performance of quarantine, or without requiring and receiving such paper as aforesaid, unless compelled thereto by stress of weather, adverse winds, or accidents of the sea, such pilot shall for every such offence forfeit and pay the sum of two hundred pounds.

XIII. And be it further enacted, that if any pilot being on board, or any commander, master, or other person having the charge of any vessel coming from foreign parts, whether such vessel shall be liable to quarantine or not, shall be required by any officer of the customs, authorized to act in the service of quarantine, to bring to such vessel, to the end that the commander, master, or other person having the charge thereof may be interrogated according to the provision of this Act, and shall neglect or refuse to bring to such vessel, as soon as it can be done with safety, in obedience to such requisition, every such pilot, commander, master, or other person having the charge of any such vessel shall for every such offence forfeit and pay the sum of one hundred pounds.

XIV. And to the end that it may be better known whether

or order in Council requiring the performance of quarantine, on penalty of £100.

Pilot to give notice if any articles be on board liable to quarantine, on penalty of £100.

Penalty on pilots conducting vessels to any other place than that appointed for their reception, £200.

Pilot to bring to at request of officer of customs, on penalty of £100.

For better
ascertaining
whether vessels
be actually in-
fected, or the
persons on
board liable to
orders touching
quarantine.

Masters of
vessels refusing
to answer in-
terrogatories,
etc., to forfeit
£200.

Vessels subject
to quarantine
arriving at any
port than that
at which it
ought to be
performed, may
be forced to
repair to the
appointed place.

Masters of
vessels that
have touched
at infected
places, etc.,
omitting to dis-

any vessel be actually infected with the plague or other infectious disease or distemper as aforesaid, or whether such vessel, or the mariners or passengers coming, or the cargo imported in the same, are liable to any orders touching quarantine, be it further enacted, That when any country or place shall be known or suspected to be infected with the plague or other infectious disease or distemper as aforesaid, or when any order or orders shall be made by His Majesty in Council concerning quarantine and the prevention of infection as aforesaid, then and in such case, as often as any vessel shall attempt to enter into any port or place in the United Kingdom, or of the Isles of Guernsey, Jersey, Alderney, Sark, or Man, whether such port shall have been appointed for the performance of quarantine or not, the superintendent or assistant at such port or place, or, if not, the principal officer of His Majesty's customs at such port or place, or such officer of the customs as shall be authorized to act in that behalf, shall go off to such vessel, and shall, at a convenient distance from such vessel, demand of the commander, master, or other person having charge of such vessel, and such commander, master, or other person shall, upon such demand, give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall by such superintendent or his assistant, or other officer of the customs authorized as aforesaid, be required, to all such questions and interrogatories as shall be put to him by virtue and in pursuance of such regulations and directions as His Majesty by order in Council shall be pleased to prescribe; and in case such commander, or master, or other person having charge of such vessel shall, upon such demand made as aforesaid, refuse to make a true discovery in any of the particulars concerning which he shall be interrogated in manner aforesaid, or in case he shall not be required to answer such questions or interrogatories upon oath, shall give a false answer to any such question or interrogatory as aforesaid, such commander, master, or other person having charge of such vessel for every such offence shall forfeit and pay the sum of two hundred pounds.

XV. And be it further enacted, that in case it shall appear, upon such examination or otherwise, that such vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrived, or at which it attempts to enter as aforesaid, is not the port or place where it ought to perform quarantine, in which case it shall and may be lawful to and for the officers of any of His Majesty's ships of war, or of any of His Majesty's forts or garrisons, and all other His Majesty's officers, upon notice thereof given to them, or any of them respectively, and to or for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required to oblige such vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such vessel, or by any other kind of necessary force whatsoever; and in case any such vessel shall come from, or shall have touched at any place infected by the plague, or such other infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague or other such infectious disease or distemper as aforesaid, and the commander, master, or other person

having charge of such vessel, knowing that the place from whence he came, or at which he had touched as aforesaid was infected with the plague or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague or such other infectious disease or distemper as aforesaid, shall refuse or omit to disclose the same upon such examination as aforesaid, or shall wilfully omit to hoist the signal hereinbefore directed, to denote that his vessel is liable to the performance of quarantine, at the times and on the occasions herein directed with respect to the same, such commander, master, or other person having charge of such vessel shall forfeit the sum of three hundred pounds.

close the same, or omitting to hoist the prescribed signal, to forfeit £300.

XVI. And be it further enacted, that every commander, master, or other person having charge of any vessel which shall be ordered to perform quarantine as aforesaid, shall forthwith, after his arrival at the place appointed for the performance of quarantine, deliver on demand to the superintendent of quarantine or his assistant, or other officer of the customs, authorized to act in that behalf, and which superintendent, assistant, or other officer as aforesaid is hereby required to make such demand, his bill of health and manifest, together with his log-book and journal, under pain of forfeiting the sum of one hundred pounds if he shall wilfully refuse or neglect so to do.

Commanders to deliver up bills of health, manifests, and log-book, to the superintendent of quarantine, on penalty of £100.

XVII. And be it further enacted, that if any commander, master, or other person having charge of any vessel liable to perform quarantine, and on board of which the plague or other infectious disease or distemper shall not then have appeared, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such vessel to quit such vessel by going on shore, or by going on board any other vessel or boat, before such quarantine shall be fully performed, unless by such licence as shall be granted by virtue of any order in Council to be made concerning quarantine as aforesaid, or in case any commander or other person having charge of such vessel shall not, within a convenient time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed into the place or places appointed for such vessel and lading to perform quarantine; then and in every such case every such commander, master, or other person as aforesaid, for every such offence shall forfeit and pay the sum of four hundred pounds; and if any such person coming in any such vessel liable to quarantine (or any pilot or other person going on board the same, either before or after the arrival of such vessel at any port or place in the United Kingdom, or the islands aforesaid), shall, either before or after such arrival, quit such vessel, unless by such licence as aforesaid, by going on shore in any port or place in the United Kingdom, or the islands aforesaid, or by going on board any other vessel or boat, with intent to go on shore as aforesaid, before such vessel so liable to quarantine as aforesaid shall be regularly discharged from the performance thereof, it shall and may be lawful for any person whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such vessel so liable to quarantine to return on board the same; and every such pilot or other person so quitting such vessel so liable to quarantine shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of three hundred pounds.

Penalty on masters, etc., quitting vessels, or permitting persons to quit them, or not conveying same to the appointed places, £400.

Penalty on persons coming in such vessels, or going on board, and quitting them before discharged from quarantine, to suffer imprisonment for six months, and forfeit £300.

For punishing disobedience or refractory behaviour in persons under or liable to quarantine, or persons having intercourse with them.

Persons refusing to repair to the lazaret or vessel, to forfeit £200.

Persons quitting vessels liable to perform quarantine, etc., may be seized.

XVIII. And whereas disobedience or refractory behaviour in persons under quarantine or liable to the performance of quarantine, or in other persons who may have had any intercourse or communication with them, may be attended with very great danger to His Majesty's subjects: Be it further enacted, that all persons liable to perform quarantine, and all persons having had any intercourse or communication with them, whether in vessels or in a lazaret or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendent of quarantine, or his assistant, or from the principal officer of the customs at any port or place where there is no such superintendent or assistant, or from any other officer of the customs authorized to act in that behalf, and the said officers are hereby empowered and required to enforce all necessary obedience to the said orders, and in case of necessity to call in others to their assistance, and all persons so called in are hereby required to assist accordingly; and such officers shall and they are hereby empowered and required to compel all persons liable to perform quarantine as aforesaid, and persons having had any intercourse or communication with them, to repair to such lazaret, vessel, or place, and to cause all goods, wares, and merchandise, and other articles comprised within any such orders to be made as last aforesaid, to be conveyed to such lazaret, vessel, or place duly appointed in that behalf, in such manner and according to such directions as shall be made by order of His Majesty in Council as aforesaid, or of the Lords or others of the Privy Council, or of any two or more of them; and if any person or persons liable to perform quarantine as aforesaid, or any person or persons having had any intercourse or communication with him, her, or them, shall wilfully refuse or neglect to repair forthwith, when required and directed so to do by such officers as aforesaid, to the said lazaret, vessel, or place duly appointed in that behalf, or having been placed in the said lazaret, vessel, or place, shall escape or attempt to escape out of the same before quarantine duly performed, it shall and may be lawful to and for the said quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, and each of them, and they are hereby respectively required, by such necessary force as the case shall require, to compel every such person so refusing or neglecting as aforesaid, and every such person so escaping or attempting to escape as aforesaid, to repair or return to such lazaret, vessel, or place so appointed as aforesaid; and every person so refusing or neglecting to repair forthwith as aforesaid to the said lazaret, vessel, or place, and also every person actually escaping as aforesaid, shall forfeit the penalty of two hundred pounds.

XIX. And be it further enacted, that it shall be lawful for any constable, headborough, tithingman, or other peace officer, or any other person, to seize and apprehend any person that shall, contrary to the provisions of this Act, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret, vessel, or place appointed in that behalf, for the purpose of carrying such person before any justice of the peace or magistrate; and it shall be lawful for any such justice of the peace or magistrate to grant his warrant for the

apprehending and conveying of any such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody (not being a public gaol), and under such restrictions as to having any communication with any other persons, as may in the discretion of any justice of the peace or magistrate (calling to his aid, if he shall see fit, any medical person) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Privy Council as to the disposal of any such person, and to make any further order, or grant any further warrant that may be necessary in that behalf.

XX. And whereas it may be necessary for the public security to prevent all communication whatever with vessels performing quarantine: Be it therefore further enacted, that it shall and may be lawful to and for His Majesty, his heirs or successors, by his or their order or orders in Council, notified by proclamation or published in the *London Gazette*, to prohibit all persons, vessels and boats whatsoever, from going, under any pretence whatsoever, within the limits of any station which by any order or orders in Council as aforesaid has been or may be assigned for the performance of quarantine; and if any person whatsoever, after such notification or publication of any such order or orders in Council, shall presume, under any pretence whatsoever, to go with any vessel or boat within the limit of any such station, he or she shall for every such offence forfeit and pay the sum of two hundred pounds.

Intercourse with stations allotted for quarantine of vessels, may be prohibited by order in Council.

XXI. And be it further enacted, that if any officer of His Majesty's customs, or any other officer or person whatsoever, to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other breach or neglect of his duty in respect of the vessels, persons, goods, or articles performing quarantine, every such officer or person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thence incapable to hold or enjoy the same, or to take a new grant thereof; and every such officer and person shall forfeit and pay the sum of two hundred pounds; and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and willingly permit any person, vessel, goods, or merchandise to depart or be conveyed out of the said lazaret, vessel, or other place as aforesaid, unless by permission under an order of His Majesty, by and with the advice of his Privy Council, or under an order of two or more of the lords or others of his Privy Council; or if any person hereby authorized and directed to give a certificate of a vessel having duly performed quarantine or airing, shall knowingly give a false certificate thereof, every such person so offending shall be guilty of felony; and if any such officer or person shall knowingly or wilfully damage any goods performing quarantine under his direction, he shall be liable to pay one hundred pounds damage and full costs of suit to the owner of the same.

Penalty on persons embezzling goods performing quarantine, neglecting or deserting their duty, or permitting persons, vessels, etc., to depart without authority, or giving false certificates or damaging goods.

Vessels from the Mediterranean, Turkey, or Africa, having undergone examination and released from quarantine, to be admitted to entry upon producing a certificate of such examination.

After proof of performance of quarantine, and proper certificate to that effect, vessels or persons shall not be liable to further detention.

Goods liable to perform quarantine shall be opened and aired, as directed by order in Council, and proof thereof to be made, etc.

XXII. And be it further enacted, that if any vessel arriving from the Mediterranean, or from any port in Turkey or Africa, shall have undergone examination by the proper officer of quarantine, and upon a report of such examination being made to the Lords or others of His Majesty's Privy Council, their lordships shall think proper to direct the release of such vessel from the performance of quarantine, it shall be lawful for such officer and he is hereby required to grant to the master or person having the charge or command of such vessel, a certificate in writing of such examination and release, and upon the production of such certificate to the collector or principal officer of His Majesty's customs, at any port in the United Kingdom, such vessel shall be admitted to entry without being liable to any further restraint.

XXIII. And be it further enacted, that after quarantine shall have been duly performed by any vessel, person or persons, obliged to perform quarantine as aforesaid, according to this Act, and to such order or orders made as aforesaid, and upon proof to be made by the oaths of the master or other person having charge of such vessel, and of three or more of the persons belonging thereto, or upon proof to be made by the oaths of two or more credible witnesses, before the collector or principal officer of the customs at the port where such quarantine shall be performed, or at the port nearest thereto, or before the superintendent of quarantine, or his assistant at the quarantine station, or before any justice of the peace living near to the port or place, or when such quarantine shall have been performed within any of the said isles of Guernsey, Jersey, Alderney, Sark, or Man, before any two jurats or magistrates of any of the said isles respectively, that such vessel, and all and every such person and persons respectively, have duly performed quarantine as aforesaid, and that the vessel and all and every person and persons are free from infection, and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said vessel, or person acting for him, then and in the said respective cases such collector or principal officer of the customs, or the superintendent of quarantine, or his assistant, or such justice of the peace, or such jurats or magistrates as aforesaid, respectively, are hereby required to give a certificate thereof, and thereupon such vessel, and all and every such person or persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account, for which such vessel, person or persons, shall have performed quarantine as aforesaid.

XXIV. And be it further enacted, that all goods, wares, and merchandise, and other articles liable to quarantine as aforesaid, shall be opened and aired in such place or places, and for such time and in such manner as shall be directed by His Majesty, his heirs and successors, by such order or orders to be made as aforesaid, and after such orders shall have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandise and all other articles shall have been opened and aired, and of one of the guardians, or if there be no guardians, then one of the officers authorized by the Commissioners of Customs to act in the service of quarantine in such lazaret or vessel, or if there be no such officer, then by the oaths of two or more credible witnesses

serving in the said lazaret or vessel, before the superintendent of quarantine or his assistant, in case such opening and airing shall be had at a port or place where such superintendent or assistant shall be established, or otherwise before the principal officer of the customs authorized to act in the service of quarantine at such port or place, which oath such superintendent, assistant, or principal officer is hereby authorized to administer; and such superintendent, assistant, or principal officer, as the case may be, shall grant a certificate of such proof having been made, and upon production of such certificate to the proper officer of the customs, such goods, wares, and merchandise, and other articles, shall be liable to no further restraint or detention, either at the port or place where such quarantine shall have been performed, or at any other place whereto they be afterwards conveyed.

XXV. And be it further enacted, that if any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of His Majesty, his heirs or successors in Council, now in force or hereafter to be made touching quarantine, or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully utter and publish any such certificate with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony.

Persons forging or uttering false certificates required by order in Council, guilty of felony.

XXVI. And be it further enacted, that if any person shall land or unship, or shall move in order to the landing or unshipping thereof, any goods, wares, or merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles from on board any vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they have been so landed or unshipped, every such person shall forfeit and pay the sum of five hundred pounds; and if any person or persons shall clandestinely convey or secrete, or conceal for the purpose of conveying any letters, goods, wares, or merchandise or other articles as aforesaid, from any vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandise, or other articles as aforesaid shall be performing quarantine, every such person so offending as last aforesaid shall forfeit the sum of one hundred pounds.

Penalty on persons landing goods, etc., from vessels liable to perform quarantine, or receiving them, or securing them from vessels performing quarantine, £100.

XXVII. And be it further enacted, that in case it shall at any time happen that any part of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, or France, Spain, or Portugal, or the Low Countries, shall be infected with the plague, or any other infectious disease or distemper as aforesaid, it shall and may be lawful to and for His Majesty, his heirs and successors, by his or their proclamation, to prohibit or restrain all vessels and boats under the burthen of one hundred tons from sailing or passing out of any port or place of the United Kingdom, or the isles of Guernsey, Jersey, Alderney, Sark, or Man, or any of them, until security be first given by the master of every such vessel or boat respectively, to the satisfaction of the principal officers of the customs, or the chief magistrate of the port or place from whence such vessel or boat shall sail, by bond taken

His Majesty in certain cases may prohibit vessels under 100 tons from sailing until bond be given by the master with certain conditions.

by such officer or magistrate, to the king, his heirs or successors, with sufficient sureties in the penalty of two hundred pounds, with condition, that if such vessel or boat shall not go to or touch at any country, port, or place to be mentioned for that purpose in such proclamation, and if neither the master or other person having charge of such vessel or boat, nor any mariner or passenger in such vessel or boat, shall, during the time aforesaid, go on board any other vessel at sea, and such master or other person having charge of such vessel or boat shall not permit or suffer any person or persons to come on board such vessel or boat at sea from any other vessel, and shall not during the time aforesaid receive any goods or merchandise whatsoever out of any other vessel, then such bond shall be void; for the making of which bond no fee or reward whatsoever shall be taken; and in case any vessel or boat for which such security shall be required by such proclamation shall set sail or pass out of any port or place of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, or any of them respectively, before security be given as aforesaid, every such vessel or boat so sailing or passing out of any port or place contrary to the true intent and meaning of this Act, together with her tackle, apparel, and furniture, shall be forfeited to His Majesty, his heirs and successors, and the master of and every mariner sailing in such vessel or boat shall severally forfeit and pay the sum of two hundred pounds.

Penalty for sailing without giving such security, forfeiture of vessel, etc.

Power to consuls, etc., to administer oaths.

Persons authorized to take examinations may administer oaths, and persons swearing falsely or procuring others so to do shall be deemed guilty of perjury.

Superintendents at ports to be appointed. Principal officer of the customs to act as superintendent of quarantine in case of absence, etc. Publication in the *London*

XXVIII. And be it further enacted, that the consuls and vice-consuls of His Majesty, his heirs and successors, shall and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

XXIX. And be it further enacted, that in all cases wherein by virtue of this Act, or any other Act hereafter to be made touching quarantine, any examination or answer shall be taken or made upon oath, the person who shall be authorized and required to take such examinations and answers shall and may be deemed to have full power and authority to administer such oaths: and if any person who shall be interrogated or examined shall wilfully swear falsely to any matter concerning which such person shall depose or make oath on such examination, or in such answer, or if any person shall procure any other person so to do, he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of and shall be liable to be prosecuted for perjury or subornation of perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law in such case respectively made and provided.

XXX. And be it further enacted, that all superintendents of quarantine at the several ports, and their assistants, shall and may be appointed by any instrument signed by the Commissioners of customs for the time being; and everything required to be done and performed by the superintendent of quarantine, or his assistant, may, in case of the absence or sickness of such superintendent or assistant, be done and performed by such principal officer of the customs as shall be authorized to act in that behalf.

XXXI. And be it further enacted, that the publication in the *London Gazette* of any order in Council, or of any order by any two or more of the Lords or others of His Majesty's Privy Council

made in pursuance of this Act, or His Majesty's royal proclamation made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

Gazette of orders of council, etc., sufficient notice.

XXXII. And be it further enacted, that all forfeitures and penalties that shall be incurred by reason of any offence committed against this Act shall and may be recovered by suit in any of His Majesty's Courts of Record in England or Ireland, in which no essoign or wager of law, or more than one imparlance, shall be granted, or in Scotland by summary action in the Court of Session, or by prosecution before the Court of Justiciary there, or by suit in any of His Majesty's Courts in the islands of Guernsey, Jersey, Alderney, Sark, or Man; and every such forfeiture and penalty shall belong and be given, two-thirds to the person who shall inform and sue for the same, and the remainder to His Majesty, his heirs, and successors.

Recovery and application of penalties.

XXXIII. Provided always, and be it further enacted, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, information, or prosecution, or actions, bills, plaints, informations or prosecutions, in any of His Majesty's Courts in England, Ireland, or Scotland, or any proceeding or proceedings before any justice of the peace of any county, riding, division, city, town, stewartry, or place for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in Council, or by two or more of the Lords or others of His Majesty's Privy Council as aforesaid, unless the same be commenced, prosecuted, entered, or filed in the names of His Majesty's Attorney-General in England or Ireland, or Advocate in Scotland respectively, or under the direction of the Commissioners of the customs, and in the name or names of some officer or officers of the customs in England, Ireland, or Scotland respectively; and if any action, bill, plaint, information, or prosecution, actions, bills, plaints, informations, or prosecutions, or any proceeding or proceedings before any justice as aforesaid, shall be commenced, prosecuted, entered, and filed in the name or names of any other person or persons than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

In whose name actions for penalties in England, Ireland, or Scotland must be prosecuted.

XXXIV. Provided also, and be it further enacted, that in case any prosecution, suit, complaint, or other proceeding as aforesaid, shall be commenced or depending by any officer or officers of the customs, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in Council, or by any two or more of the Lords or others of His Majesty's Privy Council as aforesaid, it shall and may be lawful for His Majesty's Attorney-General in England or Ireland, or Advocate in Scotland respectively, to stop all further proceedings therein, as well with respect to the share of such fine, penalty, or forfeiture, fines, penalties, or forfeitures, to which any such officer or officers shall or may claim to be entitled, as to the share thereof belonging to His Majesty, if upon consideration of the circumstances under which

In prosecutions by officers of the customs, the Attorney-General in England or Ireland, or Advocate in Scotland, may stop proceedings.

any such fine, penalty, or forfeiture, fines, penalties, or forfeitures, may be incurred, it shall appear to them respectively to be fit and proper so to do.

Offences not being felony, and offences for which no specific penalty is provided, may be determined before three justices, who may fine or imprison.

Application of penalties.

Answers of persons having the charge of vessels shall be received as evidence so far as relates to the places from which vessels came, or at which they touched, and the having been directed to perform quarantine shall be received as evidence that vessels were liable, unless proof be made to the contrary, and the performance of quarantine shall be proof of vessels being liable to perform it.

XXXV. And be it further enacted, that all offences committed against any of the provisions of this Act, for which no specific penalty, forfeiture, or punishment is provided by this Act, shall and may be tried, heard, and determined before any three justices of the peace of the county, riding, division, city, or place where such offence or disobedience shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to such forfeiture and penalty not exceeding the sum of five hundred pounds for any offence, or to such imprisonment, not exceeding twelve months for any one offence, as shall in the discretion of the three justices who shall have heard and determined the same be judged proper: and such forfeiture and penalty shall be paid, two-thirds to the person suing for the same, and the remainder to His Majesty, to be applied as the proceeds of other forfeitures and penalties are hereinbefore directed to be applied.

XXXVI. And be it further enacted, that in any prosecution, suit, or other proceedings against any person or persons whatsoever, for any offence against this Act, or any Act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by His Majesty, his heirs or successors, with the advice of his Privy Council, concerning quarantine and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by two or more of the Lords or others of the Privy Council aforesaid, the answer or answers of the commander, master, or other person having charge of any vessel, to any question or interrogatories put to him by virtue and in pursuance of this Act, or of any Act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence, so far as the same relates or relate to the place from which such vessel shall come, or to the place or places at which such vessel touched in the course of the voyage, and where any vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or where there is no such superintendent or assistant, by the principal officer of the customs at any port or place, or other officer of the customs authorized to act in that behalf, they having been so directed to perform quarantine, may and shall be given and received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant in any such prosecution, suit, or other proceeding to show that the vessel did not come from or touch at any such place or places as is or are stated in the said answer or answers, or that such vessel, although directed to perform quarantine, was not liable to the performance thereof; and where any such vessel shall have in fact been put under quarantine at any port or place by the superintendent of quarantine or his assistant, or other officer of the customs authorized as aforesaid to act in that behalf, and shall actually be performing the same, such vessel shall in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this Act or any other Act which may hereafter be passed concerning quaran-

tine and the prevention of infection, or any order or orders which shall be made by His Majesty in Council, or any two or more of the Lords or others of his Privy Council as aforesaid, be deemed and taken to be liable to quarantine without proving in what manner or from what circumstances such vessel became liable to the performance thereof.

XXXVII. And be it further enacted, that if any action or suit shall be commenced against any person or persons for anything done in pursuance or execution of this present Act, or of any order of Council made by virtue thereof, the defendant or defendants in such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and in execution of the said Act; and if it shall appear so to have been done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall have been given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same as the defendant or defendants hath or have in other cases by law; and that no such action or suit shall be brought against any person for any matter or thing done in pursuance or execution of this Act, but within the space of six months after such matter or thing shall have been done.

General issue.

Treble costs.

Limitation of actions.

26 VICT. c. 13.

An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs.

[4th May, 1863.]

WHEREAS it is expedient to make provision for the better protection and charge of enclosed garden or ornamental grounds which have been set apart for the use of the inhabitants of any public square, crescent, circus, street, or other public place surrounding or adjoining such gardens or grounds in any city or borough: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works, where the same is in any place under their jurisdiction, except the city of London (where the provisions of this Act shall be carried into

Gardens in certain squares, etc., may be freed from neglect, encroachments, etc., and vested in the Metropolitan Board of Works or other corporate authority.

effect by the corporation of the said city), and the corporate authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure-ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the Metropolitan Board of Works or corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the Metropolitan Board of Works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

Protection of
open spaces
from encroach-
ment.

II. And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall, by notice in writing signed by him addressed to the Metropolitan Board of Works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said Metropolitan Board of Works or corporate authority to protect the right before mentioned, the said Metropolitan Board of Works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request, and then and thereupon the right of such person to require that such garden or

ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

III. Any charge incurred by the Metropolitan Board of Works in the execution of this Act shall be deemed to be expenses of the said Board, for payment whereof provision is made by the Act for the better local management of the metropolis; and the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution, within and for their city or borough, the Act intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any other Act amending the same.

Expenses, how to be defrayed.

IV. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all Courts whatever; and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior Courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Bye-laws for management of garden, etc.

V. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A. B. and others.

Penalty for injuring garden.

VI. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Act passed in the session of Parliament held in the eighteenth and

Certain provisions of 18 & 19 Vict. c. 120, to be incorpo-

rated with this Act, and to apply to penalties, etc., imposed by this Act.
 11 & 12 Vict. c. 43, also to apply.

nineteenth years of the reign of Her most gracious Majesty the Queen, chapter one hundred and twenty, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, (1) shall apply to every penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales.

Act not to extend to property of the Crown or to property under the management of the Commissioners of Works, etc.

VII. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of her Crown or of her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings, or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental, or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of Parliament.

Extent of Act.

VIII. Nothing contained in this Act shall extend to Scotland or Ireland.

26 & 27 VICT. c. 40.

An Act for the Regulation of Bakehouses.

[13th July, 1863.]

WHEREAS it is expedient to limit the hours of labour of young persons employed in bakehouses, and to make regulations with respect to cleanliness and ventilation in bakehouses: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as "The Bakehouse Regulation Act, 1863."

Interpretation of terms.

II. For the purposes of this Act the words hereinafter mentioned shall be construed as follows; that is to say:

"Local authority" shall, as respects any place, mean the persons or bodies of persons defined to be the local authority in that place by the one hundred and thirty-fourth section of the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, (2) or by the Nuisances Removal Act hereinafter mentioned; that is to say, as to England, by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty-one, as amended by the Act passed in the session holden in the twenty-

(1) See "Jervis's Acts," by Glen. 2nd edition.

(2) The Metropolis Local Management Act.

third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven; as to Scotland, by the Act passed in the session holden in the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and three; and as to Ireland, by the Acts passed, the one in the session holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter one hundred and twenty-three, and the other in the session holden in the twelfth and thirteenth years of the reign of Her present Majesty, chapter one hundred and eleven:

"Bakehouse" shall mean any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived: (1)

"Employed," as applied to any person, shall include any person working in a bakehouse, whether he receives wages or not:

"Occupier" shall include any person in possession:

"The Court" shall include any justice or justices, sheriff or sheriff-substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

III. No person under the age of eighteen years shall be employed in any bakehouse between the hours of nine of the clock at night and five of the clock in the morning. (2)

Limitation of hours of labour of persons under 18 years of age.

If any person is employed in contravention of this section, the occupier of the bakehouse in which he is employed shall incur the following penalties in respect of each person so employed; that is to say:

For the first offence, a sum not exceeding two pounds:

For a second offence, a sum not exceeding five pounds:

For a third and every subsequent offence, a sum not exceeding one pound for each day of the continuance of the employment in contravention of this Act, so that no greater penalty be imposed than ten pounds.

IV. The inside walls and ceiling or top of every bakehouse situate in any city, town, or place containing according to the last census a population of more than five thousand persons, and the passages and staircase leading thereto, shall either be painted with oil or be limewashed, or partly painted and partly limewashed: where painted with oil there shall be three coats of paint, and the painting shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months: where limewashed, the limewashing shall be renewed once at least in every six months.

Regulations as to cleanliness of bakehouses.

Every bakehouse wherever situate shall be kept in a cleanly state, and shall be provided with proper means for effectual ventilation, and be free from effluvia arising from any drain, privy, or other nuisance.

(1) The word "profit," must be taken to mean a money profit, and not profit in the nature of that derived from baking in a house for home consumption—as otherwise the definition of a "Bakehouse" is so general in its terms that the Act would apply to "any place" in a private house in which bread, etc., is baked. The word "derived" should also, it is apprehended,

be read as if it meant "*derivable*," for it may be that the business is carried on at a loss.

(2) The time must be reckoned according to the meridian of the place, and not according to railway (or Greenwich) time.—*Curtis v. Mach*, 4 Jur. (N.S.) 1112; 23 J. P. 663.—See also Glen's "*Jervis's Acts*," 2nd edition, p. 101.

If the occupier of any bakehouse fails to keep the same in conformity with this section, he shall be deemed to be guilty of an offence against this Act, and to be subject in respect of such offence to a penalty not exceeding five pounds.

The Court having jurisdiction under this Act may, in addition to or instead of inflicting any penalty in respect of an offence under this section, make an order directing that, within a certain time to be named in such order, certain means are to be adopted by the occupier for the purpose of bringing his bakehouse into conformity with this section; the Court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the Court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding one pound for every day that such non-compliance continues.

As to sleeping
places near
bakehouses.

V. No place on the same level with a bakehouse situate in any city, town, or place containing according to the last census a population of more than five thousand persons, and forming part of the same building, shall be used as a sleeping place, unless it is constructed as follows; that is to say:

Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling:

Unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation:

And any person who lets, occupies, or continues to let, or knowingly suffers to be occupied, any place contrary to this Act, shall be liable for the first offence to a penalty not exceeding twenty shillings, and for every subsequent offence to a penalty not exceeding five pounds.

Power to local
authority to
enforce pro-
visions of this
Act.

VI. It shall be the duty of the local authority to enforce within their district the provisions of this Act, and in order to facilitate the enforcement thereof any officer of health, inspector of nuisances, or other officer appointed by the local authority, hereinbefore referred to as the inspector, may enter into any bakehouse at all times during the hours of baking, and may inspect the same, and examine whether it is or not in conformity with the provisions of this Act; and any person refusing admission to the inspector, or obstructing him in his examination, shall for each offence incur a penalty not exceeding twenty pounds; and it shall be lawful for any inspector who is refused admission to any bakehouse, in pursuance of this section to apply to any justice for a warrant authorizing him, accompanied by a police constable, to enter into any such bakehouse for the purpose of examining the same and to enter the same accordingly.

As to expenses
of local autho-
rity acting
under this Act.

VII. All expenses incurred by any local authority in pursuance of the provisions of this Act may be paid out of any rate leviable by them, and applicable to the payment of the expenses incurred by the local authority under the said Nuisances Removal Acts, and the said authority may levy such rate accordingly.

Penalties.

VIII. All penalties under this Act may be recovered summarily before two or more justices; as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same; as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the Acts regulating the proceedings of Petty Sessions and the duties of Justices of the Peace out of Quarter Sessions in Ireland, or any Act amending the same;" and as to Scotland, upon summary conviction, with power for the justices having cognizance of the case to sentence the offender to imprisonment for a period not exceeding three months until the penalty and expenses of conviction are paid.

Recovery of penalties.

IX. Any Act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say, as to England, by any metropolitan police-magistrate or other stipendiary magistrate sitting alone at a police-court or other appointed place, or by the Lord Mayor of the city of London, or any alderman of the said city sitting alone or with others at the Mansion-house or Guildhall; as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by one or more justice or justices of the peace in petty sessions; and as to Scotland by the sheriff or sheriff-substitute, or by any police-magistrate of a burgh.

Jurisdiction of certain magistrates.

30 & 31 VICT. c. 146.

An Act for regulating the Hours of Labour for Children, Young Persons, and Women employed in Workshops; and for other purposes relating thereto.

[21st August, 1867.]

WHEREAS by the Factory Acts Extension Act, 1867, provision is made, amongst other things, for regulating the hours during which children, young persons, and women are permitted to labour in any manufacturing process conducted in an establishment where fifty or more persons are employed:

And whereas it is expedient to extend protection so far as respects the regulation of the hours of labour to children, young persons, and women working in smaller establishments, and further to make provision respecting the employment of a fan or other mechanical means for the prevention of the inhalation of dust by workmen in processes of grinding:

Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and

	temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:
Short title.	I. This Act may be cited for all purposes as "The Workshop Regulation Act, 1867."
Extent of Act.	II. This Act shall apply to the whole of the United Kingdom.
Commencement of Act.	III. This Act shall come into operation on the first of January, one thousand eight hundred and sixty-eight.
General definitions.	IV. The following words and expressions shall in this Act have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say: <ul style="list-style-type: none"> "Child" shall mean a child under the age of thirteen years: "Young person" shall mean a person of the age of thirteen years and under the age of eighteen years: "Woman" shall mean a female of the age of eighteen years or upwards: "Parent" shall mean parent, guardian, or person having the custody of or control over any such child or young person: "Employed" shall mean occupied in any handicraft, whether for wages or not, under a master or under a parent as herein defined: "Handicraft" shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any article: "Workshop" shall mean any room or place whatever, whether in the open air or under cover, in which any handicraft is carried on by any child, young person, or woman, and to which and over which the person by whom such child, young person, or woman is employed has the right of access and control: "The Court" shall include any justice or justices, sheriff or sheriff-substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.
Application of Act.	V. This Act shall not apply: <ul style="list-style-type: none"> (1.) To any factory or part of a factory, or other place subject to the jurisdiction of the inspectors of factories, in pursuance of any Act of Parliament already passed, or which shall be passed during this present Session of Parliament: (2.) To any bakehouse as defined by "The Bakehouse Regulation Act, 1863."
Regulations as to time of labour.	VI. Subject to the exceptions mentioned in the first schedule annexed hereto, the following regulations shall be observed with respect to the employment of children, young persons, and women in workshops: <ul style="list-style-type: none"> (1.) No child under the age of eight years shall be employed in any handicraft: (2.) No child shall be employed on any one day in any handicraft for a period of more than six and a half hours, and such employment shall take place between the hours of six in the morning and eight at night: (3.) No young person or woman shall be employed in any handicraft during any period of twenty-four hours for more than twelve hours, with intervening periods for taking

meals and rest amounting in the whole to not less than one hour and a half, and such employment shall take place only between the hours of five in the morning and nine at night :

- (4.) No child, young person, or woman shall be employed in any handicraft on Sunday, or after two o'clock on Saturday afternoon, except in cases where not more than five persons are employed in the same establishment, and where such employment consists in making articles to be sold by retail on the premises, or in repairing articles of a like nature to those sold by retail on the premises :
- (5.) No child under the age of eleven years shall be employed in grinding in the metal trades or in fustian cutting.

VII. If any child, young person, or woman is employed in contravention of this Act the following consequences shall ensue : Penalty for employment of children, young persons, and women, contrary to the provisions of this Act.

First, the occupier of the workshop in which such child, young person, or woman is employed shall be liable to a penalty of not more than three pounds :

Second, the parent of or the person deriving any direct benefit from the labour of or having the control over the child, young person, or woman shall be liable to a penalty of not more than twenty shillings, unless it appears to the Court before whom the complaint is heard that the offence has been committed without the consent, connivance, or wilful default of the parent or person so benefited, or having such control.

VIII. In every workshop where grinding, glazing, or polishing on a wheel, or any other process is carried on by which dust is generated and inhaled by the workmen to an injurious extent, if it appear to the local authority, or to any inspector of factories, that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, it shall be lawful for the local authority or for the inspector of factories, by notice served on the occupier of the workshop in the manner in which notices given by such local authority or by the inspector of factories are usually served, to require a fan or such mechanical means as may from time to time be approved by one of Her Majesty's principal Secretaries of State, under the provisions of the Factory Acts, to be provided by the occupier of the workshop within a reasonable time. Provision with respect to use of fan in grinding.

If the occupier of any workshop fails to provide a fan or other mechanical means in compliance with a notice served on him in manner aforesaid, he shall be deemed to be guilty of an offence against this Act, and to be subject in respect of such offence to a penalty not exceeding ten pounds nor less than three pounds.

The Court having jurisdiction to inflict any penalty under this Act may, in addition to or instead of inflicting such penalty in respect of an offence under this section, make an order directing that within a certain time to be named in such order he do provide such fan or other mechanical means : The Court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the Court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding one pound for every day that such non-compliance continues.

Power to officers appointed by local authority, etc., to enter workshops.

IX. If, on the complaint of any officer of health, inspector of nuisances, or other officer appointed by a local authority, or of any superintendent of police, it appears to any justice of the peace that there is reasonable cause for believing that any of the provisions of this Act or of the Sanitary Act, 1866, are contravened in any workshop, it shall be lawful for such justice, by order under his hand, to empower the complainant to enter into such workshop at any time within forty-eight hours from the date of such order, and to examine such workshop; and any person so empowered may examine, touching any matter within the provisions of this Act or of the Sanitary Act, 1866, so far as relates to such workshop, any person whom he finds in such workshop.

Penalty on persons refusing admission.

Any person refusing admission to any person so empowered, or obstructing him in the discharge of his duty, shall for each offence incur a penalty not exceeding twenty pounds.

Power to inspector or sub-inspector of factories to enter workshops and inspect conditions thereof.

X. Any inspector or sub-inspector of factories may, when any person is at work at any handicraft, enter any workshop and inspect the condition thereof, and examine, touching any matter within the provisions of this Act or of the Sanitary Act, 1866, so far as relates to such workshop, the persons therein, provided that he report to one of Her Majesty's principal Secretaries of State the fact of such entry, and the condition of the workshop, in his next half-yearly report.

Penalty on obstructing inspector, etc.

Any person obstructing any inspector or sub-inspector in making such entry as aforesaid, or in his inspection of a workshop, shall for each offence be liable to a penalty not exceeding twenty pounds.

Liability of hirer of machine instead of occupier.

XI. Where in any workshop the owner or hirer of any machine or implement moved by steam, water, or other mechanical power, in or about or in connection with which machine or implement children, young persons, or women are employed, is some person other than the occupier of the workshop, and such children, young persons, or women are in the employment and pay of the owner or hirer of such machine or implement, in any such case such owner or hirer shall, so far as respects any offence against this Act which may be committed in relation to such children, young persons, or women, be deemed to be the occupier of the workshop.

Recovery and application of penalties.

XII. All penalties under this Act may be recovered summarily, as to England before two or more justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same.

The Court imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards the payment of such costs of the proceedings as the Court thinks just (including compensation for loss of time to the person upon whose information such penalty was recovered), and, subject as aforesaid, all penalties shall be applied in the manner directed by the Acts referred to in this section.

Description of local authority.

XIII. For the purposes of this Act, in the several places mentioned in the first column of the second schedule hereto annexed, the local authority shall be the bodies of persons or persons in

that behalf specified in the second column of the same schedule, and such schedule, with the explanation annexed thereto, shall be deemed to be part of this Act.

XIV. The following regulations shall be made (subject to the provisions hereinafter mentioned) respecting the education of children employed in workshops: Regulations for attendance at school of children employed in workshops.

- (1.) Every child who is employed in a workshop shall attend school for at least ten hours in every week during the whole of which he is so employed:
- (2.) In computing for the purpose of this section the time during which a child has attended school, there shall not be included any time during which such child has attended either
 - (a.) In excess of three hours at any one time, or in excess of five hours on any one day; or
 - (b.) On Sundays; or
 - (c.) Before eight o'clock in the morning, or after six o'clock in the evening:

Provided that the non-attendance of any child at school shall be excused—

- (1.) For any time during which he is certified by the principal teacher of the school to have been prevented from attendance by sickness or other unavoidable cause:
- (2.) For any time during which the school is closed for the customary holidays or for some other temporary cause:
- (3.) For any time during which there is no school which the child can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child.

XV. The parent of every child employed in a workshop shall cause that child to attend school in manner required by this Act. Parents to cause children to attend school.

Every parent who wilfully fails to act in conformity with this section shall be liable to a penalty of not more than twenty shillings for each offence.

XVI. Every occupier of a workshop who has employed a child for any time amounting in the whole to not less than fourteen days, shall on Monday in every week during the employment of such child obtain from the principal teacher of some school a certificate that the child so employed has, in manner required by this Act, attended school during the preceding week, if attendance at school was so required during that week. Occupiers of workshops shall obtain certificates of attendance of children at school.

The certificate may be in the form contained in the third schedule hereto, or in such other form as one of Her Majesty's principal Secretaries of State may from time to time prescribe.

The employer shall keep the said certificate for one month, and shall produce the same to any inspector or sub-inspector of factories whenever required by him during that period.

Every person who acts in contravention of this section shall be liable to a penalty of not more than three pounds.

XVII. The principal teacher of a school which is attended by any child employed in a workshop, may apply in writing to the occupier of such workshop to pay such sum as hereinafter mentioned on account of any child in respect of whom he may have duly granted a certificate in pursuance of this Act, and after the date of such application the occupier, so long as he employs the child, shall pay to the principal teacher of the said school for every On application of teacher, occupier to pay sum for schooling of child, and deduct it from wages.

week that the child attends that school the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one-twelfth part of the wages of the child. The occupier may deduct the sum so paid by him from the wages payable for the services of such child.

Any occupier who, after such application, refuses to pay on demand any sum that may become due as aforesaid, shall be liable to a penalty not exceeding ten shillings.

Inspector may disqualify for granting certificates any teacher who is unfit.

If an inspector of factories is satisfied, by inspection of a school or otherwise, that the principal teacher of a school who grants certificates of school attendance required under this Act ought to be disqualified for granting such certificates for any of the following reasons; namely:

- (1.) Because he is unfit to instruct children by reason either of his ignorance or neglect, or of his not having the necessary books and materials;
- (2.) Because of his immoral conduct;
- (3.) Because of his continued neglect to fill up proper certificates of school attendance—

in any such case he may serve on the teacher a written notice, stating the reason for such disqualification. At the expiration of two weeks from the date of such notice the teacher shall, subject to the appeal hereinafter mentioned, be disqualified for granting certificates.

The inspector shall, so far as he can, serve on every occupier of a workshop who obtains certificates from such teacher a notice to the like effect as the notice served on the teacher, and also specifying a school which the child employed in the workshop of such occupier can attend within one mile (measured according to the nearest road) from the workshop or the residence of the child.

Any teacher who is disqualified as aforesaid, and any occupier of a workshop who obtains certificates from him, may, within three weeks after the service of the notice on the teacher, appeal therefrom to one of Her Majesty's principal Secretaries of State, who may confirm or reverse such disqualification.

After a teacher is disqualified for granting certificates, no certificate given by him shall be deemed to be a certificate in compliance with this Act, unless in the case of there being no other school which the child employed in a workshop can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child, or unless with the written consent of an inspector of factories.

The inspectors of factories shall in their reports to one of Her Majesty's principal Secretaries of State report the name of every teacher disqualified under this section during the preceding six months, the name of the school at which he taught, and the reason for the disqualification; and in the case of such teacher's continued neglect to fill up proper certificates, shall report the fact of such neglect to the Committee of Council on Education, if such teacher be employed in any school in receipt of annual grants made by the Committee of Council on Education.

Penalty for forging, etc., certificate.

Every person who forges or counterfeits any certificate required by this Act, or gives or signs any such certificate falsely, or wilfully makes use of any forged, counterfeited, or false certificates, or aids in or connives at any of the foregoing offences, shall be guilty of

a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour.

XVIII. It shall be the duty of the local authority to enforce Local authority within their jurisdictions the provisions of this Act, so far as relates to enforce Act. to any powers or authorities conferred on the local authority by this Act, and all expenses incurred by them in enforcing the same may be defrayed out of any funds in their hands, or any rates leviable by them and applicable to any purpose relating to the improvement, paving, cleansing, or management of the places within their jurisdiction, or, in cases where the local authority is in the receipt of any poor rate, out of any such rate.

XIX. Where any proceedings are taken against any person in respect of any offence under this Act committed in or relating to a workshop, it shall not be competent for the defendant to prove that such workshop is a factory within the meaning of any Act for regulating factories unless he has previously given notice of its being a factory to the inspector of factories in manner required by any Act of Parliament in that behalf. Provision as to pleading that workshop is a factory.

XX. Every inspector or sub-inspector of factories shall be furnished with such certificate of his appointment as the Secretary of State may direct; and on applying for admission to any workshop, such inspector or sub-inspector shall, if required, produce to the occupier the said certificate; every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or falsely pretends to be an inspector or sub-inspector of factories, shall be guilty of a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour. Inspector or sub-inspector to be furnished with certificate of his appointment.

SCHEDULES referred to in the foregoing Act.

FIRST SCHEDULE.

Temporary Exceptions.

1. During the first six calendar months next ensuing the day on which this Act is limited to come into operation, hereinafter referred to as the commencement of this Act, children of not less than eleven years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this Act.

2. During the first thirty calendar months next ensuing the commencement of this Act, children of not less than twelve years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this Act.

3. During the first twelve calendar months next ensuing the commencement of this Act, children, young persons, and women may be employed on Saturdays until half-past four o'clock in the afternoon.

4. During the first thirty calendar months next ensuing the commencement of this Act, children, young persons, and women may be employed in the manufacture of preserves from fruit in the same manner as they were employed therein before the passing of this Act.

5. During the first thirty calendar months next ensuing the commencement of this Act, male young persons of not less than sixteen years of age may be employed in any workshop where the manufacture of machinery is carried on in the same manner as if they were male persons exceeding the age of eighteen years.

Permanent Exceptions.

6. Whereas the customs or exigencies of certain trades require that male young persons of the age of sixteen years and upwards should be occasionally employed beyond the hours allowed by this Act, it shall be lawful for one of Her Majesty's principal Secretaries of State, on due proof to his satisfaction

that such customs or exigencies exist, and that such occasional employment is not injurious to the health of such male young persons, from time to time, by order to be advertised in the *London Gazette*, or otherwise published in such manner as he may think fit, to give permission that in the case of any particular workshop or class of workshops male young persons of sixteen years of age and upwards may be employed for a period not exceeding fifteen hours on any one day :

Provided that—

1st. They are not so employed except between the hours of six in the morning and nine in the evening.

2nd. In addition to the time allowed under this Act for meals, they shall be allowed half an hour for a meal after the hour of five in the evening.

3rd. They are not so employed for more than twelve days in any period of four weeks, nor on the whole for more than seventy-two days in any period of twelve months.

7. In any workshop in which the mechanical power is water, and in any workshop or class of workshops with respect to which one of Her Majesty's principal Secretaries of State certifies by order under his hand that it has been proved to his satisfaction, that by reason of the nature of the business it is necessary to carry on the same throughout the night, it shall be lawful to employ male young persons during the night, subject to the same intervals of rest which they are allowed during the day, and subject to this provision, that no male young person employed during the night shall be employed during either the preceding or succeeding day, and that no male young person shall be employed more than six nights in any fortnight.

For the purposes of the last-mentioned provision, night shall mean any time between six o'clock in the afternoon of one day and six o'clock of the morning of the following day.

8. So much of this Act as forbids the employment of young persons and women on any Saturday after two o'clock of the afternoon, shall not apply to male young persons employed in day and night turns, changing every alternate week, nor in any week to any women or young person whose hours of actual work have not in any day in such week exceeded eight.

9. The said Secretary of State, on proof to his satisfaction that the customs or exigencies of trade, or any other special circumstances, require the alteration to be made, may, by order to be advertised in the *London Gazette*, or otherwise published in such manner as the Secretary of State may think fit, give permission with respect to any particular workshop or class of workshops for all or any of the following things; namely :

(1.) That children, young persons, or women may be employed between two and eight o'clock in the afternoon on Saturday, provided that in any such workshop or workshops arrangements are made to the satisfaction of the said Secretary of State for giving on some work-day in every week to every child, young person, or woman employed a half-holiday of equal length either at the beginning or at the end of their day's work; or,

(2.) That in any workshop in which it is proved to his satisfaction that work does not commence before the hours of seven or eight in the morning, children, young persons, and women may be employed on Saturday, or on any other day on which the weekly half-holiday is given, from the hours of seven in the morning to three in the afternoon, or from eight in the morning to four in the afternoon. Subject to the usual hours for meals.

(3.) That male young persons of not less than sixteen years of age may be employed in the same manner as if they were male persons exceeding the age of eighteen.

10. Where the occupier of any workshop is a person of the Jewish religion, and it is his custom to keep such workshop closed on Saturday until sunset, it shall be lawful for him to employ young persons or women on that day from after sunset until nine o'clock at night.

SECOND SCHEDULE.

COLUMN (1).	COLUMN (2).
Places within jurisdiction of local authority.	Description of local authority.

ENGLAND AND WALES.

The City of London and the liberties thereof.	Commissioners of Sewers of the City of London.
Parishes within the metropolis mentioned in Schedule (A) to the Metropolis Management Act, 1855.	The vestries incorporated by the Metropolis Management Act, 1855.
Districts within the metropolis formed by the union of the parishes mentioned in Schedule (B) to the Metropolis Management Act, 1855.	The Board of Works for the district incorporated by the Metropolis Management Act, 1855.
Boroughs, excepting Oxford.	The mayor, aldermen, and burgesses, acting by the Council.
The borough of Oxford and any place not included in the above descriptions, and within the jurisdiction of a Local Board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The Local Board.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local Act with powers of improving, cleansing, or paving the town.	The commissioners, trustees, or other persons entrusted by the local Act with powers of improving, cleansing, or paving the town.
Any parish not within the jurisdiction of any local authority hereinbefore mentioned, and in which a separate rate is or can be levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

* * * * *

THIRD SCHEDULE.

Form of Certificate of School Attendance.

School.

I do hereby certify that [*Christian name and surname of the child*] has attended the above school for not less than ten hours during the week ending on Saturday the of 18 .

(Signed) A.B.

Principal teacher of the above school.

Date of 18 .
Address of school.

INDEX.

- ABANDONMENT of Local Government Act in certain places, 19
Abatement of actions, 445
Abatement of nuisances, entry upon premises, 482, 496; proceedings before justices for, 489; order for, 495; no appeal against, 497; penalty for neglect of order, 497; at common law, 524
Aberavon provisional order, 732
Aberavon, repeal of South Wales Highway Act in, 191, 732
Aberdare provisional orders, 727, 738
Aberystwith provisional order, 746
Abingdon, diversion of sewage of, from river Thames, 465
Absence from district when a disqualification for office of member of Local Board, 33
Absence of chairman, during election, 42; or of person appointed to conduct election, 42
Abstracting voting paper, penalty for, 46
Access to privy or ashpit, bye-law as to, 205
Accountant, employment of, by Local Board, 357
Accounts, punishment for fraudulent, 417
Accounts as to highways, verification of, not necessary, 187; audit of them, 416
Accounts relating to burial-grounds, 325; audit of, 325, 423
Accounts, when to be closed, 416
Accounts under Free Public Libraries Act, 349
Accretions from the sea, how to be dealt with, 140, 471
Accrington provisional orders, 727, 736, 738, 741
Accumulation of manure, etc., removal of, 143; of dung, 143
Accumulations when a nuisance, 477
Acid, spirit of sulphur, liability for nuisance arising from, 303
Action against Local Boards for statutory payments, 62, 63
Action for recovery of penalty, proof of offence, 33; consent of Attorney-General to, 34, 440; by Local Board, 437; to be in name of their clerk, 444; when not to abate, 445; notice of, 446, 447; limitation of, 447
Action for fouling water, 230
Action, limitation of time, 358

- Action against local authority, 535 ; action for recovery of costs and expenses of local authority, 501 ; for penalty for fouling water with gas washings, 519
- Action for polluting streams with sewage, 91, 92, 102, 103
- Action by common informers, time within which it must be brought, 64
- Action against Local Board, form of notice of, 447
- Acts of disqualified members of Local Board, saving as to, 35
- Addressing voting papers, how to be performed, 45
- Adjoining districts, when they may unite, 10, 23 ; execution of works in, 139 ; cleansing of watercourses in, 139
- Adjoining places, execution of works in, 511
- Admission to public libraries and museums to be free, 351
- Adoption of Public Health Act, 6 ; of Local Government Act, 10 ; poll for, 13 ; by parish in a highway district, 14 ; not exhausted by one adoption, but may be exercised from time to time, 20 ; by lesser place included in a greater, 12 ; partial adoption of, 18 ; by places not having defined boundaries, 15 ; appeal against, 23 ; notice of adoption, 21 ; publication of, 22 ; objections as to validity of, 22 ; costs in relation to adoption, 22
- Adoption of Local Government Act, return as to, 6
- Adoption of Public Health Act, return as to, 6
- Adoption of Local Government Act in an Ecclesiastical district, 11, 16 ; of Local Government Act in Knottingley district rescinded, 738 ; of Free Public Libraries Act in boroughs, 348 ; in Improvement Act districts, 349 ; of Public Baths and Wash-houses Acts in boroughs, 232 ; in Local Board of Health districts, 232
- Adulteration of food, 521 ; to extend to medicines, 521
- Adulteration of medicines, 521
- Advertisement of audits, 417
- Agent of candidate may accompany deliverer of voting papers, 50
- Agreement between landlord and tenant not to be affected by Acts, 377
- Agreements for water supply, 226
- Agriculture, drainage of land for purposes of, 110, 225
- Aldershott, constitution of Local Board of, 51 ; provisional order, 727
- Alehouse, a place of public resort, 313
- Alfreton provisional order, 726
- Alien, disqualification of, as member of Local Board, 28
- Alkali works, nuisances arising from, 481 ; registration of, 481 ; inspection of, 481 ; condensation of the muriatic acid arising from, 481
- Aller Moor, drainage scheme in, 111
- Alley, meaning of, 273
- Allowance of rates not necessary, 187
- Allowances by auditor, appeal against, 417, 419
- Alnwick provisional order, 725
- Alteration of districts, 67
- Alteration of streets, 155 ; of pipes laid therein, 157
- Amendment of grounds of appeal, 534
- Amendment of rates, 371
- Amends, tender of, 448
- Animal charcoal, furnaces for making, 302

- Animal, keeping of, so as to be injurious to public health, 143
- Animal kept so as to be a nuisance, 477; remedy, 496; exposure of, when glandered, 521
- Annual meetings of Local Boards, 58
- Annual reports of Secretary of State to Parliament, 3; of Local Boards, 60
- Annual report of medical officer appointed by Privy Council, 559
- Annual returns as to highways, 184
- Annual value, meaning of term, 28, 30; general district rates to be assessed on, 362; how to be ascertained, 362, 364; evidence of, 365
- Appeal against adoption of Local Government Act, 23; time within which the petition may be presented, 23; against rates when amended, 371; against disallowances in accounts, 419; to Secretary of State in respect of private improvement expenses, 382; to Quarter Sessions, 442
- Appeal does not lie against order for abatement of nuisance, 497; against order prohibiting occupation of house unfit for habitation, 497; against order for execution of structural works, 499; against assessment by local authority, 510
- Appeal in respect of proceedings for carrying on noxious trades, 523; to be made to Quarter Sessions, 442; notice of, 443; the hearing, 533; costs, 534; on case stated to superior court, 534
- Appeal against allowances by auditor, 417, 419
- Appeal against auditor's decision, form of notice of inquiry, 421
- Appeal against bye-laws under Public Baths and Wash-houses Acts, 235; against constitution of special drainage district formed by sewer authority, 541; against highway rates, 397; from decision of Court, no bar to granting an injunction upon some point, 92; against rates, 398; in Oxford, 402; under Nuisances Removal Acts, jurisdiction of justices, 533; costs of appellants, 534
- Appeal to Quarter Sessions, notice of, 443
- Appeals against rates, 398; form of notice and grounds of, 399
- Appeals, qualification of justices as to, 533
- Appeals to Secretary of State, costs of, 4; against disallowance, form of order, 422
- Appearance of Local Boards before justices, 445; of nuisance authorities before justices, 490; of sewer authorities in legal proceedings, 538
- Application of surplus income arising from burial-grounds, 325
- Application of General Acts to Local Boards constituted under Local Acts, 5
- Application of Public Health Act to districts, 6; of Local Government Act, 10; of penalties, 441, 531; of money arising from sale of noxious matters, 493
- Application of Sewage Utilization Act, to what districts, 536
- Appointment of analysts, 521
- Appointment of officers by Secretary of State, 3; of persons to assist at election of members of Local Board, 42; of chairman of Local Board, 59; of officers, 61; when district contains population less than 3000, must be made within two months after the election of the Local Board, 61; receiver of rates, 408
- Appointment of committee by local authority, 472; of officer of health, 560
- Appointment of inspectors of nuisances, 473; under Local Boards, 61, 474; in the metropolis, 474

- Apportionment of rates between outgoing and incoming tenants, 361; of expenses incurred in respect of two or more parts of districts, 361; of expenses, when to be binding, 462; expenses of paving private streets, 158, 161; of rent-charges, 382
- Apprehension of officer failing to account, 65
- Appropriation of lands for purposes of baths and wash-houses, 235
- Approval of General Board of Health dispensed with, 2; to be given by Secretary of State, 3
- Approval of Local Boards, how to be given, 59
- Aqueducts for public supply of water, 212; use and construction of, 82
- Arable land, rating of, 367
- Arbitration, disputes as to amount of compensation to be settled by, 96; reference to, of works prohibited to be done by Local Boards without consent, 107; effect of it, 108; as to substituted sewers, etc., 109; questions how to be referred to, 432; matters which may be referred to, 436; questions as to damages, 456, 457; conduct of, 436
- Arches over canals, etc., construction of, by Local Boards, 188
- Artesian wells, description of, 80
- Artesian well, reference to an, 223
- Artificial disinfectants, 151
- Artisans' and labourers' dwellings, local authorities for, 272; interpretation of terms of Act, 273; appointment of officer of health, 274; his report on premises, 274; householders may report on premises unfit for habitation, 275; duties of local authority on receipt of reports, 275; appeal against order of local authority, 276; by owner, 277; owner to signify assent to execution of necessary works, 277; appearance of local authority in proceedings, 277; jurisdiction of justices under, 277; service of notice on owner, 278; to execute works in specification, 278; how in case of default, 278; when works to be executed by local authority, 278; cost of works to be a charge on premises, 279; demolition of premises, 279; power to owner to take down premises instead of improving them, 279; determination of tenancies, 279 application to justices where one owner out of several included in order neglects to comply, 280; grant of charging order on premises on completion of works, 280; form of, 281; charges recoverable as rent-charges, 281; registry of order, 281; assignment of charge, 282; form of, 282; expenses of local authority, 282; borrowing powers of, 282; service of notice on, 283; penalties under Act, 283
- Ashford provisional order, 733
- Ashby-de-la-Zouch provisional orders, 725, 726
- Ashes, what are not, 142
- Ashes, boxes for temporary deposit of, 141
- Ashpits, cleansing of, 141; examination of, by surveyor, 145; to be provided for new houses, 151; bye-laws as to, 142, when a nuisance, 477
- Asses, bye-laws for licensing and regulating hire of, 321, 454
- Assessment, limitation in amount of, 510
- Assessment, meaning of term, 510
- Assessment of railway to general district rates, 9
- Assessment of unoccupied houses, 361; of parts of districts or streets, 361; of general district rates, 363

- Assessment of premises to defray cost of sewers, 514; limitation of amount, 511
- Assessment Committee, appointment of, in Oxford, 401; duties of, 402; their expenses, 403
- Attendance of ratepayers at audit, 417
- Attorney, employment of, by Local Boards, 62
- Attorney-General, consent of, to action for penalties, 34, 49, 440
- Auction, sale of noxious matters removed from premises by public, 493
- Audit of accounts, 416; of Improvement Commissioners, 417; notice to be given, 417; as to highways, 187; relating to burial-grounds, 325, 423
- Audit of accounts under Public Baths and Wash-houses Act, 234; under Labouring Classes Dwellings Act, 260
- Auditor, power of, to compel production of books, etc., 422; his remuneration, 418; his personal expenses, etc., 418; his report on the accounts audited, 423
- Auditor's certificate, finality of, unless appealed against, 423
- Authentication of documents by Local Boards, 59
- Authentication of orders of Privy Council, 554, 555
- Authority of Local Board, how to be expressed, 455, 456
- Authority of Nuisances Removal Committee, 473
- Avoidance of constitution of district, if no election of Local Board take place within time limited, 39
- Avon, drainage into the river, 127
- Award for costs generally is good, without ascertaining the amount, 435
- Bakehouse Regulation Act, 331; interpretation of terms, 331; penalties for acting in contravention of, 331
- Bakehouse, definition of, 331; ventilation of, 332; limitation of hours for employment in, 331; cleansing of, 332; sleeping places in, 332; inspection of, 332
- Bakehouse, excluded from provisions of Factory Acts and Workshop Regulation Act, 331
- Balances of lighting rate in overseers' hands should be paid over to Local Board, 176
- Banbury, amount of rates to be levied in, limited, 365; provisional orders, 726, 729, 739
- Bangor provisional orders, 727, 736
- Bankrupt, disqualification of, as member of Local Board, 32; recovery of rate from, 374
- Barnard Castle provisional order, 726
- Barnsley, limitation of rates in, 365; provisional orders, 726, 729
- Barrack and Hospital Improvement Commission, memorandum of, on use of disinfectants, 149
- Basford provisional order, 731
- Bathing in reservoirs, etc., penalty, 228; regulations as to, on the sea shore, 242
- Bathing-machines on sea shore, licence must be obtained from owner of shore, to their being placed there, 242
- Baths, supply of water to, 226
- Baths and wash-houses, establishment of public, in boroughs, 232; in Local

- Board of Health districts, 232; powers, etc., of Local Board, 233; sale of, 238
- Baths, for the labouring classes, number of, to be provided, 240; charges for, 240; for higher classes, 240
- Bathing places (open), provision of, under Public Baths and Wash-houses Act, 236; bye-laws as to, 239
- Batley provisional order, 731
- Battle provisional order, 728
- Beacons exempt from rates, 370
- Bear-baiting, prohibition as to places for, 314
- Bedding used by sick in common lodging-house, disinfection or destruction of, 249; place for disinfection of, 503; transmission of, to such place, 564; selling when infected, 564
- Bedford (Lancashire) provisional order, 741
- Bedford provisional orders, 731, 739
- Beggars in common lodging-houses, reports as to, 250
- Berwick-upon-Tweed provisional orders, 725, 731
- Beverley provisional order, 725
- Bideford provisional order, 740
- Bilston, voting under Small Tenements Rating Act for, 40
- Binsey, election of members of Oxford Local Board for parish of, 55; rate-books for, 55; penalty for refusing to produce, 55
- Birmingham, consumption of smoke in, 306
- Bishop Auckland provisional orders, 727
- Blackpool, provisional order relating to, 742
- Blackstone, Mr. Justice, definition of nuisance by, 478
- Blood-boiler, prohibition as to trade of, 298
- Blood-boiling, causing noxious effluvia, proceedings in such case, 522
- Board of Health, general, transfer of powers of, to Privy Council, 553
- Boards of Health, incorporation of, 411
- Boats, bye-laws for licensing and regulating hire of, 321, 454
- Boats, when deemed to be within district of nuisance authority, 478; removal of sick from, to hospitals, 504
- Bognor provisional orders, 742, 745
- Bolton provisional order, 733
- Bone-boiler, prohibition as to trade of, 298
- Bones, boiling, burning, or crushing, causing noxious effluvia, proceedings in such case, 522
- Books, production of, on inquiry, 4; to chairman conducting election of Local Boards, 42
- Borough defined, 274
- Borough fund, when expenses of local authority are to be defrayed out of, 475
- Boroughs, application of surplus borough fund to improvement of, 106, 140, 175
- Boroughs, adoption of Public Baths and Wash-houses Acts in, 232; adoption of Free Public Libraries Act in, 348
- Boroughs, local authority in, 469
- Borrowing money by local authority, 514
- Borrowing money for purposes of Baths and Wash-houses Act, 235

- Borrowing powers, exercise of, in case of partial adoption of Local Government Act, 19; extension of, 406
- Boston provisional order, 729
- Boundary of district, how to be treated in certain cases, 140
- Boundaries of districts desirous of adopting Local Government Act, how to be settled when not already defined, 15; when settled by Secretary of State and adopted by parish, his order cannot be quashed by *certiorari*, 16; cleansing water-courses on, 139; cleansing, etc., ditches on, 512
- Boundaries of district, form of order dismissing petition against, and settling, 541
- Boundary between districts a highway, 140
- Boundary of Halstead district, 737
- Bradford provisional order, 731
- Bradford (Yorkshire) provisional orders, 735, 744
- Bread, entry upon premises to inspect, 484, 520
- Brecon provisional order, 724
- Brentford, diversion of sewage of, from river Thames, 465
- Brewery, nuisance arising from, refuse of, 491
- Brick-burning, nuisance arising from, 299, 301
- Bridgend provisional order, 725
- Bridges, when deemed highways, 93; a street, 156; construction of, by Local Boards, 188; when not to be interfered with by Local Boards, 107
- Bridges, speed of locomotives over, 195; damage to, by, 196
- Bridlington provisional order, 733, 736
- Brighouse provisional order, 734
- Brighouse district expenditure under Local Act extended, 734
- Bridgnorth provisional order, 729
- Brighton provisional orders, 730, 733
- Bristol, special powers of Local Board of, as to highways, 185; provisional orders, 725, 738, 745
- Bristol, exercise of compulsory powers of purchasing land by local authority, 738; time within which it is to be exercised, 745
- Briton Ferry district, repeal of South Wales Highway Act in, 191, 737
- Bromsgrove provisional orders, 730, 731, 734
- Brook, Secretary at War may alter course of, 110
- Bryn Mawr provisional order, 725
- Building, not to be erected over sewers, 104; for deposit of sewage, etc., 141; what is line of building, 201; what is a, 104, 200; closing of, when unfit for habitation, 202; when ruinous or dangerous, to be taken down, 209
- Buildings (new) defined by Secretary of State, 207
- Buoys, exempt from rates, 370
- Burial Acts, by Glen, 322
- Burial not to take place under churches, etc., 326
- Burial Board, when Local Board may be the, 322
- Burial Boards, transfer of powers, etc. of, to Local Boards, 324
- Burial-grounds, exemption of, from certain expenses, 169; closing existing, 325; prohibition of, when dangerous to health, 325; formation of new, 326
- Burial-grounds, application of, to secular purposes, 329

- Burial-grounds, rating of, 368
- Burial-grounds, audit of accounts relating to, 325, 423; application of surplus income arising from, 325; bye-laws as to, 330
- Burial-grounds, when closed, how to be kept in order, 327, 330
- Burial, common law liability as to, 326; of the poor, 327; of persons dying in hospitals, 327; of pauper lunatics, 327
- Burial rate, when it may be levied, 324, 398; mortgage of, 325, 409
- Burial by relieving officer of dead bodies placed in mortuary house, 505
- Burnham provisional orders, 726, 746
- Burning bricks, nuisance arising from, 299, 301
- Burnley provisional orders, 734, 738
- Burslem provisional order, 725
- Burton-upon-Trent provisional orders, 736, 741, 746; superannuation allowance to late clerk, 747
- Bury (Lancashire) provisional orders, 734, 746
- Business, prohibition as to offensive, 298
- Business, when accumulations necessary for carrying on, are not to be deemed nuisances, 477; proceedings when causing noxious effluvia, 522
- Butchers' meat, inspection of, 297
- Bye-law as to new buildings, power of Local Board to make, with regard to erection of new buildings, 203
- Bye-law, information for violating, need not be laid by person appointed under seal of Local Board, 441; nor by consent of Attorney-General, 441
- Bye-law respecting access to privy or ashpit, 205
- Bye-laws under Local Government Act, 2; under repealed provisions of Public Health Act, 2; as to proceedings of Local Boards, 58; as to duties of their officers, 61; for removal of filth and refuse, 142; as to swine, 142, 453; for prevention of nuisances arising from snow, filth, etc., 142; in respect of the construction, etc., of new streets, 176; as to new streets and houses, 201; as to public bathing, 242; for markets and fairs, 290; as to slaughter-houses and knackers' yards, 295; offensive trades, 298; hackney carriages, 320; for licensing and regulating hire of horses, etc., 321, 454; as to burial-grounds, 330; houses for reception of the dead, 326; how to be made, 451; as to salary of stipendiary magistrate, 454
- Bye-laws, confirmation of them by Secretary of State, 451; they must be reasonable, 452; enumeration of subjects to which they may apply, 453; to be printed after confirmation and copies given to ratepayers on application, 451
- Bye-laws, effect of, 454
- Bye-laws sanctioned by Treasury as to erection of labouring classes' dwelling-houses, 270
- Bye-laws under Public Baths and Wash-houses Acts, 239
- Bye-laws, appeal against, 235
- Bye-laws as to common lodging-houses, 243, 249
- Bye-laws for regulating labouring classes' lodging-houses, 264
- Bye-laws, when *ultra vires*, 203, 206
- Bye-wash defined, 81

Calculations of rate, errors in, 372

- Calne provisional order, 726
 Cambridge, Local Board of Health for, 26
 Cambridge local authority, 27, 469; quorum, 58; levying rates in, 376
 Cambridge, local authority in, under Common Lodging Houses Act, 247
 Canals, construction of bridges, etc., over, 188; when not to be interfered with by Local Boards, 107; rating of, 367
 Canterbury provisional orders, 736, 740; limitation of rates to be levied in, 366
 Candidates, nomination of, 43; refusal to serve, tender of, 45; when to be deemed duly elected, 47; agent of, may accompany deliverer of voting papers, 50
 Candle-house, noxious effluvia, proceedings in such cases, 522
 Carbolic acid, use of, as a disinfectant, 151
 Carcase, entry upon premises to inspect, 484, 520
 Cardiff provisional orders, 724, 728, 735
 Carlisle provisional order, 724
 Carlisle, sewage irrigation works at, 118
 Carmarthen provisional order, 724
 Carriages for conveyance of sick, 559
 Carriages for conveyance of infected persons, provision of, 504
 Carriages (public) used for conveying persons suffering from infectious disorders, disinfection of, 564
 Carrymoor provisional order for drainage scheme, 111
 Carts, conviction for leaving, in market-place, 291
 Case stated for opinion of superior Court, 534
 Casting up of votes by chairman, 47; how if impracticable to do so on day appointed, 47
 Casting vote of chairman, 59
 Casual vacancies, when to be filled up, 50
 Catchment basins, definition of, 70
 Cattle, impounding, when straying, 307
 Cattle, nuisances caused by, 494; regulation of continental cities as to slaughtering of, 296
 Cause of action, limitation of time, etc., 358
 Cellars, entrance to, from streets, 176; occupation of, 208
 Cellar dwellings, closing of, when two convictions with regard to, have occurred within three months, 209; provisions of Public Health Act, 1848, with regard to, extended throughout England, 209, 527; occupation of, when prohibited, 527; what such a dwelling, 528
 Certificate of chairman of members elected, when conclusive, 48; of officer of health, as to houses in a filthy condition, 154; of auditors, how to be enforced, 422
 Certificate of auditor is final, unless appealed against, 423
Certiorari, removal of disallowances in accounts by, 416, 419; when it will not lie, 444; when it may be granted, 444
Certiorari, when proceedings not to be removed by, 530; when they may, 534
Certiorari, not granted to quash provisional order of Secretary of State, 68
Certiorari, right to, taken away, 297
 Cessor of right of nuisance, action maintainable on, re-exercise of right, 301

- Cesspools, when a nuisance, 477
 Cesspools, nuisance arising from, 490
 Cesspools, cleansing of, 141; penalty for allowing to overflow, 143; examination of, by surveyors, 145; bye-laws as to, 202
 Chairman of Local Board, attendance of, at office of Local Board during elections, 47; neglect of, to deliver voting-papers to Local Board, 49; absence of, during election, 42; cannot conduct election if he be a candidate for re-election, 49; of Oxford Local Board, appointment of, 59
 Chairman of meeting refusing to grant poll as to adoption of Act, course to be pursued, 15
 Chairmen of Local Boards, appointment of, 59; to conduct elections, 42; how if they refuse or are absent, 42; their certificate of members elected a judicial act, 48
 Chancery, decrees of, not to be affected by repealed provisions of Public Health Act, 3; power of, to restrain nuisance, 303
 Chancery suit, in what case the expenses of, may be defrayed out of district rates, 353
 Changing site of market, 284
 Channelling streets, 155
 Channelling streets, specification of works, 170
 Chapels, exemption of, from certain expenses, 169
 Charge of costs of preliminary inquiry on general district rates, 10
 Charges incurred by local authority how to be defrayed, 475
 Charges for public baths and wash-houses, 240; open bathing-places, 241; recovery of, 240; for occupancy of labouring classes' lodging-houses, 265
 Charges on rates, 358
 Charitable allowance, disqualification of person receiving, as member of Local Board, 28
 Chatham provisional orders, 724, 729
 Chedzoy provisional order for drainage scheme, 111
 Chelmsford provisional order, 724
 Chepping Wycombe provisional order, 740
 Chesterfield provisional order, 742
 Chief officer of police, powers of, with respect to removal of nuisances, 492
 Children, employment of, in workshops, regulations as to, 337; must attend school whilst in employment, 340; hours of labour for, 337
 Chimneys on fire, 312
 Chimneys sending forth black smoke, when a nuisance within Nuisances Removal Acts, 478
 Chloride of lime, use of, as a disinfectant, 151; of zinc, use of, as a disinfectant, 151; of manganese, use of, as a disinfectant, 151; of soda, use of, as a disinfectant, 151
 Christchurch provisional order, 727
 Christmas-day, day for performance of acts falling on, 43
 Churches, exemption of, from certain expenses, 169; prohibition of interments within, 326
 Churchwardens to give notice as to occupation of cellars as habitations, 209; construction of wells, sewers, etc., by, in certain cases, 517
 Churchwardens, notice of, as to cellar dwellings, 528

- Churchyard, exemption of, from certain expenses, 169
Churchyards, keeping of, in order when closed, 327
Cisterns for public supply of water, 226
Citation of Public Health Act, 2 ; of Local Government Act, 2 ; of Nuisances Removal Act, 466
City of London, local authorities in, for executing Diseases Prevention Acts, 558
Cleansing sewers, etc., 125, 138 ; watercourses on boundaries of district, 139 ; streets, 141 ; privies, ashpits, and cesspools, 141, 142 ; turnpike roads, 188
Cleansing ships, regulations as to, 553
Cleansing common lodging-houses, 250 ; lodging-houses, 252 ; premises, notice of nuisance authority as to, 503 ; how when owner or occupier is unable to do so through poverty, 503
Clerk of Local Board, judgment against, 414 ; to nuisance authority, appearance of, in legal proceedings, 490
Clerk of Local Boards, appointment of, 61 ; to make returns as to highways, 184 ; actions to be in the name of, 444
Clerks, appointment of, by Secretary of State, 3 ; of Boards of Guardians, to produce books, etc., to chairman conducting election of members of Local Boards, 42
Clocks (public), Local Boards may provide, 178
Closed burial-grounds, how to be kept in order, 327, 330
Closing accounts, 416
Closing buildings unfit for habitation, 202, 209 ; burial-grounds, 325
Closing cellar-dwellings after two convictions within three months, 209
Clothing of sick persons in common lodging-house, disinfection or destruction of, 249 ; place for disinfection of, 503 ; transmission of, 564 ; selling when infected, 564
Coach-house, part of curtilage of house, 147
Cockermouth provisional orders, 734, 746
Cockfighting, prohibition as to places for, 314
Collection of rates, 372
Collection of voting papers, 46 ; agent of candidate may accompany, 50
Collectors, appointment of, 61
Combination of sewer authorities, 546
Commissioners (of Public Works), loans by, 404
Commissioners (of Sewers), works under, when not to be interfered with by Local Boards, 106
Commissioners of Sewers for drainage of land, 110
Commissioners of Improvement, when local authority, 469
Commissioners under a local Act, qualification for, 31
Committee of local authority, appointment of, 472
Committees of Local Boards, 60
Committees under Diseases Prevention Act, 557
Committees of sewer authorities, 538 ; their powers, 538 ; their chairman, 538 ; their meetings, 538 ; quorum, 538 ; questions before, how to be determined, 539 ; vacancies in, not to invalidate proceedings, 539 ; alteration of number of members of, 539 ; their obligations, 539
Common, who should be proceeded against for nuisance on, 491

- Common informers cannot sue without consent of Attorney-General, 34, 440
 Common informers, time within which actions must be brought by, 64
 Common law liability as to burial, 326
 Common law, indictment at, for nuisance, 524
 Common lodging-houses, local authority, 471; notice of nuisance existing in 482; over-crowding, 527
 Common lodging-houses, powers of Local Boards as to, 243; definition of, 246
 Common lodging-houses, regulations for, 243, 249
 Common Lodging-houses Act, execution of, by Local Boards, 247; in Oxford and Cambridge, 247; expenses of, 247; notice of, to be given to keepers of houses under, 248; form of notice, 248; register of, 248; regulations respecting houses, 249; penalties for offences against, 249; keepers of, to give notice of fever, etc., therein, 249; removal of sick persons from, 249; inspection of, 250; reports from keepers of, as to beggars and vagrants, 250; cleansing, 250; supply of water to, 250; complaints as to nuisances in, proceedings in such case, 250; penalty for offences against Act, 251; evidence in case of over-crowding, 251; conviction for third offence, 251; recovery of penalties, 252; general powers of local authority as to, 252
 Commons near the metropolis, return as to, 178; management of, 181
 Companies Clauses Act, borrowing powers incorporated with Baths and Wash-houses Act, 236
 Compensation for carrying sewers through lands, 96; disputes as to amount of, to be settled by arbitration, 96; for injury caused by works, 97, 100; for injury by raising or lowering levels of streets, 156, 201; in respect of houses projecting beyond line of streets, 172, 199; for damage by Local Board, 456, 457
 Compensation for bedding or clothing of sick in common lodging-houses, when destroyed, 249; for damage occasioned by acts of public bodies, 457; for damage occasioned by sewer authority, 546; to officers under Lincoln Local Act who may be removed, 739
 Compensation for damages in respect of ditches, etc., 505
 Complaint to justices by inhabitants as to existence of a nuisance, 498
 Complaint before a justice, as to existence of nuisances, 489; in the case of joint offenders, 530
 Complaint to Secretary of State when default is made in enforcing Local Government Act, 455; of Nuisances Removal Acts, 471, 472; of Sewage Utilization Act, where default is made by Local Board in water supply, 212
 Compounding for penalties under contracts, 427
 Compulsory drainage into sewers, 509
 Computation of time, 532
 Computation of time for service of notices by post, 529
 Conditions and specification of sewerage works, 116; of works of paving, 170
 Conduct of arbitrators, 436
 Conduits for gratuitous supply of water, 226
 Confirmation of provisional order of Secretary of State, 67
 Confirmation of bye-laws, 451
 Consecrated ground, application of, to secular purposes, 329
 Consent of General Board of Health dispensed with, 2; when to be given by

- Secretary of State, 3 ; of Attorney-General, to action for penalties, 34, 440 ;
 of Local Boards, how to be expressed, 455
- Consents of Local Boards, how to be signified, 364
- Consequential nuisance, 490
- Conservators of the river Thames, to preserve flow and purity of water down
 to metropolis, 130 ; list of notices served by, 133, 137
- Conservatory, not a building, 174
- Constable, notice of nuisance by, 482 ; entry upon premises by, 498
- Constable refusing to make distress, penalty, 375
- Constables, appointment of, as inspectors of nuisances, 474
- Constables, jurisdiction of, under Common Lodging-houses Acts, 250, 252
- Constables not to interfere at elections, 29
- Constituting part of parish a special drainage district, 542
- Constitution of Boards of Health, 25
- Constitution of Local Government Boards, 26
- Constitution of local authority, 469
- Constitution of special drainage district by sewer authority, appeal against,
 541
- Construction of reservoirs, mode of, 80
- Construction of terms in Public Health Act, 463 ; in Local Government Act,
 2 ; of sewer by owner through misapprehension of liability, 94 ; of new
 streets, 201 ; of waterworks, 212
- Construction of Sewage Utilization Act, 536
- Contagious diseases, prevention of, 552 ; defined, 552
- Contagious diseases in common lodging-houses, notice of, to be given by keepers,
 249 ; carriages for conveyance of persons infected with, 504 ; penalty on
 persons suffering from, entering public conveyances, 504 ; in naval and
 military stations, reference to Act, 566
- Continuance in office of Local Boards, 56
- Contract for sewerage works, form of, 112
- Contracts under repealed provisions of Public Health Act, 3 ; persons concerned
 in, disqualified as members of Local Boards, 29, 32 ; what is being con-
 cerned in, 32 ; penalty on officers interested in, 64 ; for sale of sewage, 127 ;
 for storing, etc., sewage, 127 ; for lighting streets, 177 ; for water supply,
 212, 227 ; of Local Boards, how to be entered into, 427
- Contracts under Public Baths and Wash-houses Act, 237 ; for erection of
 dwelling-houses for labouring classes, 262 ; for supply of sewage by sewer
 authorities, 547
- Contracts with corporations, 429
- Contracts, *ultra vires*, 430, 448
- Contracts of Local Board must be under seal, 429
- Contributions in the case of joint owners or occupiers, 530
- Contributions by sewer authority to works under contract relating to supply of
 sewage, 127
- Conveyance of sick, carriages for, 559
- Conveyance of infected persons, carriages for, 504 ; of sick to hospitals, 504 ;
 from ships or boats, 504 ; in public carriages of persons labouring under
 infectious or contagious diseases, 504
- Conviction for third offence against Common Lodging-houses Acts, 251 ; with

- regard to occupation of cellar dwellings, how when two have occurred within three months, 209
- Conviction, form of it, 450
- Copies of bye-laws to be given to ratepayers on application, 451
- Copies of orders, etc., of local authority, to be received in evidence, 529
- Copper works, nuisance arising from, how restrained, 524
- Corn, entry upon premises to inspect, 484, 520
- Corn market-house, application of income arising from, in Halstead district, 737
- Coroner, removal of dead bodies by order of, to place provided for post-mortem examinations, 505
- Corporation, Local Board a, 455
- Corporate borough, definition of, 315, 569
- Corporate district, what, 25
- Corporation, aggregate, how to vote at elections, 40
- Corpses, houses for the reception of, 326
- Costs of appeals to Secretary of State, 4; payment of, may be enforced by mandamus, 4; costs of legal and parliamentary proceedings, 354
- Costs of mandamus, application for, must be made within two terms of the obeying of such writ, 358
- Costs, an award for, generally, without ascertaining the amount is good, 435
- Costs of appeals under Nuisances Removal Acts, 534; of nuisance authority, mandamus to pay, 475; when nuisance authority may require payment of, from owner or occupier, 500; of petition for payment of money out of Court, 415
- Costs of provisional orders, 68; repayment of, 413
- Costs of preliminary inquiry, 10; of adoption of Local Government Act, 11, 22
- Costs of repair of highways, how to be defrayed, 185
- Costs of levying arrears of rate, 375; recovery of, 437
- Costs incurred by local authority, how to be defrayed, 476; how recovered, 499; division of, 502; of frivolous complaints, 503; of making sewers, assessment to defray, 509; in the case of joint offenders, 530; in appeals to Quarter Sessions, 534
- County Court, recovery of expenses in, 138, 144, 158; recovery of rates in, 374
- County Courts, proceedings for recovery of demands by Local Boards in, 158
- Court, payment of moneys into, 448
- Court, meaning of, 273
- Courts of justice, decrees of, not to be affected by repeal of certain provisions of Public Health Act, 3
- Coventry provisional orders, 724, 729
- Covering drains, etc., 138
- Cowes, East, provisional order, 730
- Cowes, East, repeal of Isle of Wight Highway Act in, 730
- Cowes, West, provisional order, 725-733
- Cowley provisional order, 736; election of members of Oxford Local Board for parish of, 54; overseers of, to produce rate books, 55; penalty for default, 55
- Cowpen provisional order, 745
- Crowded dwelling-houses, proceedings in such case, 526

- Croydon provisional orders, 724, 731
 Croydon, sewage irrigation works at, 119
 Cruelty to animals, 314
 Cul de sac, liability of owner to pave adjoining street although separated by wall, 161
 Culvert to reservoir, construction of, 81
 Curtilage of house, definition of, 91; what is within, 147

 Damage, definition of, 456
 Damage for injury to lands in constructing sewers, 96; by raising or lowering levels of streets, 156, 201; in respect of houses projecting beyond line of streets, 172, 199; recovery of, 437; by Local Board, compensation for, 456, 457
 Damage, compensation for, in respect of ditches, etc., 505
 Damage caused by overflow of sewer, 101
 Damage occasioned by acts of public bodies, compensation for, 458; occasioned by sewer authority, compensation for, 546; to bridges by locomotives, 196
 Damage, retrospective rate to satisfy, 99
 Damaging wells, etc., penalty, 519
 Damaging works or property of Local Board, penalty, 462; of nuisance authority, 516; of sewer authority, 545
 Dangerous buildings, 209; how taken down, 211
 Dangerous places near streets, repair of, 211
 Dangerous substances, safe keeping of, 309, 310
 Darlington provisional order, 725
 Dartford provisional order, 724
 Dartmouth provisional orders, 729, 736
 Days, number of, how to be reckoned, 41
 Dead bodies, nuisance authority may provide place for reception of, 505; during post-mortem examinations, 505; burial of, by relieving officer, 505
 Dead, burial of, 326; houses for the reception of, 326
 Dead, issue of regulations by Privy Council for interment of, 553
 Death of arbitrator, mode of proceeding in such case, 433
 Death, proceedings not to abate by reason of, 530
 Debt, rate for payment of, 358, 359
 Debts on special district rates, 378
 Declaration to be made by members of Local Boards before acting, 30; when falsely made, a misdemeanor, 30; penalty for acting without having made, 33; of arbitrators, 436
 Declaration as to accounts under audit, 423
 Declaration of qualifications, not required from members of Oxford University, 31
 Decrees of Court of Chancery not affected by repeal of certain provisions of Public Health Act, 3
 Defacing notice boards, etc., 462
 Defacing voting paper, penalty for, 46
 Default of Local Board to provide sewers, mode of proceeding, 89; in enforcing Local Government Act, complaint of, to Secretary of State, 455; in supplying water, complaint to Secretary of State in such case, 212

- Defects in election or selection of members of Local Boards, saving as to, 35, 49
- Defects in election not to invalidate proceedings of Local Board, 35
- Definition of "place," 11; "year," 38, 56; of Nuisances Removal Acts, 466; of nuisances, 477; of sewer authority, 536, 537
- Definition of rack-rent, 38; rateable value, 28; highways, 93, 155; owner, 106, 501
- Delivery of voting papers, 45; agent of candidate may accompany, 50
- Demand of rates, service of, 375
- Demands by Local Board, proceedings for recovery of, in County Court, 158
- Demise in ejectment to be in name of clerk, 444
- Deodorizing disinfectants, use of, by Local Boards, 149
- Depasturing glandered horses, etc., 521
- Deposits of sheep, when a nuisance, 494
- Deposit of plans and sections of works on private streets, 167
- Derby provisional orders, 724, 728, 734, 738, 741
- Description on rate of owner and occupier when unknown, 371; of property of Local Boards in actions, 445
- Designation of owners and occupiers in proceedings, 494, 530
- Destroying voting paper, penalty for, 46
- Destruction of noxious matters removed from premises, 493; of food unfit for man, 520
- Devizes provisional order, 742
- Devonport provisional order, 743; compensation to officers under local Act, 743
- Direction of General Board of Health dispensed with, 2; to be given by Secretary of State, 3
- Directions, issue of, under Diseases Prevention Act, 553
- Disallowances in accounts by auditors, 419; removal of, by certiorari, 419; appeal against, 419; form of order of Secretary of State deciding appeal against, 422; how to be recovered, 422
- Discharge of sewage into rivers, when it may be restrained by Court, 513
- Discontinuance of sewage into river Thames, 131
- Diseases Prevention Act, local authorities under, 536
- Diseases Prevention Acts, union of local authorities for executing, 554
- Disinfectants, use of, by Local Boards, 151
- Disinfectants, memorandum of Barrack and Hospital Improvement Commission on use of, 149
- Disinfecting common lodging-houses, 245
- Disinfecting premises, 503; ships, 554
- Disinfection of clothing of sick person in common lodging-house, 249
- Disinfection, nuisance authority may provide means of, 503
- Disinfection of premises, 503; how when the owner or occupier is unable to do so through poverty, 503; of public conveyances used by persons suffering from infectious disorders, 564
- Disposal of noxious matters removed from premises, 493
- Disposal of sewage, 127
- Disqualification for office of member of Local Board, 28, 32; casual dealing not a, 32
- Disqualification of interested justices for acting judicially, 439

- Disqualified persons acting as members, penalty, 33; saving as to their acts, 35
- Dissolution of district containing population less than 3000, 19
- Distance which witnesses may be required to attend inquiries, 4; how measured, 29
- Distress, form of warrant, 375; how to be levied, 438
- Distress warrant for recovery of rates, limitation of time as to issue of, 373
- Distribution of sewage, report of Commissioners on, 118-124
- Distribution of sewage beyond limits of district, 94
- Distribution of sewage, 547; powers of sewer authorities in respect to the, 545, 546, 547
- Distribution of expense of repair of streets among owners, 160
- District, area comprised in, 25; meaning of, 25
- District comprising a borough, Local Board are not trustees for executing a Paving Act, 25
- District rates, when expenses of local authority are to be defrayed out of, 476; Board to levy, 353; on part of district, 361
- District surveyor, duty of, as to ditches, etc., 505
- District Local Board of Health, formation of, 6; union of adjoining districts, 10; how when a seaport is included in, 18; bounded by a river, 18
- Districts, Local Government, formation of, 10; how when boundaries not defined, 16; union of adjoining districts, 10, 23; division of, into wards for the election of members, 36; when bounded by a highway, 140
- District of nuisance authority, when to extend to places where ships are lying, 478
- District fund, surplus of highway rates to be carried to, 183; to be kept as a separate account by Local Board, 352; moneys to be carried to, 352; what to be defrayed out of, 352
- District fund, expenses under Common Lodging-houses Act to be charged to, 247
- District fund account, moneys to be carried to, 352, 441
- District rate may include past and future expenses, 363; must be sealed with seal of Board and signed, 364, 456
- Ditch, when a nuisance, 477
- Ditches, cleansing of, by surveyor, 505; conversion of into sewers, 507; on boundaries of district, 512; draining, etc., 138, 517; cleansing of, on boundaries of district, 139
- Diverting watercourse, 225
- Diverting water from streams, etc., 214, 225
- Divided parishes, how expenses of nuisance authority are to be provided for in, 476
- Divine service, regulations as to route of carriages during, 307
- Division of district for rating purposes, 361
- Division of districts into wards for election of members of Local Boards, 36
- Docks, rating of, 367; rating of wet, 368
- Docks, when not to be interfered with by Local Boards, 107
- Documents of Local Boards, how to be received in evidence, 59
- Documents, mode of proving, 555; penalty for forging, 555
- Domestic use, supply of water for, 226

- Doncaster provisional order, 725
 Doors opening on streets, 175
 Dorchester provisional orders, 726, 729
 Dover provisional order, 725
 Drain, when a nuisance, 477; examination of premises to ascertain the course of, 483; cleansing of, by surveyors, 505; conversion of, into sewers, 507
 Drain, cleansing, covering, or filling up of, 138, 517
 Drain, obstruction of, by Secretary at War, 96; power to stop up, 110
 Drainage district, application to be constituted a special, 542; constituting a part of parish a, 542
 Drainage of land for agricultural purposes, 110, 225
 Drainage of house, 104, 146, 147; power to determine nature and extent of, vested in Local Board, 145; by Local Boards, 147; easement as to, 128-130; liabilities of owners and occupiers as to, 146; materials to be used in construction of, 147; bye-laws as to, 202; works of, when not to be interfered with by Local Boards, 106
 Drainage into river Thames, 130, 465; into sewers, compulsory, 509; into sewers of sewer authorities, 547; by persons beyond district, 548
 Drainage works defined, 79; discharge of water to be provided for in, 86
 Drainage districts, formation of special, by sewer authorities, 540
 Drinks, adulteration of, 521
 Driver of public conveyance not disinfecting it after having conveyed persons suffering from infectious disorder, penalty, 564
 Drowning, saving life from, at Scarborough, 242
 Drunken persons on streets, 309
 Dudley provisional order, 726
 Dues on canals, etc., saving as to, 108
 Dukinfield provisional orders, 727, 736
 Dung, places for deposit of, 141; removal of accumulations of, 143; when accumulated so as to be a nuisance, 144
 Duration in office of members of Local Boards, 56
 Durham provisional orders, 724, 730
 Dust, boxes for temporary deposit of, 141
 Duties of Local Government Boards, 27
 Duties of inspectors of nuisances, 474
 Dwelling-houses, overcrowding, 526
 Dysynny, provisional order for drainage scheme, 111
- Earth-closets, provision for supply of, 152
 Easement as to sewers, 105; as to drainage, 128, 129
 East Cowes provisional order, 730
 East Cowes, repeal of Isle of Wight Highway Act in, 730
 Ecclesiastical district, a place having a defined boundary, 11, 16
 Edinburgh, sewage irrigation works at, 118
 Effect of bye-laws, 454
 Effluvia from noxious trades, proceedings in such case, 522
 Elected members of Local Boards, their qualification, 29; if also elected to serve in respect of one title only, 50
 Election of Guardians, production of papers, etc., connected with, 42

- Election of Local Board, first election to be conducted by summoning officer, 42 ;
 how if chairman is absent, and no other person appointed, 42
- Election of Local Board, defects in, not to invalidate proceedings, 35
- Election of Local Boards, wards for, 36 ; by whom, 38 ; absence of person
 appointed to conduct, 42 ; who to conduct when chairman seeks re-
 election, 49 ; scale of voting, 40 ; owners' statement, 41 ; the voting, 45 ;
 how to be conducted, 41 ; notice of election, 43 ; nomination of candidates,
 43 ; notice of candidates elected, 47 ; penalty for misconduct at election,
 49 ; agent may accompany deliverer of voting-papers, 50 ; expenses at-
 tending, 50 ; how in case of a failure or lapse of Board, 57
- Elective members, qualification of, 30
- Elegit, property of Local Board can be taken under an, 414
- Elland provisional orders, 726, 727, 736
- Employment of women and children in workshops, regulation as to hours of
 labour, 337
- Emptying sewers, 125
- Encroachments on highways, 184 ; on line of building, indictment for, 174
- Endemic diseases, prevention of, 552 ; defined, 552
- Enforcement of rates, 400
- Enlarging streets, purchase of property for, 169-171
- Entrance to vaults and cellars from streets, 175
- Entry upon lands to ascertain course of sewers, 90
- Entry upon premises by local authority, 484 ; their jurisdiction as to, 484 ; to
 remove nuisances, 483 ; to make sewers, 509
- Entry, exercise of power of, under Nuisances Removal Acts, 484 ; of common
 lodging-houses by persons authorized by local authority, 245, 252
- Entry upon premises by constable, 498
- Epidemic diseases, prevention of, 552 ; defined, 552 ; registrars of births and
 deaths to furnish information to the Registrar-General of the outbreak,
 553
- Epsom provisional order, 729
- Equity, proceedings at, in respect of noxious trades, 524, 529
- Erection of labouring classes' dwelling-houses, 262 ; of new buildings after
 notice has been given to Local Board, 203 ; of public baths and wash-
 houses, 236
- Error in rate, payment in such case, 372
- Establishment of markets by Local Boards, 284
- Estimate of private improvement rate, 379
- Estimates to be prepared before making rates, 363 ; before contracts, 427
- Eton provisional order, 743
- Evidence of annual value, 364
- Evidence of adoption of Local Government Act, 22 ; in action for recovery of
 penalties, 33 ; of documents, etc., 59 ; of rates, 377
- Evidence, value of scientific, 525 ; of formation of special drainage district by
 sewer authority, 540 ; of register of common lodging-houses, 248 ; of
 overcrowding, 251
- Evidence of nuisance on proceedings before justices, 489 ; in respect of carry-
 ing on noxious trades, 523
- Evidence of orders, etc., of local authority, 529 ; of order in Council, 554

- Examination of meat, etc., by local authority, 484
 Examination of witnesses, 4; of drains, etc., by surveyor, 145
 Exchange of lands under Labouring Classes Dwelling-houses Act, 263
 Exchequer Bill Commissioners, loans by, for purposes of Public Baths and Wash-houses Act, 235
 Exciseable liquor, definition of, 315
 Excusal of highway rates on the ground of poverty, 393
 Execution of Acts, persons acting in, indemnified, 446
 Execution of Local Government Act, reports of Secretary of State as to, 3
 Execution of works, penalty on occupier for preventing, 462
 Execution of works beyond limits of district, 140
 Execution of works, jurisdiction of local authority as to, 484; of structural works, 499; penalty on occupiers obstructing owners in, 531
 Exemption from rating, meaning of, 367; what kinds of property, 367-370
 Exemption from highway rates, 394
 Exemption of Woolwich Dockyard from Act, 95
 Exemption from stamp duty, 463
 Exercise grounds, formation of, 179
 Exercise of powers of Public Health Act under sanction of Secretary of State, 3
 Exeter provisional order, 743; compensation to officers under local Act, 743
 Existing baths and wash-houses, purchase of, 237
 Exmouth provisional order, 725
 Expenses of local authority, how to be defrayed, 475; of committees, 472; how to be recovered, 476, 499; division of, 502; of legal proceedings, 530; in the case of joint offenders, 530; in the case of appeals, 534
 Expenses under Diseases Prevention Act, how to be defrayed, 557
 Expenses of carrying into effect Public Baths and Wash-houses Acts in boroughs, 232; in Local Board of Health districts, 233; of executing Common Lodging-houses Act, 247, 248; Labouring Classes' Dwellings Act, 259, 260; of nuisance authority, mandamus to pay, 475; for part of parish, 476; of repair of streets, distribution of, among owners, 161
 Expenses of sewer authorities, out of what funds to be paid, 537; payment of, 546; in supplying water, 550; recovery of, from owners of premises, 550; of water supply, recovery of, in a summary manner, 226, 437; when nuisance authority may require payment of, from owner or occupier, 500; of Oxford Assessment Committee, 403
 Expenses of repairing closed churchyards and burial-grounds, 327, 328
 Expenses of repairing private streets, recovery of, 161
 Expenses of witnesses attending preliminary inquiry, 4; of proceedings with a view to adoption of Local Government Act, 10; of election of members of Local Boards, 50
 Expenses of cleansing, etc., drains, recovery of, 138
 Expenses, provision for recovery of by Secretary of State, 89
 Expenses of removal of nuisances, when to be a charge on premises, 500
 Expenses, recovery of, in County Court, 138, 144, 158; limitation of time, 153
 Expenses of removing nuisances, recovery of, 144
 Expenses of paving private streets, 158
 Expenses of execution of Burial Acts, 324

- Expenses, what to be defrayed out of district fund account, 352 ; out of general district rates, 353
- Expenses of parliamentary proceedings, 354
- Expenses, apportionment of, between two or more parts of a district, 361
- Expenses, recovery of, 437
- Expenses, when to be a charge on premises, 461
- Expenses, apportionment of, when to be binding, 462
- Expert, alleged nuisance referred by Court to, to determine, 479
- Exposing bedding, clothes, etc., which are infected, penalty, 564
- Exposing unwholesome food for sale, 483, 520
- Exposure of persons suffering from infectious disorders, in public places, 563 ; or in public conveyances, 564
- Extension of provisions of Public Health Act, 1848, with regard to cellar dwellings throughout England, 209
- Extinguishing fires, 312
- Extinguishing fires, use of metropolitan fire brigade for, beyond their district, 312
- Extra-parochial places, 470
- Extra-parochial places, provision for incorporation of, 17
- Factories, waterclosets to be provided for, 153
- Factory, when deemed a nuisance within Nuisances Removal Acts, 477
- Failure to elect Local Board, course of proceeding in such case, 57
- Failure of officer to account, 65
- Fairs, holding of, 285 ; bye-laws as to, 290
- False evidence, punished as perjury, 462
- Fan to be used in grinding, etc., on wheel, 338
- Fareham provisional orders, 729, 733
- Farsley provisional order, 740
- Fees for post-mortem examinations, how paid, 505
- Fellmonger, prohibition as to trade of, 298, 301
- Females included in words importing the masculine gender, 464
- Fences, repair of, 155
- Fencing footpath, duty of Local Board, 156
- Fever in common lodging-houses, notice of, to be given by keepers, 249
- Filling up voting-papers with number of votes, as to necessity of, 46 ; with implied consent of voter, 46
- Filtering sewage before discharge into rivers, 127
- Filth, removing from streets, 141 ; removal of accumulations of, 143
- Filtration of sewage, 122
- Finality of apportionment of expenses of repairing private streets, 159
- Finality of orders of Secretary of State, 4, 15, 24
- Fire-engines, provision of, etc., by Local Boards, 312
- Fire-plugs, 215, 228
- Fireplaces not consuming their own smoke, when to be deemed nuisances, 477
- Fires, bye-laws as to prevention of, in buildings, 201 ; supply of water in case of, 227 ; extinguishing them, 312
- Fires, metropolitan fire brigade may render assistance in extinguishing, beyond metropolis, 312
- Fireworks in streets, 308

- First election of members of Local Board, 42, 50
Fish, flesh, or flour, entry upon premises to inspect, 484, 520
Fish trade at Scarborough, regulation of, 293
Fixing gas lamps to houses, 177
Flagging streets, 155; specification of works, 170
Floodgates, not to be interfered with by Local Boards, 106
Flow of water, description of, 71
Flowing water, right to, 216
Food, adulteration of, 521
Food, entry upon premises to inspect, 483, 520; destruction of, when unfit for man, 520
Food unfit for use, seizure of, 297
Footpath, repair of, 163
Footways, obstructions on, 308
Forging voting papers, penalty for, 15, 46
Form of conviction, 450
Form of order of Secretary of State, deciding appeal against disallowance, 422
Form of order of Secretary of State, dismissing petition settling boundaries of district, 541
Form of voting-paper, 44
Form of order of injunction to restrain pollution of stream, 103
Formation of districts under Public Health Act, 6
Formation of districts under Local Government Act, 10; of special drainage districts by sewer authorities, 540
Fouling stream of water, loss of prescriptive right to, 99; restraining of, by owner of land not actually injured, 99
Fouling water in wells, and penalty, 519
Fouling water, 229; with gas-washings, 229, 519; by manufactories, 230
Fountains, when to vest in sewer authority, 518, 550
Fountains, supply of water to, 226; maintenance of, by local authority, 518
Fraudulent accounts, punishment for, 417
Free public libraries and museums, etc., establishment of, 347; admission of, to be free, 351
Frivolous complaint, costs of, 502, 503
Frodsham and Ince provisional order for drainage scheme, 111
Fronts of houses not to be brought forward without consent of Local Board, 173
Fruit, entry upon premises to inspect, 484, 520
Fry, Danby P., Common Lodging-houses Acts, 246
Fund out of which expenses of sewer authority are to be paid, 537
Furious driving in streets, 308
Furnaces, prevention of smoke from, 304; not consuming their own smoke, when to be deemed nuisances, 477
Furnaces for making animal charcoal, 302
Future expenses may be provided for with past expenses in estimate of rate, 363

Gainsborough provisional orders, 726, 740, 746; provision as to payment of mortgage debt, 740
Game, entry upon premises to inspect, 484, 520

- Gaol and house of correction, distinction between, abolished, 46
- Garden, whether it is part of curtilage of house, 148
- Gas company, liability of, for consequential damage, 230
- Gas lamps, fixing to houses in district, 177
- Gas measures, regulation of, 177
- Gas pipes, alteration of, by Local Board, 157; examination of, when water supply is affected by them, 229
- Gas, supply of, to public baths and wash-houses, 237; to labouring classes' dwelling-houses, 263
- Gas-washings, etc., fouling water with, 229, 519
- Gates opening on streets, 175
- Gateshead provisional order, 725
- Gazette, publication of orders in, 9; of notice of adoption of Act, 22
- Gazette, London, publication of order in Council in, 9, 552, 554
- General Board of Health, transfer of powers of, to Privy Council, 553
- General Board of Health, powers under Public Health Act requiring the sanction of, 2; in the case of mortgages, 3; substitution of Secretary of State for, 3, 404
- General district rates, when expenses of local authority to be defrayed out of, 475
- General district rate, may include past and future expenses, 363; must be sealed with seal of Board and signed, 364, 456
- General district rates, when costs of preliminary inquiry were to be made a charge on, 10; of adoption of Local Government Act, 23
- General district rates to be levied by Local Boards, 353; expenses to be defrayed out of, 353
- General district rates, as to costs of legal and parliamentary proceedings being chargeable on, 353, 354; assessment of unoccupied houses, 361; apportionment of, between outgoing and incoming tenants, 361; mode of assessment, 363, 364; publication of, 363; to be signed by five members, 364; collection of, 372
- General issue, when it may be pleaded, 448
- Glandered horses, exposure of, 521
- Glen's Burial Acts, 322
- Glen's Highway Laws, 192
- Glen's Jervis' Acts, 66, 535
- Glen's Small Tenements Rating Act, 40
- Gloucester provisional orders, 724, 735
- Goit, not a hole within meaning of Public Health Act, 156; no absolute duty of Local Board to fence a, 156
- Good Friday, day for performance of Acts falling on, 43
- Gratuitous supply of water to public fountains, 226
- Great Harwood provisional order, 742
- Grinding, etc., fan to be provided to protect workmen in, 338
- Grounds of, appeal against rate, 399
- Groynes, when not to be interfered with by Local Board, 106
- Guardians of the Poor, clerk of; to produce books and papers relating to election of guardians, 42
- Guardians, burial of poor persons by, 337

- Guardians, when local authority, 469; meaning of, 467
 Guardians, powers under Diseases Prevention Act, 556
 Guardians empowered to procure sanitary reports, 561
 Guildford provisional order, 735
 Gunpowder Act, 308
 Gutter, when a nuisance, 477; cleansing of, 505; conversion of, into sewers, 509
- Hackney carriage, licence required though plying on turnpike road, 318
 Hackney carriage, plying without licence, Inland Revenue licence no answer to information, 318; exemption of, from licence, 318
 Hackney carriages, regulation of, 318
 Haddiscoe, drainage scheme in, 111
 Halifax, provision as to purchase of gasworks in town of, 178; as to waterworks, 216; provisional orders, 726, 731, 741
 Halstead provisional order, 736; boundary of district, 737; saving clause as to, 737; application of income arising from waterworks, 737; from corn market-house, 737
 Hanley provisional order, 731, 738
 Harbours, when not to be interfered with by Local Boards, 106
 Harrogate provisional orders, 738, 742, 746
 Harrow provisional orders, 724, 742; Local Board to deodorize sewage, 742
 Hartlepool provisional order, 725
 Hastings provisional orders, 725, 729, 736
 Haworth provisional order, 727
 Health, medical officer of, appointment of, 560
 Heap provisional order, 734
 Henley provisional order, 734
 Hexham provisional orders, 733, 746
 High and low water mark, jurisdiction of Local Board, 321
 High-pressure, supply of water on, for fire-plugs, 228
 High-water mark, boundary of parish, 18
 Highway, what deemed to be, 93; meaning of term, 155, 184; when streets may be declared to be, 166; Local Boards to be surveyors of, 183; returns as to, to be made by the clerk of the Local Board, 183; costs of repair of, 185; new highways, 188
 Highway, definition of, 155; liability of parish to repair although in district of Local Board, 156; forming boundary of district, 140
 Highway, power of Secretary at War to divert, 110
 Highway Board, repeal of, 23 & 24 Vict. c. 77, s. 3, with regard to, 471
 Highway district, district of Local Board cannot be formed into a, 183
 Highway-rate, in what cases inhabitants of district not liable to, 183; recovery of, by existing surveyors, 183; application of surplus, 183; allowance and signing of, not necessary, 187; when they may be levied by Local Boards, 186; how made, 185; verification of accounts as to, is not necessary, 187
 Highway rates, 385; must be levied over the whole district, 186; in divided district, 361; when to be paid out of poor rate, 510

- Highways, powers of vestries in relation to, transferred to Local Boards, 184 ; encroachment on, 184 ; repair of, when not included in district, 186 ; rates for, 187
- Highways in parts of parishes, 186
- Highways in South Wales, 191
- Highways, locomotives on, 192
- Highways in Matlock Bath district, 185
- Highways, surveyors of, duty of, as to ditches, etc., 505
- Highways, law of, reference to Glen's work on, 192
- Hincksey provisional order, 736
- Hire of horses, fixing rates for, 321
- Hoardings to be put up during repair of buildings, etc., 211
- Holbeach provisional order, 725
- Holy orders, disqualification of person in, as member of Local Board in corporate district, 28
- Holywell provisional order, 732
- Hornsey provisional order, 746
- Horses, bye-laws for licensing and regulating hire of, 321, 454
- Horses, glandered, exposure of, 521
- Hospital tents, loan of, by War Office, 488
- Hospitals, conveyance of sick to, 504 ; from ships or boats, 504 ; power of sewer authorities to provide, 550 ; for sick in metropolis, may be provided by nuisance authorities, 487
- Hospitals, liability to bury persons dying in, 327
- Hours at which locomotives may pass through cities, etc., 195
- House of correction and gaol, distinction between, abolished, 46
- House, meaning of term, 104, 147 ; drainage, 145, 148 ; curtilage of, 147
- House refuse, extension of powers of removal of, to sewer authority, 142
- Householders' report on premises unfit for habitation, 275
- Householders, notice of nuisance by, 482
- Houses when overcrowded to be deemed a nuisance, 477 ; in district of sewer authority compulsory drainage from, into sewer, 549 ; in which persons suffering from infectious disorders have been, penalty for letting without previous disinfection, 564 ; purification of, 153
- Houses, removal of projections to, 173, 174 ; to have proper waterspouts, 176 ; numbering of, in streets, 176 ; for reception of the dead, 326
- Houses built without foundations are buildings, 104
- Houses constructed of wood, 200
- Houses, to be set back to line of street on being re-erected, 199
- Hove provisional order, 738
- Human food, meat, etc., unfit for, 483, 520
- Human habitation, houses unfit for, 497
- Ilfracombe provisional order, 731
- Illuminations, regulations as to, 307
- Impounding stray cattle, 307
- Improvement Act, local authorities under, 469 ; meaning of, 468
- Improvement Act districts, adoption of Free Public Libraries Act in, 349
- Improvement Commissioners, audit of accounts of, 414

- Improvement of boroughs, application of surplus borough funds to, 106, 140, 175
- Improvement expenses, how to be levied, 379; recovery of, 381
- Improvement rates, mortgage of, 325, 409
- Improving streets, 155; purchase of property for, 169, 172
- Income arising from burial-grounds, application of surplus, 325
- Income tax on interest on loans, 405
- Incoming and outgoing tenants, apportionment of rates, 361
- Incorporated powers, 464
- Incorporation of extra-parochial places with adjoining parishes, 17
- Incorporation of parts of parishes with districts, 67
- Incorporation of Local Boards, 411, 455; of nuisance authorities, 470; of sewer authorities, 538
- Incumbents, when exempt from rates, 169
- Indecent conduct in streets, 309
- Indemnity to persons acting in execution of Acts, 446
- Indictment at common law for nuisances, 524
- Indictment for encroachment on line of building, 174
- Infected bedding, clothing, etc., penalty for selling, lending, or exposing, 564; disinfection of, 564
- Infected persons, carriages for conveyance of, 559
- Infectious diseases, carriages for conveyance of persons infected with, 504; penalty on persons suffering from, entering public conveyances, 504; removal of persons suffering from, to hospitals, 504; from ships or boats, 504; in common lodging-houses, notice of, to be given by keepers, 249; penalty on persons suffering from, exposing themselves in public places, 564; or in public conveyances, 564
- Infectious diseases, public exposure of persons labouring under, 563
- Informers, common, may not sue for penalties without consent of Attorney-General, 34, 440
- Inhabitants, application of, to justices with regard to nuisances, 482, 498
- Injunction to restrain execution of works causing private injury, 102; to restrain pollution of stream, 99, 100, 125, 126; diverting watercourse, 225
- Injunction to restrain pollution of stream, 91, 99, 100, 102, 125; form of, 103
- Injuring works of Local Board, penalty, 462
- Injury by overflow of sewers, 101; by raising or lowering levels of streets, 156, 201
- Injury caused by noxious vapours, liability for, 299-302
- Injury to lamps, 177
- Inland Revenue, licence of, no answer to information for plying without licence of Local Board, 318
- Inn, keeper of, to be deemed to let part of house in which persons suffering from infectious disorder has been, 564
- Inoculating with small-pox, penalty, 566
- Inquiries, Secretary of State may direct, 3; powers of officer in such case, 4; by inspectors under Public Health Act, as to formation of districts, 6
- Inquiries concerning public health by Privy Council, 560
- Insolvent, disqualification of, as member of Local Board, 32
- Inspection of papers relating to election of members of Local Boards, 47; of

- maps of sewers, 88 ; of common lodging-houses, 245 ; of slaughter-houses, butchers' shops, etc., 296 ; of rates, 364 ; of books, etc., before audit, 417
- Inspection of common lodging-houses, 250 ; of lodging-houses, 252 ; of labouring classes' lodging-houses, 265 ; of district by nuisance authority, 481 ; of premises on order of justices, 482
- Inspection of drains by sewer authority, 146
- Inspection of premises by local authority, 482 ; of meat, etc., 483
- Inspector of common lodging-house to give notice of nuisance existing in, 482
- Inspector under Public Health Act, inquiries by, 6
- Inspector of nuisances, appointment of, 61, 473 ; removal of filth, etc., on certificate of, 143 ; power as to places used for sale of meat, 296
- Inspector of markets, penalty for obstructing, 287
- Interested justice, disqualification of, for acting judicially, 439 ; jurisdiction of, in proceedings under Nuisances Removal Acts, 492
- Interested justices may act notwithstanding, 439, 492, 493, 533
- Interment within churches prohibited, 326
- Interment of the dead, issue of regulations for, 553
- Interpretation of the term "owner," 38, 106, 501
- Interpretation of terms in Nuisances Removal Act, 467
- Interrupting distribution of voting-papers, 46
- Ipswich provisional orders, 727, 729, 731
- Irrigation with sewage of towns, 117 ; profits of, 123
- Isle of Wight Highway Act, repeal of, in certain parishes in, 730
- Isleworth, diversion of sewage of, from river Thames, 465
- Issue, when it may be pleaded, 448

- Joint offenders, proceedings against, 530
- Joint owners or occupiers, proceedings against, 494, 530
- Joint property, qualification of members of Local Boards by, 29
- Joint rating, qualification of members of Local Boards by, 29
- Joint sewage district, constitution of, 542 ; notice of intention to form, 543 ; powers of, 543 ; expenses of, how to be defrayed, 543
- Joint stock company, when shareholder in, not to vacate office as member of the Local Board, 33
- Judgment against Local Boards, 445
- Judgment creditor of Local Board, mandamus to levy district rate to satisfy, 357 ; against clerk of Local Board, 414
- Jurisdiction of justices in regard to consequential nuisance arising beyond district, 490
- Jurisdiction of local authority as to execution of works, 484 ; of other authorities preserved, 466
- Jurisdiction of justices, 439, 492, 533
- Jurisdiction of Local Board extends to the sands of sea shore between high and low water mark, 321
- Justices of the peace defined, 66, 443 ; may summon for non-payment of rates, 371, 372 ; mode of proceeding before, 439 ; may act notwithstanding that they are interested, 439 ; orders of, once made, cannot be amended, 463
- Justices, appearance of nuisance authority before, 490 ; not disqualified for acting judicially when interested, 439 ; jurisdiction of, under Common

- Lodging-houses Act, 252; not disqualified for acting on account of being member of nuisance authority or contributor to rates, 492
- Justices, jurisdiction of, 439, 492, 533; qualified to act in respect of proceedings under Nuisances Removal Act, 492
- Justices, power to make order for vaccination of child, 565
- Justices, proceedings before, for removal of nuisances, 489; to what works their orders may extend, 494; what they may require to be done, 495
rule to, 534
- Keeper of common lodging-houses to give notice of fever, etc., therein, 249; duty of, as to cleansing house, 250; how if convicted of third offence against Acts, 251; of an inn, to be deemed to let part of house in which persons suffering from infectious disorder has been, 564
- Keeping in order closed burial-grounds, 327, 477
- Keeping pigs or other animals so as to be injurious to public health, 143
- Keighley provisional orders, 727, 743
- Kendal provisional orders, 724, 744
- Keswick provisional order, 746
- Kimberley, prevention of smoke in, 305
- Kingston, diversion of sewage of, from river Thames, 465
- Kingston-upon-Hull provisional orders, 725, 731, 733, 735
- Kirkmanshulme, highways in, 185
- Knackers' yards, Local Boards may provide, 294; licensing, 294; register of, 295; bye-laws as to, 295; suspension or revocation of licence, 295; inspection of, 296
- Knighton provisional order, 728
- Knolly's Aisle, provision respecting, 743
- Knottingley, adoption of Local Government Act in, rescinded, 738
- Labour, regulations as to hours of, for women and children, 337
- Labouring classes' dwelling-houses, establishment of, 257; expenses of, how chargeable, 258, 259; audit of accounts with regard to, 260; loans for, 261, 266; purchase of lands for, 261; erection of, 262; purchase of existing houses by local authority, 262; supply of water and gas to, 263; sale and exchange of lands, 263; sale of houses, 263; management of, 264; bye-laws for, 264; rents of, 265; how if tenants receive parochial relief, 265; inspection of, 265; advances of public money towards erection of, 261, 266; amount which may be advanced, 269
- Labouring classes' lodging-houses, bye-laws sanctioned by Treasury as to erection of, 270; smallest number of rooms in each tenement, 270; number of cubic feet in each room, 271
- Labouring classes, proportion of public baths to be provided for, 240; of washing-tubs, etc., in wash-houses, 240; charges for baths and washing-tubs, etc., used by, 240
- Lamps, injury to, 177
- Lancaster provisional order, 724
- Landlord and tenant, agreement between, not to be affected by Acts, 377
- Land, assessment of, 367
- Land, drainage districts, 111

- Lands, entry upon, to ascertain course of sewers, 90; vested in Secretary of State for War, not to be interfered with by Local Boards, 106; purchase of, 411; term defined, 411
- Lands, appropriation of, for purposes of Baths and Wash-houses Act, 235; defined, 236; sale and exchange of, 238
- Lands, for purposes of labouring classes' dwelling-houses, 261; purchase of, 261; sale and exchange of, 263
- Lands Clauses Act incorporated with Public Baths and Wash-houses Act, 236
- Lands of Local Board may be taken under an *elegit*, 414
- Lands, purchase, etc., of, for purposes of Free Public Libraries Act, 350
- Lands, sewer authorities empowered to hold, 538; to take, 546
- Lapse of Local Board, 57
- Larceny of things attached to public pleasure-grounds, 180
- Launceston provisional order, 725
- Law expenses, when to be defrayed out of district rates, 353, 354, 355
- Law of Highways by Glen, 192
- Law, proceedings at, 524, 529; expenses of, under Nuisances Removal Acts, 529
- Layton-with-Warbrick provisional orders, 742, 746
- Leam, drainage into the river, 127
- Leamington provisional order, 727, 728
- Lease of lands to Local Board by member not to vacate office, 32
- Legal procedure by local authority, 529
- Legal proceedings, appearance of Local Boards in, 445; of nuisance authority in, 490; of sewer authorities in, 538
- Legal proceedings under Diseases Prevention Act, 559
- Legal proceedings against officers failing to account, 65; in respect of damages and other matters, 437
- Legally qualified medical practitioner, meaning of term, 64
- Leicester provisional orders, 724, 729
- Lending infected bedding, clothing, etc., penalty, 564
- Leominster provisional order, 739
- Lesser place included in a greater, adoption of Act, 12
- Letting houses in which persons suffering from infectious disorders have been, without previous disinfection, penalty, 564
- Level of streets, compensation for injury caused by alteration of, 156, 201
- Level of street, need not be made to same level of adjoining street, 160
- Levelling streets, 155; bye-laws as to, 201; powers of Local Board as to, 159; specification of works, 170
- Liabilities of Local Government Boards, 27
- Liabilities of owners and occupiers for repair of sewers, etc., 146
- Liability of gas company for damage to water, 230
- Liability of public functionaries to compensate for damage caused by the execution of their statutory powers, 460
- Liability of proprietor of public carriage, 320
- Liability of treasurer of Local Board for money in his hands, 63
- Liability under Public Baths and Wash-houses Act not to attach personally, 238
- Licence of local authority for stage carriage, when not necessary, 318
- Licence as slaughter-house of part of premises, extends to whole, 295

- Licensed alehouse a place of public resort, 313
 Licensing slaughter-houses and knackers' yards, 294; hackney carriages and drivers, 318; horses, etc., 454
 Lifeboats at Scarborough, 242
 Light-dues exempt from rates, 370
 Lighthouses exempt from rates, 370
 Lighting rates, balance in hands of overseers should be paid to Local Board, 176
 Lighting streets, 176
 Limitation of actions, 447; of proceedings, 438; for penalties, 454
 Limitation of time for recovery of expenses, 153
 Limitation of amount of assessment to defray costs of sewers, 510; of time for recovery of penalties, 531
 Limitation of amount of rates, 511
 Limits of district including a sea-port, 18; carrying sewers beyond, 94, 140
 Limits of Public Health Act, 1; of Local Government Act, 2
 Lincoln provisional order, 739; compensation to officers under Local Act, who may be removed, 739
 Line of streets, 171, 172; of buildings, 199, 201
 List of candidates and elected members, 47
 Llandilo provisional order, 730
 Llanelly provisional orders, 725, 730, 732, 743
 Llanelly district, repeal of South Wales Highway Act in, 191
 Llangollen provisional orders, 727, 734
 Loans, members of Local Boards concerned in, not to vacate office, 32; by the Commissioners of Public Works, 404
 Loans, local authority not empowered to raise, 514; income-tax on interest of, 405
 Loans for purposes of Labouring Classes' Dwellings Act, 261, 266; for purposes of Public Baths and Wash-houses Act, 235
 Local Acts, transfer of powers of Commissioners under, to Town Council of Borough, 20; execution of, 67; exemptions from rating under, preserved, 367
 Local authorities under Diseases Prevention Act, 556
 Local authorities under Artisans' and Labourers' Dwellings Act, 272; their duties on receipt of report that houses are unfit for habitation, 275
 Local authority, summons to, for nuisance in adjoining district, 139
 Local authority, power of, to execute works in adjoining places, 511
 Local authority, wells, etc., vested in, 518
 Local authority, who are, under Nuisances Removal Acts, 469; their powers to appoint committees, 472; inspectors of nuisances, 473; expenses of local authority, 475; how recoverable, 530
 Local authority, cognizance of nuisances by, 482
 Local authority, entry of, upon premises to ground proceedings, 482; to ascertain the course of drains, or execute or inspect works, 483; to remove or abate nuisance, 483, 498; to inspect or examine meat, etc., 483
 Local authority, jurisdiction of, as to execution of works, 484, 485
 Local authority, mandamus to, 497, 498
 Local authority to make sewers, 508
 Local authority to assess premises to defray costs of sewers, 509

- Local authority, proceedings of, at law or equity in respect of noxious trades, 524
- Local authority, with respect of overcrowded houses, 526
- Local authority, in respect of common lodging-houses, 527
- Local authority, evidence of orders, etc., of, 529
- Local authority, legal procedure, 529; proceedings in relation to appeals, 531; expenses of legal proceedings by, 531
- Local authority, protection of, 535; personal liability saved, 535
- Local authority, powers of, under Diseases Prevention Act, 555
- Local authority, provisions as to supply of earth-closets by, 152
- Local authority for execution of Common Lodging-houses Acts, 247, 467; in the case of Oxford and Cambridge, 247; meaning of term in Common Lodging-houses Acts, 247; power to make regulations respecting houses, 249; jurisdiction of, 252; for removal of nuisances, when chief officer of police may become, 471; under Sewage Utilization Act, who are, 537; for executing Diseases Prevention Acts, union of, 556; in the City of London, 558
- Local Board a corporation, 455
- Local Board cannot purchase land upon which to erect public conveniences, 152
- Local Board may require houses to be set back on being re-erected, 199
- Local Board, incorporation of, 2, 411, 455; definition of, 537; on substituting new sewers must connect old drains, 104; for a district comprising a borough are not trustees for executing a Paving Act, 21; default of, to provide sewers, mode of proceeding for redress, 89; property of, may be taken under an *elegit*, 414; how if there be default in enforcing Local Government Act, 455; penalty for wilfully damaging works or property of, 462; transfer of powers of Burial Boards to, 324
- Local Board of Health, defects in election of, not to invalidate proceedings, 35; first election of, to be conducted by summoning officer, 42
- Local Board of Health districts, adoption of Public Baths and Wash-houses Acts in, 232
- Local Boards of Health, under local Acts, application of provisions of general Acts to, 5; constitution of, 25; definition of term, 26; qualification of selected members, 28; of elected members, 29; must make a declaration before acting, 30; disqualification of members of, 32; vacancies in, 33; wards for election of, 36
- Local Boards, election of, 38; by whom, 38; avoidance of constitution of district if no election take place within time limited in places of less than 3000 population, 39; scale of voting, 40; owners' statement, 41; voting at, 41; how election is to be conducted, 42; notice of election, 43; nomination of candidates, 43; delivery of voting-papers, 45; tender of refusal to serve, 45; signing voting-papers, 45; collection of voting-papers, 46; examination and casting up votes, 47; notice of members elected, 47; penalty for misconduct in the election, 49; agent of candidate may accompany deliverer of voting-papers, 50
- Local Boards, first meeting of, 50; expenses attending election, 50; regulation of number of members by order in Council, 50; re-election of members who go out of office or resign, 56; order in which members are to go out of

- office, 56; duration of office, 56; remaining members to act in case of vacancies, 57; how in the case of a failure to elect, 57
- Local Boards, their proceedings, 58; power to sue and be sued, 538
- Local Boards, bye-laws as to, 58
- Local Boards, quorum at meetings of, 58
- Local Boards, appointment of chairman, 58; his casting vote, 59
- Local Boards to provide offices and a seal, 59
- Local Boards, publication of proceedings of, 58
- Local Boards, committees of, 60
- Local Boards, annual report of, 60
- Local Boards, appointment of officers by, 61
- Local Boards, their powers as to sewers, 88; restraining excessive exercise of, 100; removal of sewage matter, 116; have no prescriptive rights, 126; ditches, drains, etc., 138; execution of works in adjoining districts, 139; cleansing streets, removing filth, etc., 141; house drainage, 145; power to determine nature and extent of works vested in, 145
- Local Boards, management of streets, 155; liability of, in respect of works in private streets when notices on owners are bad, 162; improving line of streets, 172; naming streets, 176; numbering houses, 176; lighting streets, 176
- Local Boards, public clocks, supply of, by, 178
- Local Boards, public pleasure-grounds, formation of, by, 178
- Local Boards, highways under, 183
- Local Boards, regulation of buildings by, 199
- Local Boards, to act in relation to highways instead of vestries, 184; repair of highways not within district, 186; in South Wales, 190
- Local Boards, agreements by, for water supply, 226
- Local Boards, liability for injuries caused by negligence, 241
- Local Boards, duty in respect of dangerous or ruinous buildings, 209
- Local Boards, water supply by, 212; to levy water-rates, 225
- Local Boards, powers in respect of public baths and wash-houses and public bathing, 232; of common lodging-houses, 243; of markets, 284; of slaughter-houses, 294; of noxious trades, 298
- Local Boards, duties in respect to the prevention of smoke, 304
- Local Boards to prevent obstructions and nuisances in streets, 307
- Local Boards to make provision for extinguishing fires, 312
- Local Boards to make regulations for places of public resort, 313; hackney carriages, 318
- Local Boards, jurisdiction of, as to the sea shore, 321
- Local Boards, duties of, in respect to the burial of the dead, 322
- Local Boards to enforce provisions of Bakehouse Regulation Act, 331
- Local Boards to fix salary of stipendiary magistrates, 344
- Local Boards to provide and furnish police office, 345
- Local Boards, power to make rate for payment of magistrate, etc., 346
- Local Boards, duty of, as to closed burial-grounds, 327
- Local Boards, their powers as to certain works restrained, 106, 109; arbitration as to, 108, 109
- Local Boards, rating powers of, 353; new valuations by, 363; to prepare estimates before making rates, 363; may amend rates, 371; remission of rates by, on the ground of poverty, 377

- Local Boards, powers as to private improvement expenses, 379
 Local Boards, power to levy water rates, 383 ; highway rates, 385
 Local Boards, appeals against rates of, 398
 Local Boards, mortgage of rates by, 403
 Local Boards, purchase of lands by, 411
 Local Boards, contracts by, 427
 Local Boards, actions by them, 444
 Local Boards, property of, how to be described in action, 445
 Local Boards, consents, etc., of, how to be given, 455
 Local Government Act, citation of, 1 ; limits of, 2 ; how to be construed, 2 ; amendment of, 2
 Local Government Act, bye-laws under, 2
 Local Government Act, when to take effect, 2, 22
 Local Government Act, not to affect qualification, etc., of members under Public Health Act, 2
 Local Government Act, Secretary of State to report annually to Parliament as to execution of, 3
 Local Government Act, formation of districts under, 10 ; restriction as to adoption in places having less than 3000 population, 14 ; adoption by parish in highway district, 14 ; abandonment of, in certain places, 19 ; how in the case of a lesser place included in a greater, 12 ; partial adoption of Act, 18 ; by places not having defined boundaries, 15 ; appeal against adoption of, 23 ; notice of adoption, 21 ; publication of, 22
 Local Government Boards, transfer of powers to municipal corporations, 27
 Local Government Boards, constitution of, 26 ; qualification for members, 30 ; disqualification, 32 ; vacancies in, 33 ; wards for election of, 36 ; election of, 38
 Local improvements, application of surplus borough fund in aid of, 106, 140
 Locks of canals, etc., Local Boards not to interfere with, 106
 Lockwood provisional order, 734
 Locomotive engines, consumption of smoke by, on roads, 193 ; on railroads, 304
 Locomotives on highways, 192 ; rules for the manner of working, 194 ; damaging bridges, 196
 Lodgers not to be received into unregistered common lodging-houses, 249
 Lodging-houses, common, overcrowding, 527
 Lodging-houses, regulations as to, 252 ; for labouring classes, establishment of, 257 ; sale of, 263 ; management of, 264 ; bye-laws as to, 264
 Lodging-houses, regulations for, under Sanitary Act, 253
 London, City of, local authority in, 470 ; for executing Diseases Prevention Acts, 558
 London Gazette, publication of orders in, 9 ; of notice of adoption of Act, 22
 Longdon and Eldersfield provisional order for drainage scheme, 111
 Longton provisional orders, 731, 736
 Lower Brixham provisional order, 746
 Low-water mark, boundary of parish, 18 ; jurisdiction of Local Board, 321 ; to form boundary of district on sea shore, 140, 471
 Ludlow provisional order, 729
 Lunatics in asylums, burial of, 327

- Mad dogs in streets, 308
 Maidstone provisional order, 739
 Majority of votes at election of members of Local Boards to be binding, 41;
 how to be ascertained, 58
 Making up accounts for audit, 417
 Malvern provisional orders, 742, 745
 Management of commons near the metropolis, 181; of free public libraries,
 etc., 351; of labouring classes' lodging-houses, 264; of public baths and
 wash-houses, in whom vested, 239; bye-laws for, 239
 Management of streets, 155
 Mandamus, costs of, application for, when to be made, 358
 Mandamus to enforce payment of costs on appeal to Secretary of State, 4; to
 levy a rate to pay a debt, 359, 360; to satisfy damages, 99, 360, 459; as
 to appeal against a rate, 401; when it will not lie against a local authority,
 497, 498
 Mandamus to levy district rate, 99, 357; to pay costs of nuisance authority, 475
 Manufactories, fouling water, 230; water-closets to be provided in, 153
 Manufactures, prohibition as to offensive, 298; when accumulations necessary
 for carrying them on are not to be deemed nuisances, 477, 522; of gas,
 penalty for fouling water with gas washings, 519; causing noxious effluvia,
 proceedings in such case, 522
 Manure, removal of accumulations of, 143; periodical removal of, from mews,
 stables, etc., 525
 Maps of sewerage, 88
 March provisional order, 726
 Margate provisional orders, 725, 745; extension of boundaries of, 725
 Market days to be appointed by Local Board, 286
 Market-gardens, rating of, 367
 Market-place, conviction for leaving carts in, 292
 Market rents, 289
 Markets, establishment of, by Local Boards, 284; changing site of, 284; sales
 elsewhere than in, 286; bye-laws as to, 290
 Markets and Fairs Clauses Act, what is not a shop within meaning of, 286
 Marksman, how to vote, 45
 Masculine gender, words importing, to include females, 464
 Master of ship or vessel to be deemed occupier thereof for purposes of Nuisances
 Removal Acts, 478
 Materials for construction of drains, 147
 Matlock provisional order, 734
 Matlock Bath, settling boundaries of, 16
 Matlock Bath district, highways in, 185; annual payment from, towards high-
 ways in Matlock district, 735
 Maxey provisional order for drainage scheme, 111
 Meadow-land, rating of, 367
 Measures for sale of gas, 177
 Measuring distance, mode of, 483, 529
 Measuring goods sold at markets, 287
 Meat, inspection of, 296; by sanitary inspector, 483; penalty for selling, when
 unwholesome, 286

- Medical officer of health, appointment of, 560 ; of a poor law union, payment to, for treatment of sick in vessels, 562
- Medical officer, appointment of, by Privy Council, 559
- Medical officer, notice of fever, etc., in common lodging-house to be given to, 249
- Medical officers, sanitary reports of, 560
- Medical practitioner defined, 64 ; certificate of, as to houses in a filthy condition, 153 ; payment to, for treatment of sick in ships, 561
- Medicine, supply of, by nuisance authority, 487 ; or sewer authority, 487
- Medicines, issue of directions for dispensing, 553 ; to sick on board vessels, 561
- Medicines, adulteration of, 521
- Meetings for adoption of Local Government Act, 11 ; for consent to provisional order of Secretary of State, 68
- Meetings of Local Boards, when first are to be held, 50 ; annual, 58 ; ordinary, 58 ; bye-laws as to, 58 ; quorum, 58
- Melcombe Regis provisional order, 725
- Melting-house causing noxious effluvia, proceedings in such cases, 522
- Metropolis, local authorities in, for removal of nuisances, 470 ; offensive ditches, etc., in, 506
- Metropolis, nuisance authorities in, may provide hospitals for sick, 487
- Metropolitan Board of Works, authority of, in Woolwich, 52
- Metropolitan fire brigade, when it may render assistance in extinguishing fires beyond metropolis, 312
- Metropolitan roads, when not to be interfered with, 189
- Mews, periodical removal of manure and refuse from, 525
- Middlesborough, limitation of rates in, 365 ; provisional order, 727
- Midgley provisional order, 743
- Minerals and mines, saving as to, 467
- Minister, disqualification of, as member of Local Board in corporate district, 28 ; not liable to certain expenses in respect of their churches, 169
- Misconduct of returning officer, penalty cannot be enforced for mere mistakes upon doubtful points, 49
- Misdemeanour, making a false declaration a, 30
- Mitigation of penalties, restriction upon justices as to the, 442
- Money, payment of, into Court, 448
- Morden Carrs provisional order for drainage scheme, 111
- Morpeth provisional orders, 725, 730
- Mortgage of borough funds or poor-rates under Baths and Wash-houses Acts, 235 ; of rates, etc., for purposes of Free Public Libraries Act, 350
- Mortgage of general district rates to pay debts secured on special district rates, 378
- Mortgage of improvement and burial rates, 325, 409
- Mortgages on special district rates, 378
- Mortgages, in what cases sanction of General Board of Health is to continue in force, 3 ; of rates, 403 ; redemption of, 405
- Mortuary houses may be provided by nuisance authority, 505 ; burial of dead bodies in, by relieving officer, 505
- Moss-side provisional order, 727
- Mules, bye-laws for licensing and regulating hire of, 321, 454

- Muriatic acid gas, regulations to abate nuisance caused by works where evolved, 481
- Museums under Free Public Libraries Act, management of, 351
- Naming streets, 176
- Nantwich provisional order, 728
- Natural drainage defined, 70
- Navigable rivers not to be interfered with by Local Boards, 106
- Navigation of river, saving as to, 467
- Necessaries, public, 153
- Negligence, liabilities for injuries caused by, 241
- Net annual value of rateable property, how to be ascertained, 363, 364
- Netherthong provisional order, 738
- New buildings, notices as to, 3; regulation of, 199; bye-laws as to, 201; defined by Secretary of State, 207; omission of builder to give required notice as to erection of, power of Local Board, 206
- New buildings, right to erect, after notice has been given to Local Board, 203
- New houses, drainage of, 146
- New roads, making of, by Local Boards, 188
- New sewer to be laid in same course as former one, 513
- New sewers, local authority empowered to make, 508
- New streets, purchase of premises for, 200; bye-laws as to, 201
- New street, width of, in a case under the Metropolis Local Management Act, 202
- New Windsor provisional orders, 724, 738
- Newbury provisional order, 726
- Newcastle-under-Lyme provisional order, 725
- Newly establishing a business, what is, 298
- Newmarket provisional order, 725
- Newport provisional orders, 724, 742; levying tolls in, 730
- Newton Heath, highways in, 185; provisional order, 728
- Nitro-glycerine, safe keeping of, 310
- Nomination of candidates, 43
- Nominator of a candidate for town councillor must be a burgess of the ward for which candidate is nominated, 37
- Non-corporate district, what is a, 25
- Non-delivery of a rate-book a civil and not a criminal proceeding, 65
- North Hincksey, election of members of Oxford Local Board for parish of, 55; overseers to produce rate-books, 55; penalty for default, 55
- Northmoor and Stanton provisional order for drainage scheme, 111
- Norwich provisional order, 725
- Norwood, sewage irrigation works at, 118
- Notice of action against local authorities or their officers, 446
- Notice of adoption of Local Government Act, 21; publication of, 22; of objections, 22; publication of, 26
- Notice of election of members, 43; of members elected, 47
- Notice of repairs to private streets, 158; service of, 169
- Notice as to cellars, etc., 208
- Notice of rates, 363; of demand of rates, 375

- Notice of audit, 417
- Notice, service of, on Local Board, 440
- Notice, service of, upon owners and occupiers, 440
- Notice of action, 446, 449
- Notice of action, form of, 447
- Notice and grounds of appeal against rate, form of, 399
- Notice as to registration of common lodging-houses, 248 ; of churchwardens and overseers as to cellar dwellings, 528 ; of fever, etc., cases in common lodging-houses to be given by keepers, 249 ; of nuisance authority to cleanse or disinfect premises, 503 ; of nuisance authority to remove manure and refuse from mews and stables periodically, 525 ; what shall be given before proceedings are taken under Nuisances Removal Acts, 489
- Notice, the giving of, as to application of Act, not a condition precedent to adoption of Act, 7
- Notice of appeal to Quarter Sessions, 532
- Notice of inquiry into auditor's decision, form of, 421
- Notice boards, penalty for defacing, 462
- Notice as to new buildings, 3 ; when no longer necessary, 207
- Notice, under Diseases Prevention Act, service of, 559
- Notice of nuisances, by whom to be given, 482 ; service of, generally, 529 ; by post, 529
- Notices, service of by sewer authority, 548
- Nottingham provisional orders, 729, 731, 735
- Noxious or offensive matters, removal of accumulations of, 143
- Noxious matters, disposal of, when removed from premises, 493
- Noxious trades, nuisances arising from, 480, 522 ; proceedings at law or in equity, in respect of, 524
- Noxious vapours, liability for injury caused by, 299, 303 ; how restrained, 524
- Nuisance authority defined, 469 ; incorporation of, 470
- Nuisance authority, appearance of, before justices, 490 ; when district of, to extend to places where ships are lying, 478 ; duty of, with regard to inspection of district, 481 ; as to enforcement of Acts, 482 ; as to prevention of smoke, 481 ; may cause premises to be cleaned or disinfected, 503 ; may provide means of disinfection, 503 ; may provide place for reception of dead bodies, 505 ; during post-mortem examinations, 505 ; for part of parish, expenses of, in such case, 476 ; penalty for damaging works or property of, 516 ; in metropolis, may provide hospitals for sick, 487 ; when they may require payment of costs and expenses from owner or occupier, 500
- Nuisance authority, supply of medicine by, 487
- Nuisance Removal Committees, repeal of 23 & 24 Vict. c. 67, s. 3, with regard to, 471
- Nuisance, notice of, to be given before proceedings are taken for its removal or abatement, 489 ; arising from copper works, how restrained, 525 ; may be restrained, though it has been gradually increasing for years, 92 ; in common lodging-houses, removal of, 250 ; powers of police with respect to, 471
- Nuisance, recourse to Court of Chancery to restrain, 303
- Nuisance, cesser of right to, action maintainable, or re-exercise of right, 301
- Nuisance, extent of, 525
- Nuisance in adjoining district, proceedings in such case, 139

- Nuisance arising from brick-burning, 298, 299
- Nuisance committed in street, 309
- Nuisance caused by alkali works, 481
- Nuisance, referred to expert, to determine as to existence of, 479
- Nuisances defined, 477
- Nuisances, bye-laws as to removal of, 142; water-closets, etc., to be constructed and kept so as not to create, 145; in streets, 309
- Nuisances Removal Act, citation of, 466; interpretation of terms used in, 467
- Nuisances arising from noxious trades, 480, 522
- Nuisances, notice of, by whom to be given, 482
- Nuisances, entry upon premises to abate, 483
- Nuisances, procedure before justices for removal of, 489
- Nuisances, prohibition of recurrence of, 496
- Nuisances, penalty for neglect of order to abate, 497
- Nuisances, abatement of, at common law, 524
- Nuisances Removal Acts, meaning of, 466; when ships and vessels are to be deemed to be within provisions of, 478
- Nuisances caused by cattle, 494
- Nuisances on village greens, 479
- Number of members of Local Boards, regulation of, 27, 50
- Numbering houses in streets, 176
- Nursery-grounds, rating of, 367

- Oath, examination of witnesses on, 3; defined, 462
- Objections to adoption of Local Government Act, course of proceeding, 23
- Obscene books, etc., prohibition of sale of, 308
- Obstructing inspector of markets, penalty, 287
- Obstructing execution of Nuisances Removal Act, 531
- Obstructing officers, penalty, 462
- Obstruction of works of Local Board in the assertion of private rights, 463
- Obstruction on streets, removal of, 172, 307
- Occasional licence under Public House Closing Act must be obtained from local authority, 316
- Occupation of cellars, vaults, or underground rooms, 208
- Occupier, duty of, as to removing refuse, 141
- Occupier, liabilities of, as to sewers, 146
- Occupier, rating of owners instead of, 367
- Occupier, description of, when unknown, 371
- Occupier of premises, right of owner to recover money paid to local authorities, from, 377
- Occupier to disclose owners' names, 439
- Occupier, service of notices upon, 440
- Occupier preventing execution of works, penalty on, 462
- Occupier need not be designated by name in proceedings, 494, 530; how in the case of joint occupiers, 494, 530; service of notices on, 529
- Occupier, penalty for obstructing owner, 531
- Occupier, paying costs to nuisance authority, may deduct same from his rent, 500; of labouring classes' lodging-houses receiving relief, 265
- Offences in streets, 307; in places of public resort, 313

- Offensive matters, removal of accumulations of, 143 ; offensive trades, prohibition as to, 298
- Office of Local Boards, continuance in, 56
- Officer of Health, appointment of, 64, 560 ; his certificate as to houses, etc., in a filthy condition, 153
- Officer of Health, meaning of, 273 ; appointment of, under Artisans' and Labourers' Dwellings Act, 274 ; his report on premises, 274
- Officer of local authority, protection of, 535 ; personal liability saved, 535
- Officers, appointment of, by Secretary of State, 3
- Officers of Local Boards, appointment of, 61
- Officers to give security, 64
- Officers, failure of, to account, 59
- Officers under Lincoln Local Act, compensation to, on being removed, 739
- Offices of Local Board, 59
- Official documents, reception of, in evidence, 59
- Oldbury provisional order, 727
- Omission of builder to give the required notice as to erection of new buildings, power of Local Board, 207
- Open bathing-places, provision of, under Public Baths and Wash-houses Act, 236
- Open spaces near the metropolis, return as to, 178 ; management of, 181 ; at the sides or backs of buildings, 205
- Openings to vaults and cellars from streets, 176
- Order of justices for removal of nuisances, 493
- Order of justices, to the execution of what works it may extend, 494
- Order of justices, what it may require to be done, 495, 496
- Order of justices, no appeal against, 497
- Order of justices, penalty for neglect of, 497
- Order of justices prohibiting occupation of houses unfit for habitation, 497
- Order of justices for payment of costs or penalties, 502
- Order of justices, refusing to obey, penalty for, 531
- Order of justices to admit nuisance authority to inspect premises, 482
- Order of Privy Council, in respect of Prevention Diseases Act, 552 ; to extend to arms of the sea, 552 ; how to be made, 554 ; their authentication, 554 ; revocation of, 554 ; publication of, in Gazette, 554 ; to be laid before Parliament, 554
- Orders of Courts of Justice not affected by repeal of certain provisions of Public Health Act, 3
- Orders, provisional, of Secretary of State, 67
- Orders in Council, when to take effect, 9 ; publication of, 9
- Orders of Privy Council under Quarantine Act, 563, 836
- Orders of Secretary of State to be binding and conclusive, 4 ; enforcement of costs, 4 ; finality of, 4, 15, 24
- Orders under Nuisances Act, service of, 529 ; of local authority, copies of, to be received in evidence, 529
- Ores, saving as to, 467
- Ormskirk provisional order, 734
- Ornamental gardens, liability of ground landlord to pave adjoining street, 159
- Ornamental water, cleansing of, 491 ; duty of owner or occupier, 491

- Oswaldtwistle provisional orders, 733, 742
 Oswestry provisional orders, 733, 734
 Otley provisional order, 745
 Outfall for sewage, 101; beyond limits of district, 94
 Outgoing tenants, apportionment of rates, 361
 Overcrowded houses, proceedings in such case, 526; common lodging-houses, 527
 Overcrowded house, when to be deemed a nuisance, 477, 526
 Overcrowding common lodging-house, evidence, 251; lodging-house, 252
 Over Darwen provisional order, 727
 Overflow of sewer, damage caused by, 101
 Overflow weir, construction of, 81
 Overseers to produce rate-books to chairman conducting election of members of Local Board, 42
 Overseers to give notice of provisions of Act as to cellars, etc., 209
 Overseers, construction of wells, sewers, etc., by, in certain cases, 517
 Overseers, when local authority, under Nuisances Removal Acts, 470
 Overseers, powers under Diseases Prevention Act, 556
 Overseers, notice of, as to cellar dwellings, 528; when to levy rate to defray expenses of nuisance authority for part of parish, 476
 Owner, definition of, 159, 273, 548
 Owner, notice to be given to, under Artisans' and Labourers' Dwellings Act, 275; works to be executed by, 278; may take down premises instead of executing works, 279; how on neglect to comply with order, 280
 Owner of works liable to an indictment for nuisance for works carried on by his servants, 303
 Owner of public conveyance not disinfecting it after having conveyed person suffering from infectious disorder, penalty, 564
 Owners, election of members of Local Boards by, 38; defined, 38; their statement as to qualification to vote, 41
 Owners, meaning of term, 106
 Owners, liabilities of, as to sewers, 146
 Owners, liability between tenants, etc., as regards sewerage, levelling, etc., of streets, 166
 Owners, rating of, instead of occupiers, 367
 Owners, description of, when unknown, 371
 Owners, names of, to be disclosed by occupiers, 439
 Owners, service of notices on, 440
 Owners, attendance of, at audit, 417
 Owners need not be designated by name in proceedings under Nuisance Act, 494, 530
 Owners, how, in the case of joint, 494, 530
 Owners, interpretation of term, 38, 106, 501
 Owners, service of notices on, 529
 Owners, penalty on occupiers for obstructing, 531
 Oxenhope and Stanbury provisional order, 743
 Oxford, Local Board for, 26, 27; election of, 52; quorum, 58
 Oxford, levying rates, 376
 Oxford, election of commissioners in, 52, 53

- Oxford, local authority in, 469
- Oxford provisional order, 735; members of University of, not required to make declaration, 23; when to be elected, 53; how ratepayers of district are to elect, 54; appointment of Chairman of, 59; appointment of Assessment Committee in, 401; appeal against rates in, 402; public library in, 351; rating public buildings in, 376; union of local authorities in, for executing Diseases Prevention Acts, 556; local authority in, under Common Lodging-houses Acts, 247; diversion of sewage of, from river Thames, 465
- Paper manufacturers, list of notices served on, by Thames Conservancy Commissioners, 133, 137
- Papers relating to election of members of Local Boards, public inspection of, 47
- Parish, definition of, by Court of Queen's Bench, 465
- Parish, meaning of, 364, 468, 537
- Parish improvement rate, 180
- Parish in highway district, adoption of Act by, 14
- Parish lands, appropriation of, for purposes of Baths and Wash-houses Act, 235
- Parish, liability of, to repair highways, although in Local Board district, 156
- Parish, part of, constituted a special drainage district, 542
- Parish, when sea shore part of, 17
- Parliament, presentation to, of reports of inspectors, 10
- Parliament, cost of proceedings in, when not to be defrayed out of district rates, 354; abstract of returns to be laid before, 424
- Parliament, Orders in Council to be laid before, 554
- Parliamentary borough, defined by Court of Queen's Bench, 465
- Parochial rates, recovery of, from bankrupts, 374.
- Part of district defined, 361
- Partial adoption of Local Government Act, 18
- Past expenses may be provided for with future expenses in estimate of rate, 372
- Pasture land, rating of, 367
- Paupers, burial of, 327
- Pauper lunatics, burial of, 327
- Pauper, disqualification of, as member of Local Board, 28
- Pavements, taken up, by Local Boards, 155, 156, 157
- Paving streets, 155; private streets, 158, 166
- Paving streets, specification of works, 170
- Paving private streets, liability of company for railway cutting, adjoining, 161; of owner of cul de sac, 161; liabilities of owners and tenants, 166
- Payment of costs or penalties, 502
- Payment of expenses of legal proceedings, 530
- Payment of medical men for aid to sick on board vessels, 562
- Payment of costs of adoption of Local Government Act, 11
- Payment for use of sewer by houses beyond district, 105
- Payment of rates, how enforced, 372
- Payment of money into Court, 448

- Penalties for disobedience to summons of officer directed by Secretary of State to make inquiries, 4; preventing examination of books, etc., 4, 364; refusing to answer questions, 4
- Penalties for neglect or refusal to comply with Local Government Act in the case of a poll, 12
- Penalties against returning officer, not enforceable for mere mistakes in conduct of election, 49
- Penalties for forging, etc., voting-papers, 15, 46; for personating voters, 15; for interrupting their distribution, etc., 15
- Penalties on disqualified persons acting as members of Local Boards, 33; for making false declaration as to qualification, 30; for acting without making declaration, 33
- Penalties, consent of Attorney-General to action for, 34
- Penalties for misconduct at election of members of Local Boards, 49
- Penalties on clerk officiating as treasurer, or treasurer as clerk, 61
- Penalties on officers interested in contracts, 64
- Penalties with regard to sewers, 104
- Penalties for obstructing removal of filth and refuse, 141
- Penalties for keeping pigs so as to be a nuisance, 143; for other nuisances, 143, 144
- Penalties for not doing works ordered by Local Board, 145
- Penalties for erecting houses without proper drains, 147; without water-closets, etc., 151; factories without, 153
- Penalties for not purifying houses after notice from Local Board, 154
- Penalties for taking up pavement, etc., of streets, 155
- Penalties for making projections to houses, 172
- Penalties for omitting to have proper coverings to openings to cellars from streets, 176
- Penalties for omitting to put up waterspouts to houses, 176; letting cellars as habitations, 208
- Penalties for interfering with, or not putting up hoardings, etc., during repair of buildings, etc., 211
- Penalties for injuring waterworks, etc., or fouling water therein, 227, 228; for bathing in reservoirs, etc., 228
- Penalties for infringement of Common Lodging-houses Act, 246
- Penalties under Artisans' and Labourers' Dwellings Act, 283
- Penalties under Workshop Regulation Act, 339, 340, 342
- Penalties under bye-laws regulating slaughter-houses, 294, 295
- Penalties for selling food unfit for man, 296
- Penalties for establishing, without consent of Local Board, offensive trades, 298
- Penalties for non-consumption of smoke, 304
- Penalties for obstructions and nuisances on streets, etc., 307
- Penalties for chimneys on fire, 312
- Penalties for offences in places of public resort, 313
- Penalties in respect of hackney carriages and drivers, 318, 319
- Penalties for burying contrary to provisions of Acts, 326
- Penalties for acting in contravention of Bakehouse Regulation Act, 331
- Penalties on constable refusing to make distress, 375

- Penalties for neglecting to make up books for audit of accounts, 417; for altering books when made up for audit, 417; for refusing to allow inspection of books when made up for audit, 417
- Penalties, recovery of, 437, 438; mitigation of, power of justices restricted, 442; application of, 441, 531; remission of, 441
- Penalties for refusing to disclose owners' names, 439
- Penalties for injuring works, 462; for obstructing officers, defacing notice-boards, etc., 462
- Penalties on occupiers preventing execution of works, 462
- Penalties, recovery of, in a summary manner, 437, 531; recovery of small, 442; when to be carried to district fund account, 441; under Quarantine Act, reduction of, 563
- Penalties for forging voting-paper, 46; for offences against common lodging-houses' regulations, 249, 251; recovery of, 252
- Penalties for taking unauthorized fees, etc., under Public Baths and Wash-houses Acts, 234
- Penalties for exacting unauthorized fees, etc., under Labouring Classes' Lodging-houses Act, 265
- Penalties on persons letting houses in which persons suffering from infectious disorders have been, without previous disinfection, 564; on persons suffering from infectious disorders exposing themselves in public places, 564; or public conveyances, 564
- Penalties for damaging works or property of nuisance authority, 516
- Penalties under Nuisances Act, to whom to be paid, 531; and applied, 531
- Penalties for neglect of order of justices to abate nuisance, 497
- Penalties for disobeying order to abate nuisance, cannot be enforced without previously summoning offender, 497
- Penalties for acting contrary to order prohibiting occupation of house unfit for habitation, 497
- Penalties, recovery of, 501, 519, 523, 559; division of, 502; how to be sued for, 520
- Penalties for fouling water with gas washings, 519
- Penalties for being in possession of food unfit for man, 521
- Penalties in respect of carrying on noxious trades, 522
- Penalties in respect of overcrowded dwelling-houses, 526
- Penalties, recovery of, by sewer authority, 551
- Penalties in the case of joint offenders, 530
- Penalties for obstructing execution of Nuisances Act, 531
- Penalties on occupier obstructing owner, 531
- Penalties on violation of Orders of Privy Council, 559
- Penalties for obstructing local authority acting under Diseases Prevention Act, 558
- Penalties for inoculating with small-pox, 566; for neglecting vaccination, 565
- Penalties for fouling water in wells, etc., 519
- Penrith provisional order, 729
- Penzance provisional order, 733
- Perchloride of iron, use of, as a disinfectant, 151
- Periodical removal of manure and refuse from mews and stables, 525
- Perjury, false evidence punishable as, 462

- Permanganate of potash, use of, as a disinfectant, 151
 Personating voters, penalty for, 15
 Person defined, 132, 273, 464
 Persons acting in execution of Acts indemnified, 446
 Petition for provisional order of Secretary of State, 67; against adoption of
 Local Government Act, time within which it may be presented, 23
 Petition for payment of money out of Court, costs of, 415
 Petroleum, safe keeping of, 310; definition of, 310; regulations for storage of,
 310; prohibition of sale of, for purpose of illumination, 311
 Petty sessions, appeal to, in respect of carrying on noxious trades, 522
 Pigs, keeping of, so as to be a nuisance, 143; bye-laws as to, 142; penalty
 for, 143
 Pigsty kept so as to be a nuisance, 143; fronting streets, 309
 Place, definition of, 11
 Places of public resort, 313; what are offences in, 313
 Places for reception of dead bodies may be provided by nuisance authorities,
 505
 Plans, power to compel production of, under Public Health Act, 4
 Plans of works intended to be executed on private streets to be deposited,
 167
 Playgrounds, provision of, 179
 Pleading general issue, 448
 Pleasure boats, bye-laws for licensing and regulating hire of, 321, 454
 Pleasure-grounds, Local Board may provide, 179
 Plymouth, special powers of Local Board as to highways, 185; provisional
 orders, 727, 730, 732, 735
 Police, powers of, with respect to removal of nuisances, 471
 Police Clauses Act in towns, incorporation of, 464
 Police magistrate, proceedings before, 495
 Poll for adoption of Local Government Act, 12, 15; refusal of chairman to
 grant, 15
 Polluting wells, etc., penalty, 519
 Pollution of rivers and streams, letter to First Lord of Treasury thereon, from
 President of the Sanitary Association, and Vice-President of the Fisheries
 Protection Association, 118
 Pollution of rivers, report of Commissioners appointed to prevent, 88, 118, 124;
 by discharge of sewage into them, 513; by sewer authorities, prevention
 of, 549; action for, 91, 99-103
 Pollution of well by sewage, liability for, 126, 217
 Ponds and pools, draining, etc., 138, 517
 Ponies, bye-laws for licensing and regulating hire of, 321, 454
 Pool, when a nuisance, 477
 Poor, burial of, 327
 Poor law auditor to audit accounts, 416
 Poor law auditor, when to audit accounts under Labouring Classes' Dwellings
 Act, 260
 Poor rates, rating premises of Local Board to, 59, 369
 Poor rate, when expenses of local authority are to be paid out of, 476
 Poor rate, when highway rate is to be paid out of, 510

- Port (sea), limits of district including a, 18
- Portsmouth, limitation of rates in, 366; provisional order, 733
- Post, when notices may be served by, 529
- Post-mortem examinations, places for reception of dead bodies during, 505
- Posts, repair of, 155
- Poultry, inspection of, by sanitary inspector, 484, 520
- Pound may be provided for stray cattle, 307
- Pound-breach, 307
- Poverty, remission of rates on the ground of, 377
- Poverty of owner or occupier of premises requiring to be cleansed or disinfected, how in such case, 503
- Power of entry under Nuisances Removal Acts, when it may be exercised, 484
- Powers of officers directed by Secretary of State to make inquiries, 4; of Local Government Boards, 27
- Powers of General Board of Health vested in Privy Council, 553; of local authority under Diseases Prevention Act, 555
- Powers of Sanitary Act, 1866, are not in derogation of other powers, 465; of sewer authorities, 544; how if default be made in exercising, 545; to take lands, 546; to borrow money, 546; to make compensation for damage, 546; to combine with other sewer authorities, 546
- Precautions to be taken during repair of buildings, etc., 211
- Precautions to be adopted with respect to noxious trades, 480
- Preliminary inquiry, costs of, 10
- Premises defined, 273, 411
- Premises, entry upon, to ground proceedings, 482; to ascertain course of drains, execute or inspect works, 483
- Premises, assessment of, to defray costs of sewers, 510
- Premises, expenses of removal of nuisance when to be a charge on, 500
- Premises unfit for habitation, report of officer of health on, 154; duty of local authority, 154
- Premises unfit for habitation, to be improved under Artisans' and Labourers' Dwellings Act, 278
- Prescriptive rights, none in the case of a Local Board, 126
- Prescriptive right to foul stream of water, loss of, 99
- Preservation of water rights of companies or individuals, 109
- Preston provisional orders, 725, 730, 736
- Presumptive right to water, 220
- Prevention of disease, 154; of fires, 201; of smoke, 304
- Prevention of diseases, regulations as to, 553
- Prevention of drowning at Scarborough, 242
- Printed copies of bye-laws to be given to ratepayers on application, 451
- Private improvement expenses, cost of covering drains may be declared to be, 138
- Private improvement expenses, cost of constructing drains, 147; water-closets, etc., 152
- Private improvement expenses, paving private streets, 158
- Private improvement expenses, how to be levied, 379
- Private improvement expenses, rent-charge in respect of, 380
- Private improvement expenses, deduction of, from rent, 382

- Private improvement expenses, redemption of, 382; appeals to Secretary of State in respect of, 382
- Private improvement expenses, recovery of, 381, 552
- Private improvement rate, estimate of, to be made, 379
- Private rights, obstruction of Local Board in assertion of, 463
- Private rights, when not to be interfered with, 101; when they must give way for works of great public importance, 101
- Private rights, injuries to, by works of drainage, 102
- Private streets, paving of, 158; notice to owners of, as to repair, 159; serving of notice on owner as to repair, 160; expenses of, 160; recovery of expenses of, 161; liability of owners for expenses, 164-166
- Privies, cleaning of, 141; penalty for allowing to overflow, 143; examination of, by surveyor, 145; to be provided for new houses, 151; bye-laws as to, 202; when a nuisance, 477
- Privies, when justices may require them to be provided, 495
- Privy Council, order of, in respect of prevention of diseases, 552
- Privy Council to exercise all the powers of General Board of Health under Diseases Prevention Act, 553
- Privy Council, orders of, how to be made, 554
- Privy Council, authentication of orders of, 554
- Privy Council, revocation of orders of, 554
- Privy Council may direct inquiries concerning public health, 560
- Privy Council, orders of, under Quarantine Act, 563, 836
- Proceedings under repealed provisions of Public Health Act, 3; of Local Boards, 58
- Proceedings under Nuisances Removal Acts, what notice shall be given before any are taken, 489
- Proceedings before justices, 439
- Processions, regulations as to, 307
- Production of books, etc., power to compel, 4; to chairman conducting election of members of Local Board, 42
- Profit, meaning of word, 853
- Profits of sewage irrigation, 123
- Prohibition of burial-grounds dangerous to health, 326
- Prohibition of use of buildings unfit for habitation, 202
- Prohibition of recurring nuisances, 496; of houses unfit for habitation, 497
- Prohibition of drainage into river Thames, 131
- Prohibition, writ of, 443
- Projections to houses, removal of, 172, 175
- Proof of offence in action for penalties, 33
- Property of Local Board, how to be described in actions, 445
- Property of Local Boards may be taken under an elegit, 414
- Property of Local Boards, penalty for damaging, 462; of nuisance authority, 516; of sewer authority, 545
- Property in wells, fountains, and pumps, when vested in sewer authority, 550
- Proprietor of waterworks, when not to vacate office as member of Local Board, 33
- Proprietor of public carriages, liability of, 320
- Prospective rates, 357

- Prostitution on streets, 308; harbouring prostitutes, 313
- Protection of local authority and their officers, 535
- Protection of sewers, 156
- Provisional orders to be delivered to doorkeepers of Houses of Parliament, 10;
and to be furnished to all persons applying for them, 10
- Provisional orders of Secretary of State, 67
- Provisional orders, confirmation of, 68
- Provisional orders, costs of, 68
- Provisional orders as to purchase of lands, 413
- Provisional orders, repayment of costs as to, 413
- Provisional order of Secretary of State cannot be quashed by certiorari, 68
- Proxy, corporations to vote by, at elections, 40, 45
- Proxy paper, stamp to, 41
- Public bathing on sea-shore, regulations as to, 242
- Public baths and wash-houses, establishment of, by Local Boards, 232
- Public baths and wash-houses, establishment of, in boroughs, 232; in Local Board of Health districts, 232; powers, rights, and duties of Local Board, 233; penalty on officers taking unauthorized fees, etc., 234; loans for, 235; erection of, 237; contracts for, 237; purchase of existing baths, etc., 237; supply of water and gas to, 226, 237; management of, in whom vested, 239; bye-laws, 239; appeal against, 235; charges for use of, 240
- Public bodies, compensation for damage occasioned by acts of, 457
- Public buildings in Oxford, rateability of, 376
- Public cisterns, etc., for gratuitous supply of water, 226
- Public carriages, licence when plying for hire on turnpike road, 318
- Public clocks, 178
- Public conveyance, penalty on persons suffering from infectious diseases entering, 504, 564; disinfection of, 564; penalty on owners not disinfecting, 564
- Public fast-day, how, when day for performance of acts falls on, 43
- Public fountains, supply of water to, 226
- Public functionaries, liability to compensate for damage caused by the execution of their statutory powers, 461
- Public health, inquiries into, by Privy Council, 560
- Public Health Act, limits of, 1; how cited, 1
- Public Health Act, Local Government Act to be deemed part of, 2
- Public Health Act, formation of districts under, 6
- Public-house Closing Act, 314; adoption of Act, 314
- Public libraries, establishment of free, 347; in the city of Oxford, 351
- Public necessities, 153
- Public nuisances, what are, 477
- Public pleasure-grounds, 178; larceny of things attached to, 180
- Public Pleasure-grounds Act applies only to ground which has been irrevocably set apart for the use of the public, 179
- Public urinal, power of Local Board to construct, 141
- Public walks, 179
- Public Works Loan Commissioners, advances by, for purposes of Labouring Classes' Dwellings Act, 261, 266; amount which they may advance, 269; may advance money for purposes of baths and wash-houses, 235; may advance money to sewer authorities, 546

- Publication of Orders in Council, 9
- Publication of notice of adoption of Act, 22
- Publication of notice of election of members of Local Boards, 43
- Publication of proceeding of Local Board at which a libel is read is not privileged, 58
- Publication of rates, 363
- Publication of Orders in Council in "London Gazette," 554
- Pumps for public supply of water, 226
- Pumps, when they may be provided by churchwardens and overseers, 517
- Pumps vested in local authority, 518; when to vest in sewer authority, 518, 550
- Purchase of sewers, 91
- Purchase of property for improving streets, 172; compulsory powers not to be exercised, 170
- Purchase of slopes or embankment of canals, etc., 188
- Purchase of premises for new streets, 200
- Purchase of waterworks, 212 .
- Purchase of lands, 411
- Purchase of existing baths and wash-houses, 237
- Purifying houses, 153
- Purloining voting-paper, penalty for, 46

- Quakers, affirmation of, 462
- Qualification for commissioners under a Local Act, 31
- Qualification of members of Local Boards of Health, 28; of town councillor, 28; of Local Government Boards, 30
- Qualification not required for University members of Oxford Local Board, 31
- Quarantine Act, description of vessels within, 563; order of Privy Council under, 563, 836; reduction of penalties under, 563; the Act, 833
- Quarter Sessions, appeal to, 442; power of sessions on appeals, 401
- Quarter Sessions, notice of appeal to, 443
- Quicklime, use of, as a disinfectant, 151
- Quo warranto*, with respect to member of Local Board, 48
- Quorum of Local Boards, 58

- Rack-rent defined, 38
- Rags, transmission of, for disinfection, 564; selling when infected, 564
- Railway, construction of bridges, etc., over, 188; rating of, 367, 369
- Railway, assessment of, to general district rates, 6
- Railway cutting adjoining new street, liability of company to pave, 161
- Railway stations, exemption from operation of Public House Closing Act, 317; sale of exciseable liquors at, 317
- Rainfall, means of ascertaining, 78
- Ramsgate provisional orders, 734, 735, 739, 742; rates in district of, 366, 736
- Ramsgate Harbour, saving clause as to, 736
- Rate, allowance or signature of, not necessary, 187
- Rate may be made prospectively, 357; apportionment of, between outgoing and incoming tenants, 361; assessment of part of district to, 361
- Rate, estimates to be prepared before making, 363; publication of, 363

- Rate may be amended, 371 ; when payable, and how to be collected, 372 ; payment of, how enforced, 372 ; service of demand of, 375 ; evidence of them, 377 ; enforcement of, 400 ; appeals against, 398 ; limitation as to amount to be levied, 510
- Rate, remission of, on the ground of poverty, 377
- Rate, mortgage of rates, 403 ; when receiver of, may be appointed, 408
- Rate, burial rates, 398
- Rate for burial-boards, 324, 398
- Rate, water-rates, 226
- Rate, general district rate, 353
- Rate for payment of debt, 357, 359
- Rate to defray cost of sewers, 510
- Rate unappealed against, liability, 373
- Rate-book, non-delivery of, a civil not a criminal proceeding, 65
- Rate-books, power to compel production of, 4 ; to chairman conducting election of members of Local Boards, 42 ; for purpose of making rates, 363
- Ratepayer continues rated until fresh rate is made from which his name is omitted, 38
- Ratepayers, election of members of Local Boards by, 38
- Ratepayers, attendance of, at audit, 417
- Rates, charges on, 357 ; proceedings for recovery of, 372
- Rates paid by agent of candidate, invalidity of votes, 48
- Rates under Free Public Libraries Act, 349
- Rates out of which expenses of sewer authority are to be paid, 537
- Rates, recovery of, from bankrupts, 374
- Rates for repair of highways not in district, 186
- Rates in drainage district, 539 ; how to be levied, 539 ; penalty on overseers for non-payment of, 540
- Rates, form of notice and grounds of appeal against, 399
- Rates and taxes, as to payment by owner or occupier, 377 ; construction of covenant in lease as to, 377
- Rating on annual value, meaning of, 28
- Rating arable and other lands, 367
- Rating burial-grounds, 368 ; docks, 368 ; owners instead of occupiers, 367 ; small tenements to highway rate, 392 ; tithe rent-charge, 367 ; water-mains, 215 ; workhouse, 369
- Reading provisional orders, 725, 729, 743
- Reading, diversion of sewage of, from river Thames, 465
- Rebuilding houses, regulations as to, 199
- Receiver of rates, when to be appointed, 408
- Reception-houses for the dead, 326
- Recision of adoption of Local Government Act in Knottingley district, 738
- Recovery of charges for use of public wash-houses, 240 ; of expenses and penalties in a summary manner, 437, 531 ; of highway-rates, 394 ; of penalties under Common Lodging-houses Acts, 252 ; of small penalties, 442 ; in a summary manner of expenses of water supply, 226
- Recovery of expenses in County Court, 138, 144, 158
- Recovery of expenses of repairing private streets, 158, 163
- Recovery of expenses, limitation of time, 153 ; nature of remedy, 437

- Recovery of expenses, by Secretary of State, provision for, 89
Recovery of rates, limitation of time for issue of distress warrant for, 373;
error in assessment not a plea against issue of distress warrant for, 374
Recovery of rates, proceedings for, 372, 373
Recovery of statutory payments from Local Boards, 62, 63; of penalties, 33,
454; proof of offence, 33
Recovery of disallowances, etc., on certificate of auditor, 422
Recovery of damages, etc., 437
Recovery of expenses charged on premises, 381, 461
Recovery of rate in County Court, 374
Recovery of rate from bankrupt, 374
Recreation grounds, 179
Recurring nuisance, prohibition of, 496
Redcar provisional order, 735
Redemption of mortgages, 405
Redemption of private improvement expenses, 382
Re-election of members of Local Boards, 56
Reference to arbitration of works prohibited to be done by Local Boards with-
out consent, 107; effect of it, 108; of questions in dispute, 432
Refreshment houses, definition of, 315
Refusal of member of Local Board to act, 33
Refusal of chairman to conduct election, 42; to receive vote at election, 49
Refusal of person nominated, tender of, 45
Refuse, removal of, from houses, 141; what is not, 142; periodical removal of,
from mews, stables, etc., 525
Register of common lodging-houses, 248
Registrars of births and deaths to furnish information to Registrar-General of
the outbreak of any epidemical disease, 553; proceedings in respect of
Vaccination Act by, 566
Registration of common lodging-houses, 248; of lodging-houses, 252
Registration of rent-charges in respect of private improvement expenses, 381;
of mortgages, 407
Registration of transfers of mortgages, 407
Registry of common lodging-houses, 243
Registry of slaughter-houses and knackers' yards, 295
Regulation of number of members of Local Boards, 50
Regulation of new buildings by Local Boards, 199
Regulation of hackney carriages, 318
Regulation of bakehouses, 331
Regulation of public baths, wash-houses, and open bathing places, bye-laws
for, 239
Regulations, issue of, under Diseases Prevention Act, 553
Regulations as to common lodging-houses, 243, 249
Regulations as to slaughtering cattle in continental cities, 296
Regulations as to advances by Public Works Loan Commissioners for purposes
of Labouring Classes' Lodging-houses Act, 267, 269; for common lodging-
houses, 243, 249; penalty for offences against, 249
Regulations as to lodging-houses, 252
Regulations for lodging-houses under Sanitary Act, 253

- Relator, who is qualified to be a, 48
- Relief, tenants of labouring classes' lodging-houses receiving, 265
- Relieving officer, notice of nuisance by, 482
- Relieving officer, notice of fever, etc., in common lodging-houses to be given to, 249; duty of, with regard to burial of dead bodies in mortuary houses, 505
- Relieving officers, appointment of, as inspectors of nuisances, 474
- Remedy for recovery of expenses, 437
- Remission of penalties, 441
- Remission of rates on the ground of poverty, 377
- Removal of dead bodies for purposes of post-mortem examinations, 505; of manure and refuse from mews, etc., periodically, 525; of nuisances, powers of police with respect to, 471; what notice shall be given before proceedings are taken, 489; how when local authority has made default, 472; in common lodging-houses, 250; of sewage matter, 116, 130; of sick persons from common lodging-houses, 249; to hospitals, 504; of sick from ships, 504
- Removal of sewage matter, 116; of filth from streets, 141; from houses, 141
- Removal of obstructions from streets, 172
- Removal of toll-gates, 189
- Removal of projection to houses, 172, 175
- Removal of nuisances, procedure before justices, 489
- Remuneration of auditor, 418; of auditor of Local Board's accounts, 418
- Rent, deduction of private improvement expenses from, 382
- Rent for use of markets, 289
- Rent, payment of, by tenant to vestry for repair of road, 501
- Rent-charge in respect of private improvement expenses, 380
- Rents of labouring classes' lodging-houses, 265
- Repair of closed burial-grounds, 325, 327
- Repair of highways not included in district, 186; in South Wales, 190
- Repair of sewers, 93
- Repair of streets, 155; of highways, 183; of turnpike roads, 188
- Repair of buildings, etc., precautions to be taken during, 211
- Repair of dangerous places near to streets, 211
- Repair of wells, etc., 518
- Repair of sewer, definition of term, 509
- Repair of streets, distribution of expenses of, among owners, 160
- Repayment of costs of preliminary inquiry, 10
- Repayment of costs of adoption of Local Government Act, 11, 22
- Repayment of costs of provisional orders, 414
- Repayment of costs of works on private streets, 158, 163
- Repeal of powers of Highway Boards and Nuisances Removal Committees under Nuisances Removal Acts, 471; of South Wales Highway Act in certain districts, 191; of Isle of Wight Highway Act, 730
- Repealed provisions of Public Health Act, proceedings under, 3
- Report of medical officer appointed by Privy Council, 560
- Report of Secretary of State to Parliament, 3
- Report of Local Boards, 60; of auditor on accounts audited, 423
- Report of Commissioners for preventing pollution of rivers, 118, 124
- Reports as to beggars and vagrants resorting to common lodging-houses, 250
- Rescinding resolution for adoption of Local Government Act, 19

- Reservoirs, fouling with gas-washings, 229, 519; saving as to, 467
- Reservoirs for public supply of water, 226; when not to be interfered with by Local Boards, 107
- Reservoirs for water, construction of, 213; making and maintaining by sewer authorities, 550
- Reservoir, capacity and site for, 80; construction of embankment for, 80; rating of, 368
- Residence of members of Local Boards, 29, 30
- Resignation of members of Local Boards, 51
- Restriction as to adoption of Local Government Act in certain places, 14
- Retirement of members, 56
- Retrospective rates, 357; when they may be made, 358
- Returning officer cannot return himself, 48
- Returning officers not bound to fill up the number of votes in voting-papers, 46; penalty cannot be enforced against, for mere mistakes in conducting election, 49
- Return as to adoption of Local Government and Public Health Acts, 6
- Returns of Registrar-General as to deaths in proposed district, 6
- Returns as to highways, 183
- Richmond, diversion of sewage of, from river Thames, 465
- Right of way over tenement which had been severed, 129
- Right to take water from streams, 213
- Rights of Local Government Boards, 27
- Riotous conduct in streets, 309
- Riparian proprietors, rights of, 216, 225
- River, district bounded by, 18; discharge of sewers into, 99, 126; may be restrained by injunction, 99
- River forming boundary of district, 140
- River Thames, discharge of sewage into, restrained, 131
- Rivers, Commissioners report of, as to sewage irrigation, 124
- Rivers, navigable, not to be interfered with by Local Boards, 106
- Rivers not navigable, power of Secretary at War to alter course of, 110
- Rivers, pollution of, letter to First Lord of Treasury thereon, 118; pollution of, by discharge of sewage, 513; prevention of pollution of, by sewer authorities, 549
- Rivers, right to waters of, 222; saving as to, 467
- Roads, when deemed highways, 93
- Romford provisional orders, 725, 727
- Rotherham and Kimberworth, prevention of smoke in, 305; provisional order, 726
- Route of processions, 307
- Row of houses, meaning of, 273
- Royton, provisional orders, 741, 744
- Rubbish, bye-laws for removal of, 142
- Ruinous buildings, proceedings as to their being taken down, 209, 211
- Rule of Court, enforcement of costs upon, 4; order of Secretary of State may be made, 4; submissions to arbitration may be made a, 435
- Rusholme provisional orders, 727, 735
- Ryde provisional orders, 731, 735

- St. Leonard provisional order, 738
- Salaries of officers appointed by Secretary of State, 3 ; recovery of, from Local Boards, 63
- Salary of inspector of nuisances, how to be charged, 473
- Sale and exchange of lands under Baths and Wash-houses Act, 238
- Sale of horses affected with glanders, exposure for, 521
- Sale of lands to Local Board by member, not to vacate office, 32
- Sale of sewers, 91
- Sale of sewage, 127, 547
- Sale of lands, etc., not required by Local Board, 201
- Sale of materials of ruins of dangerous buildings, 211
- Sale of lands under Labouring Classes' Dwelling-houses Act, 263 ; of public baths and wash-houses, when unnecessary or too expensive to be kept up, 238
- Sale of obscene books, prohibition of, 308
- Sale of unwholesome food, prevention of, 520
- Sale of noxious matters removed from premises, 493
- Sale of unwholesome meat, 286
- Sale of waterworks, 215
- Salisbury provisional order, 726
- Sanction of General Board of Health to powers under Public Health Act not now required, 2 ; to be given by Secretary of State, 3 ; how given, 10
- Sanction of Secretary of State substituted for that of General Board of Health, 3, 404
- Sandgate provisional orders, 725, 729
- Sandown provisional orders, 731, 741
- Sandown, repeal of Isle of Wight Highway Act, in, 730
- Sands of sea-shore, jurisdiction of Local Board, 321
- Sanitary Act, regulations for lodging-houses under, 253
- Sanitary inspector, power to appoint, repealed, 483
- Sanitary reports, guardians empowered to procure, 561
- Scale of voting at elections, 40
- Scarborough provisional order, 729 ; bye-laws as to hackney carriages, horses, etc., for hire, 321
- Scarborough, saving life from drowning at, 242 ; fish trade at, 293
- School, children employed in workshops must attend, 340 ; penalty on parent for omission to send to, 340
- Schools for science and art under Free Public Libraries Act, management of, 351
- Scientific evidence, value of, 525
- Scrutiny of votes at election of members of Local Board, 47
- Sea defences, when not to be interfered with by Local Boards, 106
- Sea, Order in Council to extend to arms of, 553
- Seal of Local Board, 59
- Seal of Local Board necessary to a general district rate, 364, 474
- Seaport, what within limits of, 18
- Sea-shore, jurisdiction of Board, 321, 470
- Sea-shore forms boundary of district, course to be taken when, 140, 471
- Sea-shore, when part of parish, 17 ; regulations as to public bathing on, 242

- Sea-walls, existing liabilities as to, preserved, 96, 106
- Secretary at War, action against, for obstructing drain, 96; power to divert highways, etc., 110; power to alter watercourse, 110; brook, 110; river not navigable, 110
- Secretary at War to nominate members for Aldershott district, 51; works vested in, not to be interfered with by Local Boards, 106
- Secretary of State, annual returns to, 424
- Secretary of State, definition of new buildings by, 207
- Secretary of State, sanction of, substituted for that of General Board of Health, 404
- Secretary of State, power to appoint person to make sewers upon default of local authority, 89; complaint to, when default is made by Local Board in water supply, 212; powers of, with regard to regulations for lodging-houses, 252; complaint to, when default is made in enforcing Local Government Act, 455; powers of, when nuisance authority has made default in removal of nuisances, 471; powers of, if default be made in execution of Acts by Local Boards, 455; by nuisance authorities, 472; by sewer authorities, 545
- Secretary of State, sanction to proceedings under Local Acts, 3; to make annual report to Parliament, 3; to direct inquiries, 4; to appoint officers, 3; his orders are to be binding, 4
- Secretary of State may make order as to costs of appeal to him, 4; which may be made a rule of Court, 4; finality of orders of, 4, 15, 24
- Secretary of State, how sanction of, to union of adjoining districts may be expressed, 10
- Secretary of State, powers of, with respect to appeals against adoption of Local Government Act, 24; finality of his decision on appeal, 24
- Secretary of State, provisional orders of, 67, 413
- Secretary of State, powers of, as to sewers beyond limits of district, 95; as to purchase of lands, 413
- Secretary of State, appeals to, in respect of private improvement expenses, 382
- Securing ruinous or dangerous buildings, 209
- Security for costs of adoption of Local Government Act, 11
- Security of officers, 64, 65
- Seizure of food unfit for man, 296
- Seizure of unwholesome food, 520
- Select Committee on Waterworks Bill, 1865, report of, 213
- Selected members of Local Boards, 28; if also elected to serve in respect of one title only, 50; continuance in office, 56
- Selling bedding, clothes, rags, etc., which are infected, penalty for, 564
- Selling glandered horses, etc., 521
- Selling unwholesome meat, penalty for, 286
- Separation of part of parish from district, 67
- Service of notice of entry upon premises to ground proceedings, 482; generally, 529; by post, 529
- Service of notice of demand of rates, 375; on Local Board, 440
- Service of notices as to works on private streets, 169
- Sewage, contribution to works relating to supply of, by sewer authority, 127

- Sewage districts, constitution of joint, 542 ; advertising notice of intention to form, 543 ; powers of, 543 ; expenses, how to be defrayed, 543
- Sewage irrigation, report of Commissioners, 118, 124 ; works of, at certain towns, 119 ; profits of, 123
- Sewage matter, removal of, 116
- Sewage Utilization Act, construction of, 536
- Sewage water, right to, 93
- Sewage matter, removal of, 116 ; disposal of, 127 ; sale of it, 127 ; places for deposit of, 141 ; overflow of, 101
- Sewage matter of houses, 145
- Sewage matter of streets, 201 ; how when not properly cleansed, 99
- Sewerage works, specification and conditions for, 116
- Sewer authorities, of what districts, 536 ; defined, 537 ; who are, 537 ; incorporation of, 538 ; appearance of, in legal proceedings, 538 ; committees of, 538 ; their powers, 538 ; their chairman, 538 ; their meetings, 538 ; quorum, 538 ; questions before, how to be determined, 539 ; vacancies in, not to invalidate proceedings, 539 ; alteration in their number, 539 ; their obligations, 539 ; may form special drainage districts, 540 ; levy of rates in, 540 ; appeal against constitution of district, 541 ; evidence of formation of district, 541 ; their powers, 544, 546 ; how, if default is made in exercise of, 545 ; penalty for damaging works or property of, 545 ; expenses of, 546 ; power of, to take lands, 546 ; to borrow money, 546 ; to award compensation for damage, 546 ; power of, to combine with other sewer authorities for purposes of Act, 546 ; user of sewers of, 547 ; by persons beyond district, 548 ; drainage of houses into, 548 ; to prevent pollution of rivers, 549 ; not to drain into any stream or watercourse, 549 ; supply of water by, 549 ; their expenses in such case, 550 ; recovery of, from owners, 550 ; property in wells, fountains, and pumps when vested in, 550 ; contracts by, for supply of sewage, 547 ; power of, to provide hospitals for reception of sick, 550 ; when wells, fountains, and pumps are to vest in, 519
- Sewer authorities, powers of, as to sewage, 544 ; may exercise works beyond district for distribution of sewage, 545 ; purchase of land by, for distribution of sewage, 546 ; power to contract for disposal of sewage, 547 ; service of notices by, 548 ; saving as to powers of, 551 ; recovery of penalties by, 551
- Sewer authorities, power to cleanse privies, etc., extended to, 142 ; removal of house refuse by, 142 ; power to inspect drains, 146
- Sewer authorities, supply of medicine by, 487
- Sewer across private lands to be laid in same line as former one, 513
- Sewers, when local authority may make, 508
- Sewers, carrying through private premises, 105 ; protection of, 156
- Sewers, ventilation of, 117
- Sewers for drainage of land for agricultural purposes, 110, 111
- Sewers, powers of Local Boards as to, 88 ; in constructing, Local Board should avoid creating a nuisance, 90
- Sewers vested in Local Board, 90
- Sewers, their repair, 93 ; outfall for, 101, 126 ; draining into, 105 ; erections over, 104
- Sewers beyond boundaries of districts, 105

- Sewers in new streets, 94 ; outfall beyond limits of district, 94
 Sewers, liability of owners and occupiers as to, 146
 Sewers, materials to be used in construction of, 147 ; draining, etc., 138
 Sewers, when not to be interfered with by Local Boards, 106
 Sewers, alteration of, by corporations, 108
 Sewers, when churchwardens and overseers may cleanse, etc., 517
 Sewers, default of Local Board to maintain, course to be taken, 89 ; drainage into, compulsory, 536 ; power of Secretary at War to stop up, 110
 Shanklin provisional order, 733
 Shanklin, repeal of Isle of Wight Highway Act in, 730
 Shareholder in joint-stock company not disqualified as member of Local Board, 33
 Sheerness provisional orders, 724, 729, 731
 Sheffield provisional orders, 735, 741, 745
 Sherborne provisional orders, 725, 741
 Shipley provisional orders, 729, 734
 Ships, medical aid to sick on board, 561
 Ships, when deemed to be within district of nuisance authority, 478 ; and within provisions of Nuisance Removal Acts, 478 ; removal of sick from, to hospitals, 504
 Shop, what is not, within meaning of Markets and Fairs Clauses Act, 286
 Shrewsbury provisional order, 738
 Sick, carriages for conveyance of, 559
 Sick persons, conveyance of, to hospitals, 504 ; in metropolis, hospitals for, may be provided by nuisance authorities, 487 ; removal of, from common lodging-houses, 249
 Signature of voting-papers, omission of, 45 ; of rates, not necessary, 187
 Signature of members of Local Board necessary to general district rate, 364, 456
 Sinking fund for redemption of mortgages, 405, 409
 Sinking wells, 216
 Site of market, changing, 284, 285
 Skipton provisional order, 728
 Slaughter-house, causing noxious effluvia, 522
 Slaughter-houses, Local Boards may provide, 294 ; licensing, 294 ; what may be deemed a licence, 294 ; register of, 295 ; bye-laws as to, 295 ; suspension or revocation of licence, 295 ; inspection of, 296 ; prohibition as to, 295 ; licence of part of premises extends to whole, 295
 Slaughtering cattle, regulation of continental cities as to, 296
 Slough provisional order, 741
 Sluices, when not to be interfered with by Local Boards, 106
 Small penalties, recovery of, 442
 Small Tenements Rating Act, 40 ; reference to Glen's Law of, 40
 Small tenements, rating of, to owners, 367
 Small Tenements Act, voting under, 40
 Small tenements, rating of, to highway rate, 392
 Small-pox, penalty for inoculating with, 566
 Smelting company, liability of, for injury caused by noxious vapours, 299
 Smelting ores, saving as to, 467
 Smoke, consumption of, in Birmingham, 306
 Smoke, nuisance arising from, 525

- Smoke, prevention of, 304
 Smoke, fireplaces and furnaces not consuming, when to be deemed nuisances, 477; duty of nuisance authority to prevent, 481; locomotives on highways to consume their own, 193
 Snow, removal of, 142; bye-law as to, 453
 Soap-boiler, prohibition as to trade of, 298
 Soap-house causing noxious effluvia, 522
 Soil, removal of accumulations of, 143
 Source of fresh water, 70
 South Wales, highways in, 190
 South Wales Highway Act, repeal of, in certain districts, 191, 732, 740
 Southampton provisional orders, 725, 729, 733, 739, 744
 Sowerby Bridge provisional order, 727
 Special district rates, 378
 Special drainage districts, formation of, by sewer authorities, 540; levy of rates in, 540; appeal against constitution of district, 541; evidence of formation of, 541; constituting part of parish a, 542; application to be constituted a, 542
 Specification of condition of levelling, etc., streets, 170; of sewerage works, 116; of works, signature of, 428
 Specification of sewerage works, form of, 112
 Square, meaning of, 273
 Stables, part of curtilage of house, 147
 Stables, periodical removal of manure and refuse from, 525
 Stagnant water, nuisance arising from, 143
 Staleybridge provisional order, 739
 Stallages at markets, 289
 Stamp duty, exemptions from, 463
 Stamp, necessity of, to proxy paper, 41
 Stands for carriages, 321, 454
 Stands for horses, etc., for hire, 321
 Stanmore provisional order for drainage scheme, 111
 Statements of owners as to qualification to vote, 41
 Statute of limitations, 358
 Statutory powers not to be exercised if they infringe the general law, 92
 Steam-engines on roads, 192
 Steam-vessels, consumption of smoke by, 304
 Stipendiary magistrate, appointment of, 344; Local Board to fix salary of, 344; when to be paid, 344; Local Board to provide and furnish police office for, 345; to appoint an attorney as his clerk, 345; fees to be taken by, 345; to be paid over to treasurer of Local Board, 345; power to make rate for payment of, 346; application of fines and penalties inflicted by, 346; interpretation of terms in Act relating to, 346
 Stipendiary magistrates, authority of, 66; proceedings before, 518
 Stockport provisional order, 733
 Stoppage of water on non-payment of rates, 383
 Stratford-upon-Avon provisional orders, 724, 726
 Stray cattle, impounding, 307
 Stream, Secretary at War may alter course of, 110

- Streams, polluting with sewage, 99-104; letter to First Lord of Treasury thereon, 118; prevention of pollution of, by sewer authority, 549
- Streams, fouling with gas washings, 229, 519
- Streams, saving as to, 467
- Streams, right to take water from, 214
- Street, meaning of, 155, 273
- Streets, when deemed to be highways, 93; when they may be declared to be highways, 166
- Streets, cleansing of, 141; watering, 141; naming them, 176; lighting, 176
- Streets, management of them, 155
- Streets, a bridge may be, 156
- Streets, purchase of property for improving, 169, 172
- Streets, definition of term, 173
- Streets, doors and gates opening on, 175
- Streets, line of, 201
- Streets, bye-laws as to construction, etc., of new, 176, 201
- Streets, precautions to be taken during repair of, 211
- Streets, repair of dangerous places near to, 211
- Streets, prevention of offences in, 307, 308
- Streets, power of Local Boards as to levelling, 160; distribution of expenses of, among owners, 160
- Streets not being highways, recovery of expenses of repairing, 160, 163; notice required before repairs are executed, 167; repayment of costs, 169
- Stroud provisional orders, 727, 731, 736
- Structural works, when not necessarily such, 494
- Structural works, when they may be ordered to be done, 499
- Structural works, appeal against order for, 499
- Structure of walls of new buildings, 201
- Structures of wood, 200
- Subsidence of road, when contractors not liable for, 461
- Substituting sewers, Local Board must connect old drains, 104
- Sulphate of iron, use of, as a disinfectant, 151; of zinc, use of, as a disinfectant, 151
- Sulphate of potash, regulations to abate nuisance caused by works for manufacture of, 481
- Sulphate of soda, regulations to abate nuisance caused by works for manufacture of, 481
- Summary proceedings for recovery of damages, etc., 437
- Summary proceedings, computation of time for taking, in certain cases, 462
- Summoning witnesses, 4; tender of expense of, 4
- Summons for non-payment of rates, 372
- Summons for removal of nuisances, 489
- Summons, service of, 529
- Summons in the case of joint offenders, 530
- Sunday, day for performance of acts falling on, 43; when to be reckoned in computation of time, 532
- Sunday, driving cattle in streets on, 309
- Sunderland provisional orders, 729, 744
- Superior Courts defined, 435

- Supply of sewage by sewage authorities, contracts for, 547; of water to common lodging-houses, 250; of water and gas to public baths and wash-houses, 238; to labouring classes' dwelling-houses, 263; of water, complaint to Secretary of State when Local Board has made default in, 212; of water by sewer authorities, 549
- Supply of water by agreement, 226; to public fountains, 226; powers of Local Board as to, 212
- Supply of water to town consumers, 84
- Supply of water to houses, 225; to public baths and wash-houses, 226
- Supply of water for domestic use, 226; what is domestic use, 226
- Supply of water in case of fire, 227
- Surcharges by auditors, 419
- Surface water, right to, 219, 225
- Surplus income arising from burial-grounds, application of, 325
- Surplus borough funds, application of, to drainage, 106, 140, 175
- Surplus of highway-rates, application of, 183
- Surveyor, appointment of, 61; powers as to drains, etc., 145; as to highways, 187
- Surveyor of highways, duty of, as to ditches, 505
- Surveyors of highways, Local Boards to be, 183
- Surveys, power to compel production of, 4
- Swansea provisional orders, 725, 734
- Swine, keeping of, so as to be a nuisance, 143, 309
- Taking up pavement by Local Board, 155, 157, 158
- Taking down ruinous or dangerous buildings, 209
- Tallow-melter, prohibition as to trade of, 298
- Taunton provisional order, 724
- Teignmouth provisional orders, 728, 731
- Tenancy of labouring classes' lodging-houses, charges for, 265
- Tenant, agreement between, and landlord, not to be affected by Act, 377
- Tenant, recovery of money paid by owner to local authorities from, 377; construction of lease, 377
- Tenants of labouring classes' lodging-houses receiving relief, 265
- Tenants, liabilities of, as to costs of sewerage, levelling, etc., of streets, 166
- Tenby provisional order, 725
- Tender of expenses of witnesses, 4; of refusal of person nominated to serve, 45; of amends, 448
- Tents, loan of, by War Office in exceptional cases, 488
- Tewkesbury provisional order, 725
- Thames, river, definition of, in Thames Navigation Act, 130; surface of river to be scavenged, 130; bodies corporate may contribute toward cost of improvement of, 131; prohibition to pass sewage into, 131; or in any stream communicating with, 131; notice for discontinuance of sewerage works, 131; penalty for disobedience of, 132; sewage of Oxford and other towns on banks of Thames, 465
- Thames Conservancy Act, extension of provisions of, 130; duty of conservators to preserve flow and purity of water down to metropolis, 130; list of notices served under, 133, 137
- Thanksgiving day, performance of acts falling on, 43

- Time, must be taken at meridian of place, 853
- Tipton provisional order, 746
- Tithe rent-charge, rating of, 367, 667
- Title to land, when action will lie in County Court, though it be in question, 502
- Tobacco mill actionable as a nuisance, 301
- Toll-gates, removal of, 188
- Tolls at markets, 289
- Tolls on turnpike-road, power of Local Board as to, 9 ; on canals, etc., saving as to, 108
- Tormoham provisional orders, 725, 729, 733, 734, 738, 744
- Towing paths not to be interfered with by Local Boards, 100
- Town, meaning of, 11
- Town Council, selection of members of Local Boards by, 28 ; qualification of, 28
- Town Councillor, nominator of candidate for, must be a burgess of the ward for which the candidate is nominated, 37
- Town Councils, powers of, as to burial, 322
- Towns Improvement Clauses Act, incorporation of, 464
- Towns Police Clauses Act, incorporation of, 464
- Towns, distributing system for water supply in, 83 ; supply to town consumers, 84 ; estimation of demand of water in, 79
- Towns, distribution of sewage of, 118
- Toxteth Park provisional orders, 727, 728
- Traction on highways by means of locomotives, 192
- Trade in fish at Scarborough, regulation of, 293
- Trades, accumulations necessary for carrying them on, when not to be deemed nuisances, 477, 522 ; proceedings when causing noxious effluvia, 522
- Trades, noxious or offensive, prohibition as to, 298
- Tramroads, construction of bridges, etc., over, 188
- Transfer of powers, etc., of Burial Boards to Local Boards, 323 ; of powers of Local Board to Town Council, 27
- Transfer of powers of Commissioners under local Acts to Town Council of Borough, 20
- Transfers of mortgages, 407
- Transmission of bedding, clothing, rags, etc., for purpose of being disinfected, 564
- Treasurer of Local Board, appointment of, 61 ; liability as to money in his hands belonging to Local Board, 63
- Treasury, Lords of, to fix salaries of officers appointed by Secretary of State, 3 ; powers of, as to costs of preliminary inquiries, 10 ; of adoption of Local Government Act, 22
- Treasury rules and regulations as to advances of public money for purposes of Labouring Classes' Lodging-houses Act, 269 ; regulations as to erection of labouring classes' lodging-houses, 270
- Tripe-boiler, prohibition as to trade of, 298
- Tunbridge Wells, qualification of members of Local Board, 31 ; definition of rates in, 366 ; provisional orders, 729, 733, 739, 742, 745
- Tunbridge Wells, supply of water to district of, 231
- Tunbridge Wells Water Act, mode of assessment of general district rate under, 366

- Tunstall provisional order, 727
 Turnpike-gates, removal of, 188
 Turnpike-road, powers of Local Board as to tolls on, 9; as to repair, etc., or, 188; as to metropolitan, 189
 Turnpike-roads, ditches on sides of, 507
 Twickenham, diversion of sewage of, from river Thames, 465
 Tynemouth provisional order, 726

Ultra vires contracts, 430, 448
 Umpire, appointment of, 434, 435; valid though made after twenty-one days limited by Act, 434
 Underground rooms, occupation of, 208
 Underground water, right to, 221
 Union of adjoining districts, 10, 23; sanction of Secretary of State to, how to be expressed, 10
 Union of local authorities for executing Diseases Prevention Acts, 556
 Union workhouse, rating of, 369
 Union of sewage districts, 542
 University of Oxford, rating public buildings in, 376
 Unoccupied houses, assessment of, to rates, 361
 Unwholesome food, inspection of, 520
 Unwholesome meat, penalty for selling, 286, 287
 Urinal, power of Local Board to construct, 141; when a nuisance, 477
 Use of disinfectants, memorandum of Barrack and Hospital Improvement Commission on, 149; of locomotives on highways, 192
 Use of sewers by persons beyond district, 105
 User of sewers of sewer authorities, 547; by persons beyond district, 548
 Utilization of sewage, contracts for, 547
 Uxbridge provisional orders, 724, 727

 Vacancies in office of members of Local Boards, 33; when to be filled up, 50, 56; in case of, remaining members to act, 57
 Vaccination, extension of, 565; penalty for neglecting, 565; justices may make order for, 565; half-yearly proceedings of registrars in respect of, 566; power of guardians to pay certain expenses out of their funds, 566
 Vagrants in common lodging-houses, reports as to, 250
 Validity of adoption of Act, 22; of votes at elections of members, 47
 Valuation, when it may be procured by Local Boards, 363
 Vapours, liability for injury caused by noxious, 299, 302; how restrained, 524
 Vaults, entrances to, from streets, 175; occupation of, 208
 Vegetables, entry upon premises to inspect, 484, 520
 Ventilation, justices' order may extend to, 495; of ships, 553
 Ventilation of buildings, 202; of sewers, 117
 Ventnor provisional order, 737
 Venue, 448
 Verifying accounts as to highways not necessary, 187
 Vessel, when deemed to be within district of nuisance authority, 478; and within provisions of Nuisances Removal Acts, 478
 Vessels, bye-laws for licensing and regulating hire of, 321, 454

- Vessels moored to a wharf not within exception to Market Act, 285
 Vessels, regulation for cleansing, etc., and preventing disease in, 553; medical aid to sick on board, 561
 Vesting management of streets in Local Board, 155
 Vestries, powers of, in relation to highways transferred to Local Board, 184
 Viaducts, construction of, by Local Boards, 188
 Village greens, nuisances on, 479
 Volunteer store-house exempt from rating, 371
 Vote, casting, of chairman, 59
 Votes, casting up by chairman on day appointed, 47; how if impracticable to do so, 47
 Votes, majority of, how to be ascertained, 58
 Voting-papers, how to be addressed, 45; filling up number of votes in, by returning officer not compulsory, 46; filling up of, with implied consent of voters, 46; penalty for forging or purloining, etc., 46; neglect of chairman to deliver to Local Board, 49
 Voting in wards, 36; number of votes to be given in each, 36
 Voting by Local Boards, 58; omission to record on minutes the names of members voting, would not invalidate decision, 58
 Voting, scale of, 40; how to be conducted, 41
 Voting-papers, form of, 13, 44; omission to sign, 45; how to be signed, 45; penalty for forging, 15, 46

 Wadsworth provisional order, 736
 Wakefield Local Board, special powers of, as to drainage, 139; as to highways, 185; provisional order, 726
 Wallasey provisional orders, 727, 732
 Wallingford provisional order, 734
 Walls of new buildings, structure of, 201
 Walsoken provisional orders, 726, 727
 Walton-on-the-Hill provisional order, 743
 Wandle, drainage into river, 119
 Wards in boroughs, election of councillors in, 36
 Wards for election of members of Local Boards, 36
 Ware provisional orders, 724, 726
 Warley provisional order, 743; provision as to payment of debts, 743
 Warrant of distress, form of it, 375
 Wash-houses, supply of water to, 226; establishment of, 232
 Wash-houses, establishment of public, in boroughs, 232; in Local Board of Health districts, 232; powers, etc., of Local Board, 233; sale of, 238
 Washing-tubs, etc., proportion of, to be provided for labouring classes in wash-houses, 240; charges for, 241; for higher classes, 241
 Waste water, nuisance arising from, 143
 Wasting water, penalty for, 228
 Water, source of fresh, 70; distribution of, 70; flow of, 71; pressure in, 71; power of, 78; effective energy of mill race, 78; estimation of demand for, in towns, 79; impurities of, 85; means employed to remove them, 85; discharge of, to be provided for in drainage works, 86
 Water, fouling with gas-washings, 519

- Water, gratuitous supply of, for public fountains, 226
- Water, offensive, nuisance arising from, 143
- Water-mains, rateability of, 215
- Water-meters, advantages in use of, 84
- Water-pipes, alteration of, by Local Boards, 157
- Water-rate, power of Local Board to levy, 226, 383; payable in advance, 383
- Water-rights, preservation of, 109, 214; of riparian proprietors, 216
- Water, right to surface, 102, 225
- Water-spouts to houses, 176
- Water supply, agreements for, 226; for domestic use, definition of, 226; to houses, 225, 376
- Water supply, powers of Local Board as to, 212
- Water supply to public baths and wash-houses, 226
- Water supply, contracts for, 227
- Water supply, in case of fire, 227
- Water supply, fouling with gas-washings, 229
- Water supply, fouling by manufactures, 230
- Water supply, stoppage of, on non-payment of rates, 383
- Water, supply of, to public baths and wash-houses, 238; supply of, by sewer authorities, 549; supply of, to common lodging-houses, 250; to labouring-classes' dwelling-houses, 263
- Water supply, recovery of expenses of, in a summary manner, 226; complaint to Secretary of State, when Local Board has made default in, 212
- Water-closets, penalty for allowing to overflow, 143
- Water-closets, examination of, by surveyor, 145
- Water-closets to be provided for in new houses, 151
- Water-closets, factories, 153; bye-laws as to providing, 202
- Water company, when shareholder is not to vacate office as member of Local Board, 33
- Watercourse, diverting, 225
- Watercourse, when a nuisance, 477; cleansing of, 505; conversion of, into sewer, 509; prevention of pollution of, by sewer authorities, 549
- Watercourses, Secretary at War may alter course of, 110
- Watercourses, not to be interfered with by Local Boards, 107
- Watercourses, cleansing of, on boundaries of district, 139
- Watering streets, 141; turnpike-roads, 188
- Waterloo with Seaforth provisional order, 727
- Waterworks Bill, 1865, report of Select Committee on, 213; construction of, 213; application of income arising from, in Halstead district, 737
- Waterworks defined, 79, 212; purchase of, 212; saving as to, 467; penalty for injuring, 228
- Waterworks, essential parts of, 79; capacity and site of store reservoir, 80; reservoir embankment, construction of, 80; overflow weir, construction of, 81; bye-wash, defined, 81; culvert, construction of, 81; outlet pipes, 81; sluices and sluice tower, 81; distributing system, for town supply, 83; supply to town consumers, 84; house pipes and fittings, 84; supply in case of fire, 84
- Watford provisional order, 725
- Wednesbury provisional order, 746

- Wednesfield provisional orders, 738, 740; number of members in district, 738; continuance in office of, 738; voting under Small Tenements Rating Act for, 40
 Weighing goods and carts in markets, 287
 Well, pollution of, by sewage, liability for, 126, 217
 Wells provisional order, 729
 Wells, vested in local authority, 518; repair of, 518
 Wells, sinking of, 216; for public supply of water, 226; by churchwardens and overseers in certain cases, 517
 Wells, when to vest in sewer authority, 518, 550; digging of, by sewer authorities, 550
 Welshpool provisional order, 726
 West Cowes provisional orders, 725, 733, 741
 West Derby provisional order, 743
 West Ham, election of members of Local Board of, 51; provisional orders, 727, 732
 West Hartlepool provisional order, 738
 Weston-super-Mare provisional order, 730; rates in, 366; mortgages by commissioners of, 409
 Wet-dock, rating of, 368
 Weymouth provisional order, 725
 Whitchurch and Dodington provisional order, 744
 Whitewashing houses, 153
 Whitewashing premises, 495
 Width of new street abutting on back gardens, 202
 Width of streets, bye-law as to, 201
 Width of new street, how in a case under the Metropolis Local Management Act, 202
 Wigan provisional orders, 725, 728; purchase of lands in, 414
 Willenhall provisional order, 727
 Willenhall, voting under Small Tenements Rating Act for, 40
 Wilton provisional orders, 729, 733
 Winchester provisional order, 736
 Windhill provisional order, 727
 Windsor (New) provisional order, 724, 738
 Wine licences and refreshment houses, 309
 Wisbeach provisional orders, 726, 727
 Wissey river, provisional order for drainage scheme, 111
 Witnesses, power to summon, 4; examination of, 4; distance which they may be required to travel, 4
 Wolverhampton provisional order, 725
 Wolverhampton, voting under Small Tenements Rating Act for, 40
 Women, hours of labour for, in workshops, 337
 Wooden houses, 200
 Woollen articles, place for disinfection of, 503
 Woolwich, constitution of Local Board for, 52; authority of Metropolitan Board of Works in, 52; exemption of dockyard from Act, 95; provisional orders, 726, 733
 Worcester provisional order, 724

- Workhouse liable to district rates, 369
 Workington provisional orders, 736, 743
 Works in adjoining districts, execution of, 139; for drainage, by Local Board, 147; penalty for injuring, 462
 Works beyond limits of district, execution of, 140
 Works of Local Board, penalty for damaging, 462; of sewer authority, penalty for damaging, 516; signature to specification of, 428
 Workshop, when to be deemed a nuisance within Nuisances Removal Acts, 477
 Workshop Regulation Act, application of, 334; description of local authority, 334; general definitions in Act, 335; temporary exceptions to, 335; permanent exceptions, 336; regulations as to time of labour under, 337; penalty for employing women and children contrary to provisions of, 338; power to officers of local authority to enter workshops, 339; penalty for obstructing, 339; inspector or sub-inspector of factories may enter factories and inspect condition, 339; penalty for obstructing inspector, 339; liability of hirer of machine used instead of occupier, 339; recovery and application of penalties, 340; attendance of children in workshops at school, 340; parents to cause children to attend at school, 340; penalty for omission, 340; occupier of workshop to obtain certificate of child's attendance at school, 340; form of certificate, 341; to pay for schooling and deduct it from wages, 341; teacher unfit may be disqualified from granting certificates, 341; penalty for forging certificates required under, 342; local authority to enforce Act, 342; workshop not a factory unless notice given, 342; inspectors to be furnished with certificate of appointments, 343
 Workshops, regulations as to hours of labour in, by women and children, 337; inspection of, 339
 Workshop provisional order, 726
 Worthing provisional orders, 726, 728, 732, 740, 746; borrowing powers of Local Board, 746; supply of water by, 746
 Worthing, sewage irrigation works at, 118
 Writ of prohibition, 443

 Yard at back of house, a place within meaning of Nuisances Removal Act, 467
 Yarmouth (Great) provisional order, 725
 Year, defined, 38, 56, 575
 York, how rates are to be levied in, 375; provisional order, 724



